The Ontario Securities Commission

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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)

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

A. Capital Markets Tribunal

A.1
Notices of Hearing

A.1.1 Plateau Energy Metals Inc. et al. – ss. 127(1), 127.1

FILE NO.: 2021-16

IN THE MATTER OF
PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES, AND
PHILIP NEVILLE GIBBS

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

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: November 2, 2022 at 1:00 p.m.

LOCATION: By videoconference

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Capital Markets Tribunal to approve the Settlement Agreement dated October 25, 2022 between Staff of the Commission and the respondents in respect of the Statement of Allegations filed by Staff of the Commission dated May 3, 2021.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 27th day of October, 2022

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

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

A.1.2 Canada Cannabis Corporation et al. – ss.127(1), 127.1

FILE NO.: 2019-34

IN THE MATTER OF
CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO, AND
PETER STRANG

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

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: November 4, 2022 at 8:30 a.m**.**

LOCATION: By videoconference

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Capital Markets Tribunal to approve the Settlement Agreement dated October 28, 2022, between Staff of the Commission and Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward in respect of the Statement of Allegations filed by Staff of the Commission dated September 13, 2019.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 1st day of November, 2022.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

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

A.2
Other Notices

A.2.1 First Global Data Ltd. et al.

FOR IMMEDIATE RELEASE
October 27, 2022

FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ, AND
ANDRE ITWARU,
File No. 2019-22

TORONTO – Take notice that the sanctions and costs hearing in the above-named matter is scheduled to be heard on April 3 and 4, 2023 at 10:00 a.m. on each day.

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A.2.2 Plateau Energy Metals Inc. et al.

FOR IMMEDIATE RELEASE
October 27, 2022

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

TORONTO – The Tribunal issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Plateau Energy Metals Inc., Alexander Francis Cuthbert Holmes and Philip Neville Gibbs in the above named matter.

The hearing will be held on November 2, 2022 at 1:00 p.m.

Take notice that the merits hearings days scheduled on October 31, 2022, November 1 and 2, 2022 and January 11 and 12, 2023 will not proceed as scheduled.

A copy of the Notice of Hearing dated October 27, 2022 is available at capitalmarketstribunal.ca.

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A.2.3 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
October 27, 2022

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

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

A copy of the Order dated October 27, 2022 is available at capitalmarketstribunal.ca.

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A.2.4 Polo Digital Assets, Ltd.

FOR IMMEDIATE RELEASE
October 28, 2022

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

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

A copy of the Reasons and Decision and the Order dated October 27, 2022 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.5 Harry Stinson et al.

FOR IMMEDIATE RELEASE
October 28, 2022

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

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

(1) the merits hearing days scheduled on April 5 and 17, 2023 are vacated; and

(2) the merits hearing shall commence on March 27, 2023 at 10:00 a.m., and continue on March 28, 29, 30, 31, April 3, 4, 6, 10, 11, 12, 13, 14, May 1 and 2, 2023 at 10:00 a.m. on each day.

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A.2.6 Mughal Asset Management Corporation et al.

FOR IMMEDIATE RELEASE
October 28, 2022

MUGHAL ASSET MANAGEMENT CORPORATION,
LENDLE CORPORATION AND
USMAN ASIF,
File No. 2022-15

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

A copy of the Order dated October 28, 2022 is available at capitalmarketstribunal.ca.

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inquiries@osc.gov.on.ca

A.2.7 Mark Hamlin

FOR IMMEDIATE RELEASE
October 31, 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 31, 2022 is available at capitalmarketstribunal.ca.

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For General Inquiries:

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inquiries@osc.gov.on.ca

A.2.8 Canada Cannabis Corporation et al.

FOR IMMEDIATE RELEASE
November 1, 2022

CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO, AND
PETER STRANG,
File No. 2019-34

TORONTO – The Tribunal issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into by Staff of the Commission and Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward in the above named matter.

The hearing will be held on November 4, 2022 at 8:30 a.m.

A copy of the Notice of Hearing dated November 1, 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:

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A.3
Orders

A.3.1 Xiao Hua (Edward) Gong

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

File No. 2022-14

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

October 27, 2022

ORDER

WHEREAS on October 27, 2022, the Capital Markets Tribunal held a hearing by videoconference;

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

IT IS ORDERED THAT:

1. by 4:30 p.m. on November 10, 2022, the respondent shall serve and file a notice of motion regarding the use of certain materials in Staff's possession (the **Materials Motion**);

2. by 4:30 p.m. on December 1, 2022, the respondent shall serve and file all supporting materials, including written submissions, on the Materials Motion and the respondent shall serve and file a notice of motion regarding his request for relief under the *Charter of Rights and Freedoms*; and

3. a further attendance in this matter is scheduled for December 8, 2022 at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Russell Juriansz"

"Sandra Blake"

A.3.2 Polo Digital Assets, Ltd. – ss. 127(1), 127.1

IN THE MATTER OF
POLO DIGITAL ASSETS, LTD.

File No. 2021-17

Adjudicators: M. Cecilia Williams (chair of the panel)
Geoffrey D. Creighton
William J. Furlong

October 27, 2022

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

WHEREAS the Capital Markets Tribunal held a combined merits and sanctions and costs hearing in writing to consider whether to make findings against, and impose sanctions and costs on, Polo Digital Assets, Ltd. (**Polo Digital**) pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

AND WHEREAS the Tribunal made findings against Polo Digital in its Reasons and Decision issued on October 27, 2022;

ON READING the materials filed by Staff of the Ontario Securities Commission, no one appearing on behalf of Polo Digital;

IT IS ORDERED THAT:

1. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Polo Digital shall cease permanently;

2. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Polo Digital shall cease permanently;

3. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Polo Digital permanently;

4. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Polo Digital is prohibited permanently from becoming or acting as a registrant or as a promoter;

5. pursuant to paragraph 9 of subsection 127(1) of the Act, Polo Digital shall pay an administrative penalty in the amount of $1,500,000;

6. pursuant to paragraph 10 of subsection 127(1) of the Act, Polo Digital shall disgorge USD 1,825,417.89 to the Commission; and

7. pursuant to section 127.1 of the Act, Polo Digital shall pay $138,371.50 for the costs of the Commission's investigation and hearing.

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"William J. Furlong"

A.3.3 Mughal Asset Management Corporation et al.

IN THE MATTER OF
MUGHAL ASSET MANAGEMENT CORPORATION,
LENDLE CORPORATION AND
USMAN ASIF

File No. 2022-15

Adjudicators: Andrea Burke (chair of the panel)
Geoffrey D. Creighton

October 28, 2022

ORDER

WHEREAS the Capital Markets Tribunal held a hearing in writing to consider a request from the respondents for an adjournment of the second attendance in this matter, previously set by a Tribunal order dated July 21, 2022;

ON READING the respondents' email request and further related email correspondence from the parties, and on considering that Staff of the Ontario Securities Commission do not oppose the request;

IT IS ORDERED THAT:

1. the second attendance previously scheduled for November 7, 2022, shall instead proceed on November 17, 2022 at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat; and

2. paragraph 3 of the July 21, 2022 order is varied such that the respondents shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents, by 4:30 p.m. on November 7, 2022.

"Andrea Burke"

"Geoffrey D. Creighton"

A.3.4 Mark Hamlin – s. 17(1)

IN THE MATTER OF
MARK HAMLIN

File No. 2022-16

Adjudicators: Andrea Burke (chair of the panel)
Timothy Moseley
Geoffrey D. Creighton

October 31, 2022

ORDER
(Subsection 17(1) of the *Securities Act,* RSO 1990, c S.5 (the **Act**))

WHEREAS on October 31, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider the application by Mark Hamlin 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, by order dated October 12, 2022, with reasons to follow, determined that it has jurisdiction to grant the order sought;

ON READING the materials filed and on hearing the submissions of the representatives of Hamlin and of Staff of the Ontario Securities Commission;

IT IS ORDERED THAT:

1. pursuant to subsection 17(1) of the Act, Hamlin is authorized to provide deposition testimony in the action commenced by the Commodity Futures Trading Commission against Christophe Rivoire in the United States District Court for the Southern District of New York in Case No. 19-cv-11701 (**SDNY Action**), and to make any disclosures related to such deposition to the Court or to the parties in the SDNY Action, concerning the following topics:

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

    b. the Commission's investigation order issued on April 2, 2019, under section 11 of the Act (**Investigation Order**), pursuant to which the Examination was conducted;

    c. the transcript of the Examination; and

    d. any other document, correspondence, information or evidence relating to the Examination and any related interactions with Staff of the Ontario Securities Commission or Staff of the Commodity Futures Trading Commission that is subject to the confidentiality restrictions set out in section 16 of the Act or the Investigation Order.

"Andrea Burke"

"Timothy Moseley"

"Geoffrey D. Creighton"

A.4
Reasons and Decisions

A.4.1 Polo Digital Assets, Ltd. – ss. 127(1), 127.1

Citation: *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32
Date: 2022-10-27
File No. 2021-17

IN THE MATTER OF
POLO DIGITAL ASSETS, LTD.

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

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton William J. Furlong	
Hearing:	In writing; final written submissions received August 19, 2022	
Appearances:	Aaron Dantowitz Vincent Amartey	For Staff of the Ontario Securities Commission
	No submissions made on behalf of Polo Digital Assets, Ltd.	

REASONS AND DECISION

1. DECISION AND OVERVIEW

[1] Staff of the Ontario Securities Commission alleges that Polo Digital Assets, Ltd. (**Polo Digital**) sold crypto assets to Ontario residents without complying with the registration and prospectus requirements under Ontario securities law.

[2] Staff alleges that Polo Digital owns and operates a crypto asset trading platform, through the website poloniex.com. Staff alleges that the platform, which is also accessible through an app, was made available to Ontario residents, who were able to trade Crypto Contracts and Crypto Futures Contracts that are securities under Ontario securities law, without the registration and prospectus protections of that law.

[3] This enforcement proceeding combines the merits and sanctions and costs hearings against Polo Digital and is being conducted in writing, pursuant to an order dated May 3, 2022.[1]

[4] Staff filed two affidavits in this proceeding. The first was from Jocelyn Wang, a Forensic Accountant with the Commission's Enforcement Branch.[2] The second affidavit was from Yolanda Leung, a Law Clerk within the same branch.[3]

[5] Polo Digital was originally represented in this matter by counsel who, at their request, were removed as Polo Digital's counsel of record. Polo Digital has not participated in this hearing and did not file any materials. As noted below in paragraph [24], we are satisfied that we can proceed with the merits and sanctions and costs hearing without Polo Digital's participation.

[6] For the reasons set out below, we find that Polo Digital engaged in unregistered trading of securities without an available exemption, contrary to s. 25(1) of the *Securities Act*[4] (the **Act**) and distributed securities without a prospectus and without an available exemption, contrary to s. 53(1) of the Act. These serious offences warrant permanent market participation bans, an administrative penalty of $1.5 million, disgorgement of USD 1,825,417.89 and costs of $138,371.50.

1 (2022), 45 OSCB 4683 (**May 3 Order**)
2 Exhibit 1, Affidavit of Jocelyn Wang dated June 10, 2022 (**Wang Affidavit**)
3 Exhibit 2, Affidavit of Yolanda Leung dated June 10, 2022 (**Leung Affidavit**)
4 RSO 1990, c S.5

2. BACKGROUND FACTS

[7] Polo Digital is a corporation incorporated in the Republic of Seychelles.

[8] The platform was established in 2014. Polo Digital acquired the platform on October 16, 2019. Correspondence from Polo Digital's then counsel in April 2022 continued to identify Polo Digital as the owner and operator of the platform.

[9] Information on the poloniex website identifies the platform as "Your one-stop shop for crypto trading",[5] and offers the ability to trade over 200 crypto assets.

[10] Polo Digital appears to be a significant presence in the crypto trading platform sector. Staff provided information about the scope of the platform's operations from a source that apparently tracks and reports data about crypto trading platforms. We have no evidence about this source or the accuracy of its data. In the absence of any additional evidence about the source or any contradictory evidence about the platform's size, we accept the evidence provided by Staff. Staff advises that, based on this source, on May 4, 2021, the platform was listed as the 13th largest global crypto trading platform for "spot" transactions and 30th for derivatives, with a reported 24-hour trading volume of more than USD 529 million and USD 36 million, respectively. Further, using this same source, Staff advises that on March 16, 2022, the platform was ranked as 22nd for "spot" platforms and 36th for derivatives, with reported 24-hour trading volumes of USD 22 million and USD 7 million, respectively.

[11] Investors accessing the platform can use fiat currency to buy crypto assets on the platform, deposit their own crypto assets, engage in spot trading, and engage in margin trading using assets borrowed from other users on the platform to facilitate buy and sell orders, and trade perpetual futures contracts whose value is derived from crypto assets.

[12] Polo Digital charges fees for trades on the platform and for the withdrawal of crypto assets.

[13] It is clear that the platform was accessible to Ontario investors and that Ontarians had active accounts on the platform.

[14] Staff was able to open an account on the platform and was able to deposit crypto assets and engage in trading various crypto asset products on the platform using an Ontario based IP address.

[15] In addition, in a letter dated April 13, 2022, Crawley MacKewn Brush LLP**,** Polo Digital's counsel at the time, confirmed that Polo Digital had approximately 9,300 Ontario accounts (the **Ontario Accounts**) on the platform as of July 24, 2021.

[16] The website indicated that investors could use Canadian fiat currency to buy crypto assets on the platform, and that Canada was a supported country within the third-party payment processing company Polo Digital had partnered with to facilitate the purchase of crypto assets with fiat currency.

[17] Prior to changes Polo Digital advised were made to the platform's User Agreement on July 24, 2021, neither Ontario nor Canada was listed as a "Restricted Territory". In addition, neither Ontario nor Canada was listed in the "Futures FAQ" as a jurisdiction where crypto futures trading on the platform was unavailable.

3. ANALYSIS OF THE MERITS

3.1 Introduction

[18] Staff asks that we:

a. proceed with this hearing without Polo Digital's participation;

b. draw adverse inferences in the absence of evidence from Polo Digital;

c. determine that certain crypto asset products offered on the platform are securities;

d. determine that Polo Digital has engaged in the business of trading in securities without being registered and without an available exemption, contrary to s. 25(1) of the Act;

e. determine that Polo Digital has engaged in a distribution of securities without a prospectus and without an available exemption, contrary to s. 53(1) of the Act; and

f. if we determine that Polo Digital has breached Ontario securities law, make a sanctions and costs order against Polo Digital.

[5] Wang Affidavit at para 38

3.2 Preliminary Matters

3.2.1 Should we proceed without the respondent?

[19] Section 7(2) of the *Statutory Powers Procedure Act*[6] provides that, where notice of a written hearing has been given to a party to a proceeding, a tribunal may proceed without the party's participation.

[20] Polo Digital initially participated in this matter through its counsel. Polo Digital's counsel advised the Tribunal that the company had, on April 18, 2022, terminated the relationship. Polo Digital's counsel's subsequent request to be removed as Polo Digital's counsel of record was granted by an order of the Tribunal on April 25, 2022.[7] Staff communicated with Polo Digital's counsel as the company's representative in this proceeding until the date their counsel no longer represented Polo Digital.

[21] Subsequent to Polo Digital's counsel's departure as counsel of record, Staff communicated with Polo Digital's agent of record with the Seychelles Financial Services Authority, Sterling Trust & Fiduciary Limited. The agent of record has acknowledged receipt of Staff's communications. However, Staff has received no substantive communications from Polo Digital. Staff states that it has received no indication that Polo Digital intends to participate in this hearing.

[22] Rule 21(3) of the Capital Markets Tribunal *Rules of Procedures and Forms* also provides that if a Notice of Hearing is served on a party and the party does not attend a hearing, the proceeding may continue in the party's absence.

[23] The Registrar has provided notice to Polo Digital through its agent of record of all the attendances in this proceeding and a copy of all orders issued, including the Tribunal's May 3 Order stating that Polo Digital is not entitled to any further notice in this proceeding and that this panel could proceed with this hearing in its absence.

[24] Given the May 3 Order, and that Polo Digital has been notified and has chosen not to participate in this hearing, we conclude that it is appropriate to proceed in its absence.

3.2.2 Should we draw adverse inferences against the respondent?

[25] Staff submits that because Polo Digital has failed to adduce any evidence in this proceeding, we should draw an adverse inference against it whenever necessary.

[26] The Tribunal has previously held that where Staff establishes evidence that appears to be credible and reliable and that is sufficiently strong for a respondent to be called on to answer it regarding a particular factual conclusion, it would be appropriate to draw an adverse inference against a party for their failure to testify, in respect of that conclusion.[8] Staff submits that Polo Digital's failure to call evidence amounts to an implied admission that its evidence would not have been helpful to its case.[9]

[27] In an oral hearing, a party seeking the drawing of an adverse inference can raise each such instance as the point arises. In a written hearing such as this one, the parties do not have that opportunity. In this written hearing, Staff makes a blanket request that we draw an adverse inference whenever we are not otherwise convinced that Staff has met its evidentiary burden on a particular point.

[28] In our analysis, where we conclude that Staff has provided cogent and reliable evidence on a factual point, that is sufficiently strong that Polo Digital should be called on to respond with evidence of its own, and it has not, we will draw an adverse inference against Polo Digital.

3.2.3 Is certain of the financial evidence properly before the Panel?

[29] Prior to this written hearing, Polo Digital took the position with Staff, through communications between Staff and Polo Digital, that certain financial evidence that was included in Staff's hearing brief should not be part of Staff's case, because the evidence is subject to settlement privilege and was provided to Staff on a "without prejudice" basis. Staff has provided us with the financial evidence, claiming that it is properly before the Panel. We agree with Staff, for the following reasons.

[30] Polo Digital asserted, in an email exchange between its then counsel and Staff on April 12, 2022, that Staff's hearing brief for this proceeding included "email correspondence and notes from a phone call between Commission Staff and counsel for Polo in respect of the potential resolution of the proceeding, which were exchanged on a without prejudice and [*sic*] basis and are subject to settlement privilege".[10] Staff did not agree and subsequently included this communication in its hearing brief for this hearing. Staff points to an earlier email exchange in July and August 2021 with

6 RSO 1990, c S.22
7 (2022) 45 OSCB 4492
8 *Money Gate Mortgage investment Corporation (Re)*, 2019 ONSEC 40 (***Money Gate***) at para 71; *Hutchinson (Re)*, 2019 ONSEC 36 (***Hutchinson***) at para 76
9 *Sextant Capital Management Inc (Re)*, 2011 ONSEC 15 at paras 245-246; *Hutchinson* at paras 64-65, 215, 268 and 388; *Money Gate* at paras 71 and 77; *Mega-C Power Corporation (Re)*, 2010 ONSEC 19 at paras 275-276
10 Wang Affidavit at para 139

Polo Digital's counsel where Staff advised that they "are not in a position to accept this information on a without prejudice basis".[11] Staff takes the position that the information was not provided on a "without prejudice" basis and in any event it cannot be properly considered to be the subject of settlement privilege as it was not sent in an attempt to effect a settlement. Rather, it contained factual information that was relevant to the matters in issue in this proceeding. This, coupled with the fact that Polo Digital has not asserted a claim of privilege before the Tribunal, means, in Staff's submission, that the evidence is properly before the Panel.

[31] The information in question concerns the amount of revenue generated on the platform from Ontario users since the inception of the platform in 2014. This information is relevant to our analysis of the extent of Polo Digital's operations in Ontario and to Staff's request for a disgorgement order.

[32] As indicated above, Polo Digital initially provided certain information to Staff (redacted in the copy provided to the Panel) on July 21, 2021, on a "without prejudice" basis. However, on July 22, 2021, Staff advised Polo Digital that Staff would not accept the information on that basis. On August 12, 2021, Polo Digital provided information about the number of Ontario Accounts and revenue details from certain dates, including from the platform's inception, and requested "confidential treatment" as the information is "highly commercially sensitive".[12] There was no mention by Polo Digital's then counsel of this information being related to settlement discussions or being provided on a without prejudice basis. We did not receive a request from Polo Digital to have this information marked as confidential for the purposes of this hearing. We did ask Staff for clarity about the handling of this information. In the circumstances, we determined there was no basis for us to use our discretion to mark the information confidential.

[33] On April 13, 2022, the day following the email exchange between Staff and Polo Digital's then counsel, in a letter to Staff marked "WITH PREJUDICE", Polo Digital stated it was writing "to provide the following updated information, all of which has been previously disclosed to Staff, for inclusion in the record".[13] The information in this latter communication included the approximate number of Ontario investors on the platform and information about the revenue generated from those investors from Polo Digital's acquisition of the platform on October 16, 2019, but not from the inception of the platform.

[34] We conclude that the information in Polo Digital's August 12, 2021 letter, specifically revenue from the Ontario Accounts from the inception of the platform, is properly before the Panel and not subject to settlement privilege, for the reasons articulated by Staff. When Polo Digital provided that information Polo Digital was on notice, from Staff's July 22, 2021, email, that Staff would not accept the information they had requested from Polo Digital on a "without prejudice" basis. A request for "confidential treatment" of commercially sensitive information is not equivalent to an understanding that information may not be used to the potential detriment of a party in an adversarial context. We consider it irrelevant that Polo Digital provided certain information on a "with prejudice" basis on April 13, 2022, excluding the revenue from the platform's inception. It had provided the revenue from inception information to Staff on August 12, 2021, with full knowledge of Staff's position that it would not be accepted on a "without prejudice" basis.

[35] Having determined that the revenue from Ontario Accounts from the date of the platform's inception, as disclosed in Polo Digital's communication to Staff of August 12, 2021, is properly before us, we consider whether that amount is the appropriate subject of a disgorgement order beginning at paragraph [113] below.

3.3 Are the crypto asset products offered on the platform "securities"?

[36] Before turning to whether Polo Digital breached the Act we must determine whether the crypto asset products offered by Polo Digital on the platform constitute securities, as that term is defined in the Act.

[37] Staff submits that at least two categories of crypto asset products offered on the platform constitute securities. First, an investor's contractual right to the assets they deposit, purchase and sell on the platform (the **Crypto Contracts**), is a security. Second, Polo Digital offers the ability to purchase and sell perpetual futures contracts whose value is derived from underlying crypto assets. Staff submits these perpetual futures contracts (**Crypto Futures Contracts**) are also securities.

3.3.1 Are Crypto Contracts "securities"?

[38] "Security" is defined at subsection 1(1) of the Act. The definition consists of a non-exhaustive list of 16 clauses expressed in general terms, "evidencing an intention for breadth".[14] The Ontario Court of Appeal, in a recent case, stated that the Act's definition of "key terms" capture "a great many instruments and activities within its regulatory scope and then provides many exemptions from the Act's requirements…to tailor this regulatory scope to its purposes."[15]

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11 Wang Affidavit at para 140
12 Wang Affidavit at para 135
13 Wang Affidavit at para 142
14 *Ontario Securities Commission v Tiffin,* 2020 ONCA 217 (***Tiffin***) at para 29
15 *Tiffin* at para 28

[39] In *VRK Forex & Investments Inc (Re)*, the Tribunal emphasized that a purposive approach should be adopted when determining the meaning of "security".[16] When analyzing whether an instrument is a "security" within the meaning of the Act, it is necessary to consider the purposes of the Act, including "investor protection". Staff submits that investor protection is at the heart of this proceeding and, consistent with the approach of the panel in the *VRK* decision, investor protection is the "overarching lens" through which an instrument is assessed.[17]

[40] We agree that determining whether an instrument is a security should not involve a "formulaic approach based on… static elements".[18] Using investor protection as an overarching lens will ensure that the assessment of products is flexible and adaptable to address the broad range of investment schemes that are developed in the capital markets.[19] As innovation continues in the capital markets, the language in the Act and the tests developed in Tribunal decisions applying that language, must be interpreted through the lens of the purposes of the Act to ensure that innovative products and services that engage those purposes are managed appropriately within the regulatory framework of Ontario's securities law. In this instance, the evolving nature of the crypto industry, the complexity of the products, the opacity of their valuation, the rapid growth of the market and the significant size of the market, because they invoke investor protection issues, all factor into our assessment of whether the Crypto Contracts are securities.

[41] Staff submits that Crypto Contracts are either "evidence of indebtedness", "evidence of title or interest" or constitute "investment contracts", as defined in s. 1(1) of the Act. For the reasons set out below, we find Crypto Contracts are "investment contracts". As Staff need only demonstrate that Crypto Contracts fall within one category of "security", it is not necessary to consider whether Crypto Contracts constitute "evidence of indebtedness" or "evidence of title or interest".

[42] The Tribunal has consistently applied the Supreme Court of Canada's determination in *Pacific Coast Coin* that the elements of an "investment contract" are:

a. an investment of money,

b. with an intention or an expectation of profit,

c. in a common enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties, and

d. where the efforts made by those other than the investor are undeniably significant and essential managerial efforts which affect the failure or success of the enterprise.[20]

[43] We consider each element of the test for an "investment contract", in the context of the overall circumstances, as they apply to the Crypto Contracts in turn below.

3.3.1.a Investment of money

[44] Recent Tribunal decisions have adopted a plain reading of the first element of the *Pacific Coast Coin* test, rephrasing the question to: Was there a payment?[21] In one case, the investors paid money for software licenses.[22] In another case, similar to the circumstances before us, investors on a crypto trading platform deposited either fiat currency or crypto currency to support their trading in crypto asset products available on the platform. As with the case before us, those products included a crypto contract that provided the investor with the contractual right to the crypto assets they deposited, purchased and sold on the platform.[23]

[45] In the case before us, the website indicates that a deposit of crypto assets or fiat currency is required for an investor to acquire crypto assets. Staff's investigator opened an account on the platform and deposited crypto assets. Based on the investigator's evidence about that experience and in the absence of any evidence from Polo Digital about how other investors on the platform proceeded, we draw an adverse inference and conclude there was, therefore, a payment and that the first element of the "investment contract" test is met.

3.3.1.b Intention or expectation of profit

[46] Staff submits that investors using the platform intend or expect to profit from their activities on the platform. We agree.

16 2022 ONSEC 1 (***VRK***) at para 22
17 *VRK* at para 24
18 *VRK* at para 24
19 *Pacific Coast Coin Exchange v Ontario Securities Commission* [1978] 2 SCR 112 (***Pacific Coast Coin***) at 127-132
20 *Furtak (Re),* 2016 ONSEC 35 (***Furtak***) at para 66, citing *Pacific Coast Coin*
21 *Furtak* at para 66; *Mek Global Limited (Re)*, 2022 ONCMT 15 (***Mek Global***) at para 43
22 See *Furtak*
23 See *Mek Global*

[47] The language in the platform's User Agreement and on the website support our conclusion. The User Agreement, in the limitation of liability language, acknowledges the possibility of earning profits: "*Polo [….] will not be liable for any […] damages for loss of profits…".*[24] The website states that "*Margin trading is essentially trading with borrowed funds instead of your own to maximize potential gains"* and "*The use of leverage and collateral to trade cryptocurrencies is complex and risky. You may realize substantial gains or losses and should be well prepared before you begin trading."*[25] The website, on its homepage, also highlights the ability to engage in leveraged-based trading for up to 100x.

[48] We conclude that a reasonable investor trading Crypto Contracts on the platform would intend or expect to earn a profit from their trading. Therefore, the second element of the "investment contract" test is met.

3.3.1.c Common enterprise and reliance on Polo Digital's significant efforts

[49] The questions of whether there is a common enterprise and whether there is reliance on the effort of others are so interwoven that they are commonly dealt with together.[26] Staff submits, and we agree, that investors on the platform are dependent on the actions, custody arrangements and solvency of Polo Digital for the success of their investments.

[50] The platform provides investors with exposure to crypto asset markets. However, every deposit and trade by an investor is dependent on Polo Digital to accept, execute transactions, safeguard and deliver crypto assets to investors. Crypto assets deposited on the platform are held in digital wallets controlled by Polo Digital. Investors do not have their own, investor-controlled digital wallets. The User Agreement stipulates that there is no deposit insurance protection for any crypto asset deposits and that Polo Digital will not be held liable for any losses or theft of investors' crypto assets.

[51] Investors are completely reliant on Polo Digital for the return of their assets. The User Agreement provides that Polo Digital has the right to restrict or refuse to honour requests to withdraw assets from the platform in certain circumstances. Staff submits, and we agree, that once an investor has entered the platform's ecosystem, the success or failure of the client's investment (including the return of their initial investment) is inextricably tied to, reliant upon and within the control of, Polo Digital.

[52] Based on Staff's evidence, we conclude that investors in Crypto Contracts were engaged in a common enterprise with Polo Digital and were dependent on Polo Digital's significant efforts for the failure or success of their investment. Our conclusion is undisturbed by any evidence to the contrary. Therefore, the third and fourth elements of the "investment contract" test are met.

3.3.1.d Conclusion regarding Crypto Contracts

[53] We conclude that all the elements of the test of whether a Crypto Contract is an investment contract have been met. The investors paid fiat currency or crypto assets into the platform, intended or expected to profit from their trading activities on the platform and were dependent on Polo Digital for the failure or success of their investment.

[54] We are aided in our conclusion by considering the platform through a purposive approach, engaging an overarching lens of investor protection. The platform is available to retail investors. Within the platform's ecosystem, investors have no deposit insurance protection, no control over their assets and no absolute right to withdraw their assets. They are also encouraged to engage in high-risk trading, including trading on margin. The website encourages investors to take risks by promoting various trading campaigns and competitions to earn rewards.

[55] Trading in crypto assets is an emerging and rapidly growing industry. It is global in nature, with trading platforms, such as Polo Digital's platform, frequently located in offshore locations that have little if any local regulation or oversight. The products themselves are unique and complex, extremely difficult to objectively value and subject to significant volatility. Few retail investors would have much, if any, experience with these complex and risky products, heightening the need for the registration and prospectus protections of Ontario securities law.

[56] For all of these reasons we conclude the Crypto Contracts are "investment contracts" and, therefore, securities within the meaning of the Act.

3.3.2 Are Crypto Futures Contracts "securities"?

[57] Our conclusion about Crypto Contracts applies equally to Crypto Futures Contracts, for similar reasons. An investment in a Crypto Futures Contract allows an investor to speculate on the future price of a wide variety of underlying crypto assets, with flexible, substantial leverage. The Crypto Futures Contracts have no expiration dates and are designed to closely track the underlying "spot" market.

[24] Wang Affidavit at para 40
[25] Wang Affidavit at paras 99 and 109
[26] *Pacific Coast Coin* at 129

[58] Staff submits and we agree that the Crypto Futures Contracts offered on the platform meet the definition of "investment contract" and are, therefore, securities under the Act. We again apply each of the elements of the test for an "investment contract", in the context of the overall circumstances, to the Crypto Futures Contracts in turn below.

3.3.2.a Investment of money

[59] Similar to Crypto Contracts, in order to trade Crypto Futures Contracts on the platform, clients must first deposit their fiat currency or crypto assets into an account on the platform. Based on the investigator's experience on the platform and in the absence of any evidence from Polo Digital about how other investors on the platform proceeded, we draw an adverse inference and conclude there was a payment and that therefore, the first element of the "investment contract" test is met regarding the Crypto Futures Contracts.

3.3.2.b Intention or expectation of profit

[60] The Crypto Futures Contract is structured such that investors do not expect the delivery of the underlying crypto asset. Rather, investors are speculating on the future price of the underlying crypto asset, intending or expecting to earn a profit with the possibility of increasing the profit potential by leveraging their initial investment.

[61] The website highlights the prospect of enhanced profits through leverage as a feature of the Crypto Futures Contract. The disclaimer on the future trading site on the platform states: "The use of leverage and collateral to trade cryptocurrencies is complex and risky. You may realize substantial gains or losses and should be well prepared before you begin trading".[27] Up to 100x leverage was available for crypto futures trading on the platform.

[62] We conclude that a reasonable investor trading Crypto Futures Contracts on the platform intended or expected to earn a profit from their trading. Therefore, the second element of the "investment contract" test is met.

3.3.2.c Common enterprise and reliance on Polo Digital's efforts

[63] In *VRK*, the panel identified the following attributes of an online platform to determine that investors were in a common enterprise with the platform and that they relied on the platform operator's efforts:

a. the respondent provided access to, and operated, an online proprietary platform for trading contracts for differences, which gave clients exposure to underlying assets that might not otherwise be directly available;

b. the respondent allowed clients to leverage their investment using margin;

c. the respondent was required to hedge risk, including credit risk, performance risk and misappropriation risk so that they could satisfy payment and performance obligations of the contracts for differences; and

d. the contracts for differences were not transferable off the platform, they could only be closed on the platform.[28]

[64] Staff submits that the platform shares and indeed amplifies many of these same attributes, namely Polo Digital:

a. owns and operates a platform that allows clients to purchase Crypto Futures Contracts, which provide exposure to a variety of underlying crypto assets, without need for clients to purchase or hold such crypto assets directly (and manage the associated risks);

b. clients can leverage their purchases of Crypto Futures Contracts;

c. is necessarily required to hedge risk, including credit risk, performance risk and misappropriation risk so that Polo Digital can satisfy payment and performance obligations of the Crypto Futures Contracts; and

d. does not provide a mechanism to transfer Crypto Futures Contracts off the platform – they must be closed on the platform.

[65] We agree that these elements exist regarding the platform. Every trade by an investor in a Crypto Futures Contract is dependent on Polo Digital to accept, execute transactions, safeguard and deliver the crypto assets to the investor. Staff also submits, and we agree, that the value of the Crypto Futures Contracts is directly dependent on Polo Digital's efforts to design the contracts such that their value closely replicates the underlying crypto "spot" market. As a result, the value of the Crypto Futures Contract is completely reliant upon Polo Digital's expertise and efforts.

[27] Wang Affidavit at para 99
[28] *VRK* at paras 31-32

[66] We conclude that investors in Crypto Futures Contracts were engaged in a common enterprise with Polo Digital and were dependent on Polo Digital's significant efforts for the failure or success of their investment. Our conclusion is undisturbed by any evidence to the contrary. The third and fourth elements of the test for an "investment contract" are therefore met.

3.3.2.d Conclusion regarding Crypto Futures Contracts

[67] We conclude that all the elements of the "investment contract" test have been met regarding Crypto Futures Contracts. Investors paid money into the enterprise, intended or expected a profit from their investment and were dependent on Polo Digital for the success or failure of their investment.

[68] In coming to this conclusion, we have taken a purposive approach that considers the overarching investor protection concerns presented by this product. Crypto Futures Contracts are novel and complex products that are inherently risky. The risk is heightened by the use of leverage and the potential volatility of the underlying assets. Underlying each Crypto Futures Contract is a deposit that is itself a Crypto Contract and investors were completely dependent on Polo Digital for the redemption of their initial investment. The emerging nature of the industry and the size of the market add to the risk of this product for retail investors.

[69] For these reasons, we conclude that the Crypto Futures Contracts are an "investment contract" and, therefore a security with the meaning of the Act.

3.4 Did the respondent engage in the business of trading in securities without being registered and without an available exemption?

[70] Having determined that the products in this case were securities, we now turn to consider whether Polo Digital engaged in the business of trading those securities without being registered and without an available exemption. We conclude that they did.

[71] A person must be registered under Ontario securities law to engage in the business of trading in securities unless an exemption applies.[29] The registration requirement is a cornerstone of Ontario's securities regulatory regime, designed to ensure that those who engage in trading in securities are proficient and solvent, and that they act with integrity.[30] Unregistered trading defeats these necessary legal protections and undermines investor protection and the integrity of the capital markets.

[72] To determine whether Polo Digital engaged in the business of trading in securities, we must decide whether Polo Digital's conduct constituted "trading", and if so, whether that conduct was carried out for a business purpose.

[73] The Act defines "trade" or "trading" to include:

- any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, and
- any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.[31]

[74] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade, for the purposes of the second element above.[32] The Tribunal has found that a wide variety of activities constitute acts in furtherance of trades, including those most relevant to our analysis below: distributing promotional materials concerning potential investments, preparing and disseminating materials describing investment programs, accepting and depositing investor cheques in a bank account for the purchase of securities, and setting up a website that offers securities to investors.[33]

[75] In determining whether Polo Digital engaged in acts in furtherance of a trade, we must analyze events as a whole, in the circumstances in which they took place, while also assessing the impact the acts had on those they were directed towards.[34]

[76] In order to determine whether the registration requirement applies, we must determine if Polo Digital was, or held themselves out to be, in the business of trading in securities. This is often referred to as the "business trigger" test.

[77] Criteria for determining whether the business trigger threshold has been met are set out in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Previous panels have adopted these

29 Act, s. 25(1)
30 *Limelight Entertainment Inc (Re)*, 2008 ONSEC 4 (***Limelight Merits***) at paras 135-136
31 Act, s. 1(1) "trade"
32 *Rezwealth Financial Services Inc (Re)*, 2013 ONSEC 28 at para 215; *Bluestream Capital Corporation (Re)*, 2015 ONSEC 6 at para 37
33 *Winick (Re)*, 2013 ONSEC 31 (***Winick***) at para 99
34 *Winick* at para 98

factors and applied them in assessing possible contraventions of s. 25(1) of the Act.[35] As with the analysis of acts in furtherance of a trade, it is important to consider these criteria in the broader context of whether the evidence viewed as a whole indicates that Polo Digital engaged in the business of trading.[36]

[78] The criteria for determining whether the business trigger threshold has been met include:

a. trading with repetition, regularity or continuity;

b. directly or indirectly soliciting securities transactions;

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

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

[79] Staff submits, and we agree, that Polo Digital was in the business of trading securities and engaged in direct trading as well as acts in furtherance of trading. Polo Digital owns the platform and therefore owns and operates the securities trading business conducted on the platform. Polo Digital directly engages in securities trading with the investing public. When an investor deposits crypto assets on the platform or trades crypto assets for other crypto assets, this is a sale of a Crypto Contract by Polo Digital to the investor, constituting a "sale or disposition of a security for valuable consideration". When an investor opens or closes a position in a Crypto Futures Contract on the platform, that also constitutes a "sale or distribution of a security for valuable consideration" by Polo Digital.

[80] We also conclude that Polo Digital engaged in the following acts in furtherance of trading:

a. creating and maintaining a securities trading market on the platform;

b. carrying out trade matching functions;

c. creating and maintaining means for investors to create and fund accounts on the platform;

d. providing information to investors to assist them in accessing and trading on the platform;

e. promoting the platform; and

f. offering the app through which investors trade on the platform.

[81] Considering the evidence and the overall circumstances of this case, we conclude that Polo Digital was in the business of trading, because:

a. Polo Digital owns and operates the platform, a global crypto asset trading platform conducting millions of dollars of trading in Crypto Contracts and Crypto Futures Contracts. In its letter dated April 13, 2022, Polo Digital confirmed that it had approximately 9,300 Ontario investors as of July 24, 2021. We conclude, therefore, Polo Digital trades with repetition, regularity and continuity.

b. Polo Digital solicits investors by making the platform available to the investing public through the website and the app and runs campaigns on the website to promote trading.

c. Polo Digital receives compensation for its trading services. The transaction fee schedule on the website indicates that investors benefit from reduced fees as their 30-day trading volume increases. Investors also incur withdrawal fees to cover the cost of broadcasting a transaction on the network. Polo Digital confirmed that, as of January 31, 2022, the total revenue generated by Polo Digital from Ontario-based users of the platform, from the date of the platform's inception was USD 1,825,417.89.

d. By promoting and facilitating the trading in securities on the platform it acquired and maintains Polo Digital is engaging in conduct similar to that of a registrant.

[82] Polo Digital has never been registered in any capacity with the Commission. Polo Digital bears the burden of establishing any possible entitlement to available exemptions from the registration requirement. Polo Digital has neither claimed an exemption nor filed any evidence that would support such a claim.

[35] See, for example, *Mek Global* at para 79; *Meharchand (Re)*, 2018 ONSEC 51 at para 111; *Money Gate* at para 145 and *Paramount Equity Financial Corporation (Re)*, 2022 ONSEC 7 at para 32

[36] *Future Solar Developments Inc (Re)*, 2016 ONSEC 17 at para 45

[83] We conclude that Polo Digital was engaged in the business of trading in securities within the meaning of the Act without being registered to do so and without an available exemption. As a result, Polo Digital contravened s. 25(1) of the Act.

3.5 Did the respondent engage in the distribution of securities without a prospectus and without an available exemption?

[84] A person or company must not distribute a security without a prospectus,[37] unless an exemption applies. The definition of "distribution" includes "a trade in securities of an issuer that have not been previously issued".[38] The prospectus requirement is another cornerstone of Ontario's securities regulatory regime. A prospectus is fundamental to protecting investors because it ensures that they have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed decision.[39]

[85] Staff submits, and we agree, that Polo Digital distributed securities without a prospectus, because:

a. when an investor deposits crypto assets into their account on the platform, Polo Digital creates and sells a Crypto Contract to the investor. The Crypto Contract is a security that has not been previously issued; and

b. similarly, when an investor opens a Crypto Futures Contract on the platform, Polo Digital creates and sells to the investor a security that has not been previously issued.

[86] Many of these distributions were made directly to Ontario investors, including Staff's investigator. In its letter dated April 13, 2022, Polo Digital confirmed that it had approximately 9,300 Ontario investors as of July 24, 2021, and that it earned revenue from transactions on the platform from these investors.

[87] No prospectus or preliminary prospectus was ever filed or receipted in connection with the distribution of securities by Polo Digital. No discretionary relief was granted in respect of the prospectus requirement.

[88] Polo Digital bears the burden of establishing any possible entitlement to an exemption from the prospectus requirement. Polo Digital has neither claimed an exemption nor filed any evidence that would support such a claim.

[89] We find that Polo Digital engaged in the distribution of securities without filing a preliminary prospectus or prospectus, and without an available exemption from the prospectus requirement. As a result, Polo Digital contravened s. 53(1) of the Act.

3.63 Conclusion on the Merits

[90] We conclude that Polo Digital has breached ss. 25(1) and 53(1) of the Act. Given this conclusion, it is not necessary for us to consider Staff's alternate argument that even if there were no breach of Ontario securities law, an order under s.127(1) would be warranted because Polo Digital's conduct engaged an animating principle of the Act. We treat this allegation as having been abandoned and now turn to consider the appropriate sanctions and costs in this matter.

4. SANCTIONS

4.1 Overview

[91] Staff seeks the following orders against Polo Digital for its breaches of Ontario securities law:

a. trading in any securities or derivatives by Polo Digital cease permanently;

b. the acquisition of any securities by Polo Digital cease permanently;

c. any exemptions contained in Ontario securities law do not apply to Polo Digital permanently;

d. a reprimand;

e. Polo Digital be permanently prohibited from becoming or acting as a registrant or as a promoter;

f. an administrative penalty of $1.5 to $2 million; and

g. disgorgement of an amount equal to either USD 1,825,417.89 or USD 176,334.48.

[37] Act, s. 53(1)
[38] Act, s. 1(1) "distribution"
[39] *Limelight Merits* at para 139

[92] Staff submits that significant sanctions are warranted and in the public interest given Polo Digital's disregard for cornerstone provisions of the Act.

[93] Polo Digital operates a global crypto asset trading platform accessible to Ontario investors. Staff submits that entities like Polo Digital put investors at risk, undermine efforts to bring the sector into compliance and contribute to an uneven playing field among platforms and registered firms.

[94] Staff further submits that significant sanctions are necessary to send an appropriate deterrence message to other unregistered or non-compliant crypto trading platforms that ignoring Ontario securities law will not be tolerated.

4.2 Legal Framework for Sanctions

[95] The Tribunal may impose sanctions under s. 127(1) of the Act where it finds it is in the public interest to do so. The Tribunal's role is to impose sanctions that will protect investors and the capital markets from similar conduct in the future.[40] The Tribunal's mandate is protective and preventive, as opposed to remedial and punitive.[41]

[96] Sanctions are to be proportionate to the respondent's behaviour in the particular circumstances.[42] Previous panels have identified a non-exhaustive list of factors to be considered with respect to sanctions generally, including the seriousness of the conduct, the respondent's experience and level of activity in the marketplace, whether the respondent recognizes the seriousness of its misconduct, the need for deterrence, whether the conduct was isolated or recurrent, the size of any profit obtained or loss avoided, and any mitigating factors.[43] We consider the sanctioning factors applicable in the circumstances of this matter in turn below.

4.3 Sanctioning Factors

4.3.1 Specific and general deterrence

[97] When imposing sanctions it is important for the Tribunal to consider both general and specific deterrence. The purpose of general deterrence is to dissuade other, like-minded persons from engaging in similar conduct by demonstrating that such conduct is unacceptable and will not be tolerated.[44] Specific deterrence aims to discourage a particular respondent from repeating their bad acts and engaging in further misconduct in the future.[45]

[98] Staff submits that their proposed sanctions would send a strong deterrent message to the crypto asset trading sector, and non-crypto firms generally, that disregarding Ontario securities law will not be tolerated. The Tribunal has previously noted that foreign trading platforms need a strong regulatory message that they must comply with Ontario securities law.[46] In our view, the need for specific and general deterrence is heightened by the inherent risks of the crypto trading sector, which we have highlighted elsewhere in these reasons.

[99] Staff also submits that allowing Polo Digital to escape without significant penalty would create an uneven playing field within Ontario's capital markets and could incentivize others, specifically in the crypto asset trading sector, to engage in similar misconduct. Many other crypto asset trading firms have taken steps to bring their operations into compliance with Ontario securities law. Staff submits that it is important to underscore the fact that accepting appropriate restrictions and regulatory supervision will not put compliant participants in this sector at a competitive disadvantage and is the only route that is acceptable to the Tribunal and the investing public.

[100] We agree. Polo Digital needs to understand that its conduct is not acceptable and that any such further misconduct will not be tolerated. A fundamental purpose of the Act is investor protection.[47] Polo Digital needs to understand that it is unacceptable to expose Ontario investors to complex, risky products in an evolving, fast-growing industry without the applicable protections of Ontario securities law. Another purpose of the Act is to "foster fair, efficient and competitive capital markets and confidence in the capital markets".[48] A failure to impose significant sanctions on Polo Digital would undermine the confidence in Ontario capital markets. It would also send a message to those in the crypto asset trading sector who have worked to come into compliance with Ontario securities law that despite those efforts they remain open to unfair competition from other industry players who operate in this market without appropriate registration and supervision.

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40 *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19 at para 26 (***Bradon***), citing *Mithras Management Ltd (Re)* (1990), 13 OSCB 1600 at 1610-1611
41 *Bradon* at para 27, citing *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43
42 *York Rio Resources Inc (Re)*, 2014 ONSEC 9 at para 36, citing *MCJC Holdings Inc (Re)* (2002), 25 OSCB 1133 at 1134
43 *Norshield Asset Management (Canada) Ltd (Re)*, 2010 ONSEC 16 at paras 92-93
44 *Bradon* at para 46
45 *Bradon* at para 46
46 *Vantage Global Prime Pty Ltd (Re)*, 2021 ONSEC 18 (***Vantage***)
47 Act, s. 1.1(a)
48 Act, s. 1.1(b)

4.3.2 Seriousness of the conduct

[101] Staff submits, and we agree, that Polo Digital's misconduct is serious. The registration and prospectus requirements are cornerstones of Ontario's securities regulatory framework and are essential to the protection of investors, a foundational purpose of the Act.[49] Registration ensures that those who engage in the business of trading securities meet the applicable proficiency, integrity and financial solvency requirements of the Act.[50] This is particularly the case with new markets and products, such as the quickly evolving crypto asset trading sector, where there are large volumes of non-compliant trading in a wide variety of investment products with inherently high volatility, complexity and financial risk.

[102] The prospectus requirement is intended to ensure that prospective investors have the requisite information to make informed investment decisions.[51] Staff submits, and we agree, that the protections offered by the prospectus regime are necessary for any investor, and particularly retail investors, to understand and accept the risks inherent in crypto trading platforms and products. Without the benefit of a prospectus, the Ontario investors trading on the platform lacked the information necessary to understand the risks associated with trading novel and complex crypto securities, on a foreign-based trading platform, on which they were entirely dependent for order execution, custody and delivery of their crypto assets.

4.3.3 Level of Polo Digital's activity in the marketplace

[103] We conclude that Polo Digital's activity in the marketplace is high based on the evidence that:

a. Polo Digital promoted themselves as a one-stop crypto asset trading shop with over 200 crypto assets available for trading on the platform;

b. the platform had been operating since 2014 and, in the context of an emerging market, Polo Digital therefore could be considered an experienced player;

c. on May 24, 2021, as advised by Staff, a source ranked Polo Digital as the 13th largest crypto trading platform for "spot" platforms and 30th for derivatives platforms with a reported 24-hour trading volume of more than USD 529 million and USD 36 million, respectively;[52]

d. as of July 24, 2021, Polo Digital operated approximately 9,300 Ontario Accounts and had earned USD 1,825,417.89 in fees from trading in those accounts since the platform's inception; and

e. Polo Digital's operations continue and, as advised by Staff, on May 16, 2022, a source ranked Polo Digital 22nd for "spot" platforms and 36th for derivatives platforms with a reported 24-hour trading volume of approximately USD 36 million and USD 7 million, respectively.[53]

4.3.4 Frequency of the violations

[104] Staff submits, and we agree, that Polo Digital's violations of the Act were recurrent. This is not a case of isolated incidents of misconduct. The evidence before us supports the conclusion that the platform has been operating in Ontario since 2014 with no regard for the prospectus and registration requirements of the Act. As the owner and operator of the platform, Polo Digital is accountable for the breaches of Ontario's securities laws.

[105] In addition, the risk of harm to Ontario investors continues. Despite the fact that Polo Digital advised it had taken steps to restrict access to Ontario investors (which we discuss in detail below under "Mitigating Factors"), Staff's investigator was able, in February 2022 after the service of the Statement of Allegations, to access the platform through the temporary use of a virtual private network, and also to conduct trades using an Ontario IP address.

4.3.5 Mitigating Factors

[106] Polo Digital has indicated some recognition of the seriousness of its misconduct by taking steps to restrict access to the platform by Ontario investors. Staff submits that we should give minimum weight to these steps as they appear to not have been wholly effective and Polo Digital has not expressly acknowledged its breaches and their seriousness.

[107] In its letter dated April 13, 2022,[54] Polo Digital advised that as of July 24, 2021, it "voluntarily implemented measures to prevent Ontario residents from accessing" the platform and "has voluntarily taken steps to close existing Ontario accounts". The letter goes on to say that "Since becoming aware of the OSC's concerns, it has always been Polo's

49 Act, s. 1.1(a)
50 Act, subclause 27(2)(a)(i); *Pro-Financial Asset Management (Re),* 2018 ONSEC 18 (***PFAM***) at para 100; *MP Global Financial Ltd (Re)*, 2011 ONSEC 22 ***(MP Global***) at para 45
51 *MP Global* at para 117
52 Wang Affidavit at para 38
53 Wang Affidavit at para 38
54 Wang Affidavit at para 144

intention to eliminate business in Ontario and Polo has made every effort to put Ontario platform users on reasonable notice of that fact and to cooperate with Staff in the implementation of an appropriate and acceptable process for doing so".

[108] The steps Polo Digital advised it had taken with respect to the Ontario Accounts were:

a. On July 24, 2021, Polo Digital blocked Ontario IP addresses from accessing the platform, amended the User Agreement to add Ontario as a "restricted jurisdiction", and publicly announced that Ontario had become a restricted jurisdiction.

b. In January 2022, Polo Digital sent emails to the holders of the Ontario Accounts to advise that Ontario had been added as a restricted jurisdiction and that account holders had until January 31, 2022, to access the Ontario Accounts.

c. As of February 1, 2022, no new deposits or other transactions were permitted in the Ontario Accounts and users were blocked from accessing the Ontario Accounts.

d. Polo developed procedures to allow holders of Ontario Accounts to access and withdraw funds for the purpose of closing the Ontario Accounts. Polo Digital had closed more than 50% of all identified Ontario Accounts and intends to implement enhanced application review processes to ensure that no new Ontario accounts are opened and that all remaining Ontario Accounts are closed.

[109] Despite Polo Digital's claim that, as of February 1, 2022, users of the Ontario Accounts were blocked from accessing their accounts and no new deposits or transactions would be permitted, Staff's investigator was able to access Staff's account and trade. The investigator used a virtual private network with a non-Ontario IP address to access the platform. The investigator then disconnected from the non-Ontario virtual private network and reverted to an Ontario IP address. The investigator then deposited Bitcoin in Staff's account on the platform and engaged in "spot" trading.[55]

[110] Staff submits that Polo Digital's efforts to eliminate business in Ontario have been insufficient and ineffective. Polo Digital chose to stop participating in this hearing and has not explicitly recognized the seriousness of its misconduct. Therefore, Staff submits, the panel should not give as much weight to Polo Digital's steps as a mitigating factor as we would to a direct acknowledgement of the breaches and participation in this process.

[111] We acknowledge Polo Digital's claim that it had taken steps to close existing Ontario Accounts and block future access. However, Staff's ability to access and trade in their account on the platform after the date the block was implemented suggests that those steps were not completely effective. Polo Digital is, therefore, still enabling trading in securities in Ontario in breach of Ontario securities law. We also do not know if, after Polo Digital ceased participating in this proceeding, it continued to close the remaining Ontario Accounts. Therefore, in our overall view of the appropriate sanctions against Polo Digital, we give diminished weight to Polo Digital's remedial steps as a mitigating factor.

[112] Having concluded that, as an established, significant player in the crypto asset trading sector, Polo Digital's misconduct was serious and recurrent, we turn to determine the appropriate sanctions against them.

4.4 Financial Sanctions

4.4.1 Disgorgement

[113] Staff seeks an order for disgorgement of the revenue Polo Digital generated from Ontario Accounts for either the period since the platform's inception (2014 – USD 1,825,417.89) or since Polo Digital's acquisition of the platform (2019 – USD 176,334.48). As indicated above, in paragraph [34], we conclude that the evidence about the amount of revenue from Ontario Accounts from the inception of the platform is properly before us and factors into our analysis below.

[114] Paragraph 10 of s. 127(1) of the Act authorizes the Tribunal to make an order requiring a person or company who has not complied with Ontario securities law "to disgorge to the Commission any amounts obtained as a result of the non-compliance". The purpose of a disgorgement order is to ensure that respondents do not benefit from their breaches of the Act, and to deter them and others from similar misconduct.[56]

[115] The Tribunal has previously set out various factors that it will consider in determining whether a disgorgement order is appropriate and, if so, in what amount:

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

[55] Wang Affidavit at paras 154-155
[56] 2008 ONSEC 28 (***Limelight Sanctions***) at paras 47-54.

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

c. whether the amount obtained is reasonably ascertainable;

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

e. the deterrent effect of the disgorgement order on the respondents and other market participants.[57]

[116] We addressed the second and fifth factors above in our analysis of the sanctioning factors generally (starting at paragraph [97]). The serious nature of the misconduct and the need for specific and general deterrence support a disgorgement order. Polo Digital charged fees to Ontario investors for trading in and withdrawing securities from the platform. This revenue was obtained by Polo Digital as a result of Polo Digital's non-compliance with Ontario securities law.

[117] Polo Digital advised that the revenue generated from Ontario Accounts from the date of the platform's inception in 2014 to July 31, 2021, was USD 1,825,417.89. With respect to the fourth factor above, we have no evidence before us about what, if any losses, have been incurred by Ontario investors who traded on the platform. The onus for establishing that investors who have suffered losses may be able to obtain redress lies with the respondent.[58] In the absence of any evidence of investors losses and/or the likelihood of investors being able to recover their losses, we conclude there is no basis for reducing the full amount of disgorgement sought.

[118] In *Limelight Sanctions* the Tribunal established that:

a. the onus is on Staff to prove on a balance of probabilities the amounts obtained by a respondent as a result of their non-compliance with the Act;

b. any risk of uncertainty in calculating disgorgement falls on the respondent whose breach of the Act is the basis of that uncertainty; and

c. once a disgorgement figure has been established, the onus is on the respondent to disprove the reasonableness of that number.[59]

[119] Staff has established that there are two possible amounts that could be used for disgorgement, revenue from Ontario accountholders from the date of the platform's inception (USD 1,825,417.89) or from the date Polo Digital acquired the platform (USD 176,334.48). As established in *Limelight Sanctions,* Polo Digital bears the risk of the uncertainty of the calculation and bears the onus of disproving the reasonableness of the number.

[120] Polo Digital chose not to participate in this hearing. We, therefore, have no evidence that might rebut the reasonableness of considering the revenue since the platform's inception for disgorgement. Such information might have included details of whether Polo Digital acquired all the assets and liabilities of the vendor or if there were indemnities to protect Polo Digital against adverse claims against the business, or indeed whether the acquisition was at arm's length. All of this information might have provided a basis for not ordering disgorgement of the revenue since the platform's inception. We have no such evidence. Polo Digital has not, therefore, discharged its onus of disproving the reasonableness of Staff's request that the platform's revenue since inception be disgorged.

[121] Considering all of the above factors, we conclude that an order requiring Polo Digital to disgorge USD 1,825,417.89 to the Commission is appropriate.

4.4.2 Administrative Penalty

[122] The Act states that if a person or company has not complied with Ontario securities law, an administrative penalty of not more than $1 million for each failure to comply may be ordered.[60] Staff submits that an administrative penalty of $1.5 to 2 million is appropriate given the seriousness of the conduct, the high amount of risk to Ontario investors, the disregard for Ontario's securities laws and the strong need for general deterrence in the crypto asset sector.

[123] Staff has provided us with a number of precedents to assist with our determination of the appropriate administrative penalty, which we refer to below. A previous panel recently noted, "[t]here is no formulaic approach to determining the quantum of an administrative penalty. Prior decisions provide some context to the consideration of proportionality, however, the sanctions in each proceeding must be determined based on the specific factual context and circumstances".[61]

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57 *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 (***Money Gate Sanctions***) at para 45; *PFAM* at para 56
58 *PFAM* at para 71
59 *Limelight Sanctions* at paras 48(b) and (c) and 53
60 Act, s. 127(1)9
61 *Miner Edge Inc (Re)*, 2021 ONSEC 31 (***Miner Edge***) at para 89

[124] One group of cases Staff cited involved settlements with entities operating online trading platforms offering contracts for differences to Ontarians without being registered and engaging in illegal distributions to Ontarians.[62] In each of these cases, similar to Polo Digital, the respondents took some steps to restrict their business operations in Ontario. The administrative penalties ordered in these cases ranged from $550,000 to $600,000. However, unlike the matter before us, the respondents in these cases acknowledged their misconduct, cooperated fully with the Commission and provided enforceable undertakings in relation to their Ontario operations going forward.

[125] In a recent no-contest settlement, where the respondent did not acknowledge any wrongdoing, an administrative penalty of $650,000 was ordered (in addition to disgorgement of USD 4 million) with respect to an Australian-based over-the-counter issuer of derivatives and securities.[63]

[126] Staff also cited a recent settlement involving market manipulation and whistleblower reprisal by the operators of a crypto asset trading platform, where administrative penalties of $1 million and $900,000 were ordered with respect to the Chief Executive Officer and the President and Chief Trading Officer, respectively.[64]

[127] Lastly, Staff cited the recent decision in *Mek Global* where an administrative penalty of $2 million was ordered against the owner-operators of a foreign-based crypto asset trading platform. The respondent in that instance chose not to participate at all in the proceeding. The information about the number of Ontarians affected and the amount of money raised by the respondents was not ascertainable in that case, therefore, there was no disgorgement order against the owner-operators.

[128] Staff submits that the appropriate administrative penalty in this instance should be in excess of that ordered in the contract for differences settlement cases but potentially less than what was ordered in *Mek Global*. In the contract for differences cases there were acknowledgements of responsibility, cooperation with Staff and enforceable undertakings to ensure that efforts to restrict business operations in Ontario occurred. Unlike in *Mek Global*, Polo Digital did take some steps to restrict its operations in Ontario and provided some information about the number of Ontarians impacted by its operations and the revenue generated from those operations.

[129] We conclude that an administrative penalty of $1.5 million dollars is appropriate in these circumstances. We agree the administrative penalty needs to be greater than in the contract for differences settlements because Polo Digital has not expressly acknowledged its misconduct, ceased participating with Staff just prior to this hearing and there are no tools available to the Commission to confirm that the steps Polo Digital has purported to take to restrict its business in Ontario are effective and will be sustained.

[130] While the amount raised in the other cases cited by Staff exceeds that raised by Polo Digital, in each instance (with the exception of *Mek Global* where the number of Ontario investors could not be determined), Polo Digital's misconduct affected a significantly larger group of Ontarians.

[131] Unlike in *Mek Global*, as discussed above, the evidence here also supports an order for disgorgement in the amount of USD 1,825,417.89.

[132] The Tribunal has previously observed that the administrative penalty should properly reflect the prevailing economic incentives: "there is a need for regulatory sanctions to create economic incentives to foster compliance or alternatively, remove economic incentives for non-compliance".[65]

[133] Staff submits that, given the substantial size of estimated aggregate 24-hour trading volume on the platform and the fees that Polo Digital must earn from that volume, an administrative penalty in the range of $1.5 to $2 million is necessary to achieve the necessary economic incentive to specifically deter Polo Digital.

[134] Taking all of these factors into consideration we conclude that an administrative penalty of $1.5 million is appropriate. It reflects the seriousness of the misconduct, the number of Ontarians impacted by the misconduct and the potential continuing risk of harm to Ontarians (despite Polo Digital's stated efforts, to which we give some recognition). In the absence of evidence to the contrary from Polo Digital, we accept Staff's evidence about the platform's trading volume and the fees that Polo Digital likely earns on that volume. We therefore conclude that this $1.5 million administrative penalty will both create the necessary economic incentive to Polo Digital and provide general deterrence to others operating in the crypto asset trading sector.

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62 See *International Capital Markets Pty Ltd (Re),* 2019 ONSEC 28 (***IC Markets***); *Vantage; Ava Trade Ltd (Re)*, 2019 ONSEC 27; *eToro (Europe) Limited (Re)*, 2018 ONSEC 49 and *Coinsquare*

63 *IC Markets*

64 *Coinsquare*

65 *Rowan (Re)*, 2009 ONSEC 46 at para 74

4.5 Market Participation Bans

[135] Participation in the capital markets is a privilege, not a right.[66] Staff submits that Polo Digital has lost the privilege of participating in Ontario's capital markets because of its misconduct and that permanent market bans will protect Ontario investors from Polo Digital and deliver the necessary deterrent message to other members of the crypto asset sector.

[136] The Tribunal has found permanent market participation bans to be appropriate in other instances involving breaches of the registration and prospectus requirements of the Act.[67] We take particular note of several of those decisions. In *Mek Global* the owners and operators of a similar crypto trading platform were found to have breached ss. 25(1) and 53(1), having operated its platform for two years longer than Polo Digital but in circumstances where the number of investors affected and the amount of revenue raised were not ascertainable. In *Vantage*, USD 3 million was raised from 2,700 Ontario accounts over a 6-year period in breach of the registration and prospectus requirements. In *IC Markets,* the respondents failed to comply with ss. 25(1) and 53(1) while raising USD 4 million from 1,665 Ontario accounts over a 5-year period.

[137] We conclude that permanent market participation bans are appropriate given the seriousness of the breaches, the length of time that Polo Digital has been in breach of the Act, the recurrent and ongoing nature of the risk, the number of Ontario investors impacted, and amount of revenue generated from the illegal activity in Ontario.

4.6 Reprimand

[138] With respect to the requested reprimand, Staff submits that a reprimand would further the goals of both general and specific deterrence. Staff submits that a reprimand presents an opportunity for the Tribunal to speak directly to the respondent, drive home how unacceptable its conduct is to the Tribunal and Ontario's investing public, and warn it against further breaches of Ontario securities law.

[139] Previous panels have taken the view that a reprimand is generally unnecessary, duplicative and not in the public interest when, as is the case here, there are explicit findings of breaches of Ontario securities law and the reasons for the Tribunal's decision include a clear denunciation of that conduct.[68]

[140] In our view, a reprimand is a powerful sanctioning tool in appropriate circumstances. In this instance, we conclude that a reprimand would be duplicative and unnecessary as we have made explicit findings of breaches of the Act and we have clearly denounced the misconduct. We, therefore, decline to make such an order.

4.7 Conclusion on Sanctions

[141] We conclude that permanent market bans, an administrative penalty of $1,500,000 and disgorgement of USD 1,825,417.89 are appropriate sanctions in these circumstances.

5. COSTS

[142] We will now consider Staff's request that Polo Digital pay some of the costs associated with its investigation and the hearing.

[143] Section 127.1 of the Act gives the Tribunal discretion to order a person or company to pay the costs of an investigation or a hearing, if the Tribunal is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest.

[144] A costs order is not a sanction but rather a means to recover the costs of an investigation or hearing resulting from the unlawful activities of a person or company. In this case, Staff seeks an order that Polo Digital pay costs in the amount of $138,371.50, comprised of $138,005.00 for fees and $366.50 for disbursements.

[145] Staff has calculated costs as reflected in the Leung Affidavit and the Bill of Costs attached thereto. The Bill of Costs includes a table of Costs Incurred and a table of Costs Claimed. The amount of Staff time is based on hourly rates previously approved by the Commission.

[146] The Costs Incurred include the time of various individuals during the investigation and litigation phases of this matter, including a Senior Forensic Accountant, Forensic Accountant, Senior Litigation Counsel, Senior Investigation Counsel, Litigation Counsel and Law Clerk. The Costs Incurred does not include time for those team members who incurred less than 35 hours on this matter. Staff has also discounted the time of the Senior Forensic Accountant and the Forensic

[66] *Mek Global* at para 110; *Borealis International Inc (Re)*, 2011 ONSEC 11 at para 51, citing *Erikson v Ontario (Securities Commission)* (2003), 26 OSCB 1622 at para 56; *MOAG Copper Gold Resources Inc (Re)*, 2020 ONSEC 29 at para 36

[67] *Limelight Sanctions* at paras 12(a)-(c), 41 and 42; *Blue Gold Holdings (Re)*, 2016 ONSEC 37 at paras 2(a) and (b), 6, 63-68, 79(a) and 87-89; *Miner Edge* at paras 78 and 110(a) and (b); *Mek Global* at paras 110-111

[68] *Mek Global* at para 113; *Money Gate Sanctions* at para 39; *Hutchinson (Re),* 2020 ONSEC 1 at para 49

Accountant to reflect some inevitable overlap between them when principal investigator responsibilities passed between the two towards the end of the litigation phase of this matter.

[147] In appropriate circumstances, Staff will often further discount the Costs Incurred before arriving at the amount of Costs Claimed. Staff has not done so in this instance. Staff submits that the amount of Costs Incurred is already reasonable to claim for a matter of this nature and already reflects reasonable discounts from the actual time incurred.

[148] Staff submits that Polo Digital's decision to stop participating in this proceeding resulted in limited opportunities to narrow the issues or reach agreements to streamline the proceeding, and thereby reduce costs. Also, Staff submits that while Polo Digital did make certain admissions of fact in its April 13, 2022 "with prejudice" letter, it did not admit any breaches of Ontario securities law. Staff, therefore, still had to incur time and resources to prove the elements of its case.

[149] We conclude that Staff's cost request is appropriate and reasonable in the circumstances. The request does not reflect all of Staff's Costs Incurred (appropriate discounts have been made regarding Staff whose time is included and to address the transition between investigators) and Polo Digital's decision to withdraw its participation removed the opportunity to narrow the issues before the Tribunal.

6. CONCLUSION AND ORDER

[150] For the reasons set out above, we conclude that Polo Digital engaged in:

a. the business of trading in securities without the necessary registration or available exemption from the registration requirement, contrary to s. 25(1) of the Act; and

b. the distribution of securities without a prospectus or an available exemption from the prospectus requirement, contrary to s. 53(1) of the Act.

[151] We will therefore issue an order that Polo Digital:

a. cease trading in any securities or derivatives permanently, pursuant to paragraph 2 of s. 127(1) of the Act;

b. is prohibited from acquiring any securities permanently, pursuant to paragraph 2.1 of s. 127(1) of the Act;

c. is prohibited from utilizing any exemptions contained in Ontario securities law permanently, pursuant to paragraph 3 of s. 127(1) of the Act;

d. is prohibited from becoming or acting as a registrant or as a promoter permanently, pursuant to paragraph 8.5 of s. 127(1) of the Act;

e. pay an administrative penalty of $1,500,000, pursuant to paragraph 9 of s. 127(1) of the Act;

f. disgorge USD 1,825,417.89 to the Commission, pursuant to paragraph 10 of subsection 127(1) of the Act; and

g. pay costs of the Commission's investigation and hearing in the amount of $138,371.50, pursuant to s. 127.1 of the Act.

Dated at Toronto this 27th day of October, 2022

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"William J. Furlong"

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B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 51-364 Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 51-364
Continuous Disclosure Review Program Activities
for the fiscal years ended March 31, 2022 and March 31, 2021

November 3, 2022

INTRODUCTION

Staff of the Canadian Securities Administrators (**CSA**) have prepared this Staff Notice (**Notice**) to report on the results of the reviews conducted by CSA staff (**staff** or **we**) within the scope of its Continuous Disclosure Review Program (**CD Review Program**). The goal of the program is to improve the completeness, quality and timeliness of Continuous Disclosure (**CD**) provided by reporting issuers[1] (**issuers**) in Canada. It assesses the compliance of CD documents with CD-related securities legislation, and helps issuers understand and comply with their obligations under the CD rules so that investors receive high quality disclosure to assist them in making informed investment decisions.

In this Notice, we summarize the key findings and outcomes of the CD Review Program for the fiscal year ended March 31, 2022 (**fiscal 2022**) and the fiscal year ended March 31, 2021 (**fiscal 2021**). Appendix A – *Financial Statement, MD&A and Other Regulatory Deficiencies* (**Appendix A**) describes common deficiencies and includes some illustrative examples to help issuers address these deficiencies and understand our expectations.

Our CD reviews primarily focus on issuers' disclosure requirements, including those under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**). We also assess compliance with the recognition, measurement, presentation, classification and disclosure requirements in International Financial Reporting Standards (**IFRS**). For further details on the CD Review Program, see CSA Staff Notice 51-312 (revised) *Harmonized Continuous Disclosure Review Program*.

In addition, Appendix B – *Staff Review of Non-GAAP and Other Financial Measures Disclosure* (**Appendix B**) includes the results of recently completed reviews to assess compliance with certain aspects of National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (**NI 52-112**). Appendix B also describes the common deficiencies noted in the reviews and provides guidance for meeting the requirements of NI 52-112.

Financial Reporting and Disclosure during Economic Uncertainty

While this Notice focuses on common deficiencies that we have noted over the past two years, it is important to identify and highlight the potential impacts of the current economic environment on financial reporting and other disclosures. Supply chain issues, the COVID-19 pandemic, labour shortages, high energy costs, inflationary pressures, rising interest rates, the global financial climate and the conflict in Ukraine and surrounding regions are some factors that are affecting current economic conditions and increasing economic uncertainty, which may impact issuers' operating performance, financial position, and future prospects.

We recognize that issuers are preparing disclosure in evolving and uncertain times, resulting in increased estimation uncertainty as the assumptions used to prepare the financial statements may materially change in the near term. Issuers should carefully evaluate and explain how economic uncertainty and changes in assumptions affect their operations and the amounts reported in the financial statements. Further, audit committees and external auditors must be diligent in fulfilling their responsibilities to ensure

[1] In this Notice "issuers" means those reporting issuers contemplated in National Instrument 51-102 *Continuous Disclosure Obligations*

that investors receive accurate, transparent, and timely information that supports investment decisions. Issuers must also consider how economic uncertainty impacts the application of MD&A and other disclosure requirements.

Some areas that may be impacted by the current economic environment include known trends, events and uncertainties, liquidity and capital resources, debt covenants, risk factor disclosure, impairment of non-financial assets, going concern, events after the reporting period, significant judgement and measurement uncertainties, expected credit losses, financial instrument risk disclosure, non-GAAP and other financial measures, and material change reporting. For example, we remind issuers that non-GAAP financial measures that attempt to "adjust" for certain aspects of the current environment must, among other things, be entity-specific and clearly explain how such adjustments were attributable to the current environment and/or "non-recurring", "infrequent", or "unusual".

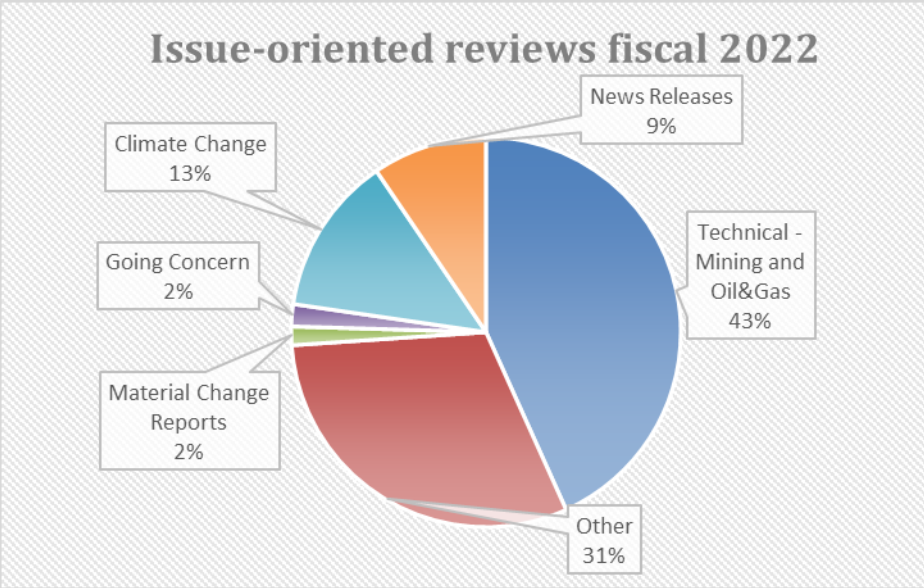
Issuers are encouraged to refer to CSA Staff Notice 51-362 *Staff Review of COVID-19 Disclosures and Guide for Disclosure Improvements*, which highlights existing requirements that may be relevant to issuers in fulfilling their disclosure obligations under securities legislation during times of economic uncertainty relating to COVID-19. Issuers are reminded to consider the factors specific to their circumstances in the current economic environment when complying with their disclosure obligations.

Results for Fiscal 2022 and Fiscal 2021

Issuers selected for a CD review (full or issue-oriented review (**IOR**)) are identified using a risk-based and outcomes-focused approach using both qualitative and quantitative criteria. IORs are focused on a specific accounting, legal or regulatory issue, an emerging issue or industry, implementation of recent rules or areas where we believe there may be a heightened risk of potential investor harm and those that are at higher risk of non-compliance. A review may also stem from general monitoring of issuers through news releases, media articles, public complaints and other sources.

During fiscal 2022, a total of 466 CD reviews (fiscal 2021 – 572 CD reviews) were conducted with IORs consisting of 70% of the total (fiscal 2021 – 74%). The nature of an IOR will impact the time spent and outcome obtained from the review. The fluctuation in the total number of reviews completed is attributable to staff resources being prioritized to core operational areas to address the unprecedented volume of prospectus filings received in Fiscal 2022 and Fiscal 2021. It is important to note, however, that reviews of prospectus filings involve a review of an issuer's financial statements, management's discussion and analysis (**MD&A**) and other documents. The following chart outlines the topics of the IORs conducted:

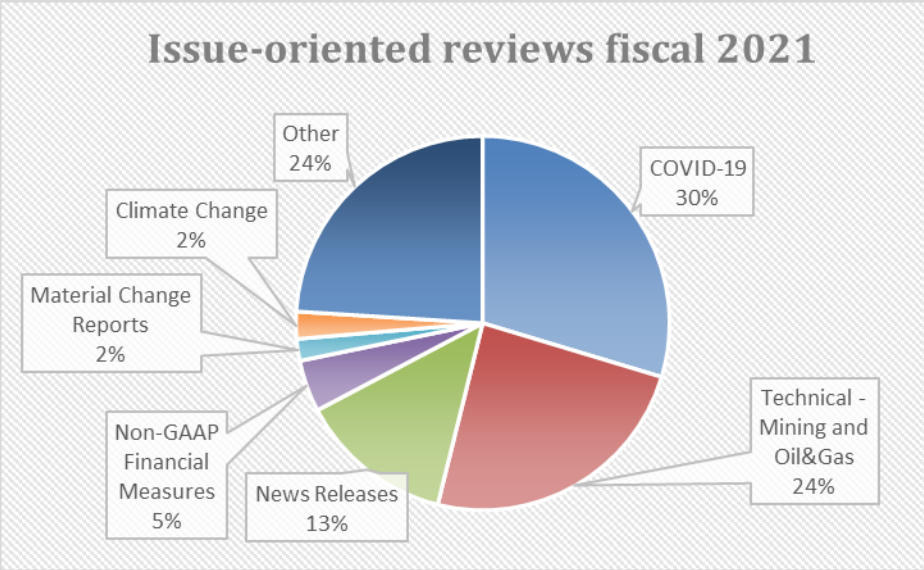
Figure #1



The "Other" category includes, but is not limited to, reviews of:

- COVID-19 disclosures
- Public complaints
- Tied selling

Figure #2



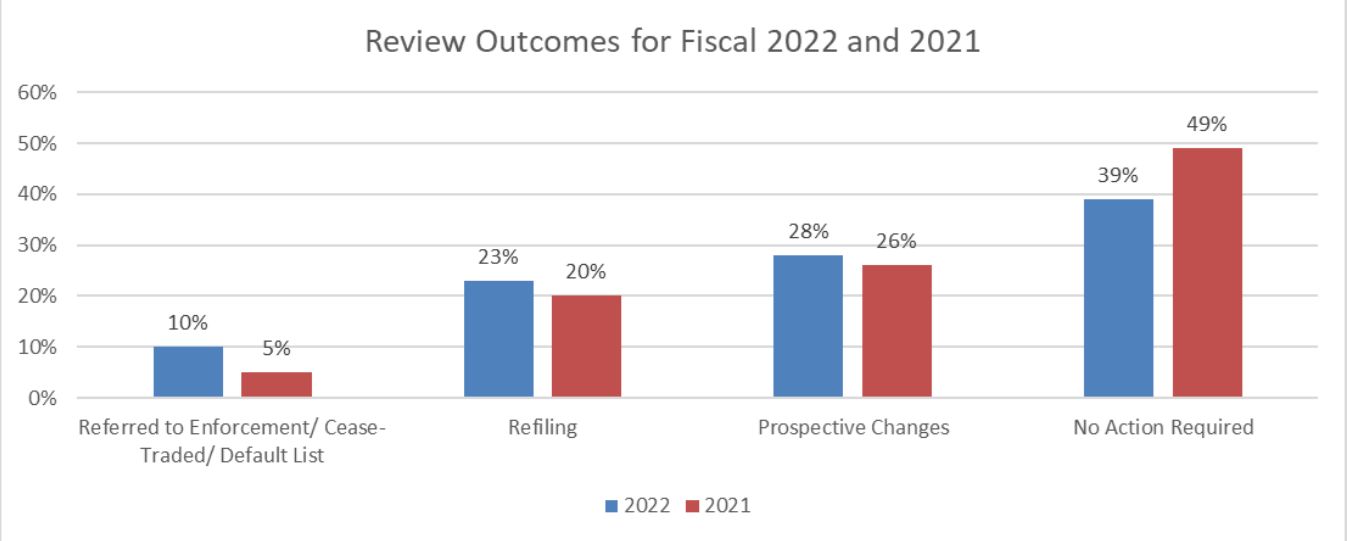
The "Other" category includes, but is not limited to, reviews of:

- Going concern reviews
- Public complaints

CD Outcomes for Fiscal 2022 and Fiscal 2021

We classify the outcomes of the full reviews and IORs into four categories: referred to enforcement/ cease-traded/ default list, refiling, prospective changes and no action required, as further described in Appendix C – *Categories of Outcomes*. In fiscal 2022, 61% (fiscal 2021 – 51%) of our review outcomes required issuers to improve and/or amend their disclosure, refile a previously filed document, or to file unfiled documents. Some of these reviews also resulted in the issuer being referred to enforcement, cease-traded or placed on the default list. The chart below summarizes the key outcomes.

Figure #3



Some CD reviews may generate more than one category of outcome. For example, an issuer may have been required to refile certain documents and also commit to make disclosure enhancements on a prospective basis.

Given our risk-based approach noted above, the outcomes on a year-to-year basis may vary and should not be interpreted as an emerging trend as the issues and issuers reviewed each year are generally different. In fiscal 2022 and fiscal 2021, we continued to see substantive outcomes being obtained as a result of our reviews.

Common Deficiencies

We have highlighted below some of the key areas where common deficiencies were observed during our CD reviews in fiscal 2022 and fiscal 2021. We have discussed these deficiencies in further detail in Appendix A to this Notice.

- **Financial Statements**: compliance with the recognition, measurement, presentation, classification and disclosure requirements in IFRS including revenue recognition, disclosure of expected credit losses, disclosure of business combinations and disclosure of reportable segments.

- **MD&A**: compliance with Form 51-102F1 *Management's Discussion & Analysis* including forward-looking information, discussion of operations specific to development and/or early-stage issuers, and non-GAAP and other financial measures.

- **Other Regulatory Requirements**: compliance with other regulatory matters including overly promotional disclosure pertaining to environmental, social and governance (**ESG**) matters, audit committee requirements, inconsistencies throughout CD documents, required disclosures in a reverse takeover transaction and mineral project disclosure.

Results by Jurisdiction

All CSA jurisdictions participate in the CD review program and some local jurisdictions may publish staff notices and reports communicating results and findings of the CD reviews conducted in their jurisdictions. Refer to the individual regulator's website for copies of these notices and reports.

APPENDIX A – FINANCIAL STATEMENT, MD&A AND OTHER REGULATORY DEFICIENCIES

Our CD reviews identified a number of financial statement, MD&A and other disclosure deficiencies that resulted in issuers enhancing their disclosure and/or refiling their CD documents (e.g., by issuing a clarifying news release). To help issuers better understand and comply with their CD obligations, we present the key observations from our reviews. The Hot Topics sections below include observations along with considerations for issuers, including the relevant regulatory guidance. We have also included some examples of deficient disclosure and provided more in-depth explanation of the matters we observed.

Issuers must ensure that their CD record complies with all relevant securities legislation. The responsibility for complying with applicable securities legislation remains with issuers and their advisors. Issuers are also reminded that quantity does not equal quality, and that disclosure should be clear and in plain language.

This is not an exhaustive list and does not represent all the requirements that could apply to a particular issuer's situation.

FINANCIAL STATEMENT DEFICIENCIES

Hot Topics

	OBSERVATIONS	CSA COMMENTS
IFRS 15: Revenue from contracts with customers; variable consideration, remaining performance obligations and disaggregation of revenue	❖ Some issuers do not consider whether the consideration promised includes a variable amount.	❖ Issuers shall consider whether the consideration promised in a contract includes a variable amount. An amount of consideration can vary because of discounts, rebates, refunds, credit, price concessions, incentives, performance bonuses, penalties or other similar items. The variability relating to the consideration may be explicitly stated in the contract and may be contingent on the occurrence or non-occurrence of a future event. Issuers shall consider whether there are valid expectations of some type of price concession, such as through customary business practices, published policies or specific statements an issuer has made, which would lead to a variable consideration component of a contract.[1] ❖ IFRS 15 contains requirements on estimating variable consideration. An issuer shall estimate variable consideration by using one of two methods, depending on which method the entity expects to better predict the amount of consideration to which it will be entitled.[2]
	❖ Some issuers include the amount of estimated variable consideration in the transaction price without assessing whether it is highly probable that a significant reversal of cumulative revenue recognised will not occur when the uncertainty associated with the variable consideration is subsequently resolved.	❖ Issuers shall only include the estimated variable consideration to the extent that it is highly probable that a significant reversal of cumulative revenue recognised will not occur. To determine this, an issuer shall consider both the likelihood and the magnitude of the revenue reversal. IFRS 15 discusses factors that could increase the likelihood or the magnitude of a revenue reversal. Although the list of factors is not exhaustive, we consider these factors when assessing an issuer's specific facts and circumstances.[3] Issuers are also reminded to update the estimated transaction price at the end of each reporting period.[4]

1 IFRS 15 *Revenue from contracts with customers*, paragraphs 50-52
2 IFRS 15 *Revenue from contracts with customers*, paragraph 53
3 IFRS 15 *Revenue from contracts with customers*, paragraphs 56-57
4 IFRS 15 *Revenue from contracts with customers*, paragraph 59

	OBSERVATIONS	CSA COMMENTS
		❖ Issuers shall provide sufficient disclosure to enable users to understand the variable consideration of a contract. This may include explicit and entity-specific disclosure about the significant payment terms and whether the consideration amount is variable.[5] ❖ Issuers are reminded to disclose information about the methods, inputs and assumptions used for determining the transaction price, including the estimate of variable consideration. Disclosure about the methods, inputs and assumptions should be sufficient to achieve the disclosure objective in the above bullet point. Issuers will need to use judgement to determine the specific disclosures that are both relevant to its business and necessary to meet these disclosure objectives.[6]
	❖ Some issuers do not disclose sufficient information to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers.	❖ Issuers are required to disclose the aggregate amount of the transaction price allocated to the performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period. In addition, issuers shall disclose when the issuer expects to recognise as revenue the remaining amount in either of the following ways[7]: ○ on a quantitative basis using the time bands that would be most appropriate for the duration of the remaining performance obligations; or ○ by using qualitative information. ❖ Issuers are reminded that performance obligations include those satisfied over time or at a point in time.
	❖ Some issuers do not provide disclosures that disaggregate revenue recognised from contracts with customers into categories.	❖ An issuer is required to disaggregate revenue recognised from contracts with customers into categories to enable investors to understand how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.[8] ❖ The extent to which revenue recognised from contracts with customers is disaggregated depends on the facts and circumstances of an issuer's contracts with customers. In addition, the issuer should consider how revenue is disaggregated in other communications or for the purposes of evaluating financial performance. Examples of appropriate categories include, but are not limited to, the following: type of good or service (e.g., major product lines), geographical region (e.g., country or region), market or type of customer (e.g., government and non-government customers), type of contract (e.g., fixed-price and time-and-materials contract), contract duration (short-term and long-term contracts) and timing of transfer of goods or services

5 IFRS 15 *Revenue from contracts with customers*, paragraph 110
6 IFRS 15 *Revenue from contracts with customers*, paragraph 126
7 IFRS 15 *Revenue from contracts with customers*, paragraph 120
8 IFRS 15 *Revenue from contracts with customers*, paragraph 110, 114-115

	OBSERVATIONS	CSA COMMENTS
		(revenue transferred to customers at a point in time and transferred over time).[9]
IFRS 7: Financial Instruments: disclosures; credit risk exposure	❖ Some issuers do not disclose enough information to enable users to understand the effect of credit risk on the amount, timing and uncertainty of future cash flows.	❖ An issuer is required to disclose the nature and extent of risks arising from financial instruments and how it manages those risks. It will need to use judgement to determine the specific disclosures that are both relevant to its business and necessary to meet these disclosure objectives. Examples of specific disclosures include, but are not limited to, the following:[10] ○ information about an issuer's credit risk management practices and how they relate to the recognition and measurement of expected credit losses (**ECL**), ○ information about how a company assesses whether there has been a significant increase in credit risk in an individual instrument or collection of instruments that may be impacted by larger macroeconomic considerations (e.g., supply chain challenges, labor shortages, inflationary pressures, etc.), ○ an explanation of the inputs, assumptions and estimation techniques used to measure ECLs, including: ▪ the basis of inputs and assumptions and the estimation techniques used to measure ECLs, ▪ how it has incorporated forward-looking information (including economic uncertainty) into the determination of ECLs, and ▪ changes in the estimation techniques or significant assumptions made and the reasons for those changes. ○ quantitative and qualitative information that enables evaluation of the amounts arising from ECLs, which includes a reconciliation from the opening balance to the closing balance of the loss allowance, and ○ the gross carrying amount of financial assets *by credit risk rating grades* to enable users to assess an issuer's credit risk exposure and understand its significant credit risk concentrations. For trade receivables measured under the "simplified approach", such disclosure is most often based on a provision matrix which discloses the fixed provision rates depending on the number of days that a trade receivable is past due within an appropriate grouping depending on the diversity of its customer base

[9] IFRS 15 *Revenue from contracts with customers*, paragraph 114
[10] IFRS 7 *Financial instruments: disclosures*, paragraphs 31-32 and 35A-N

	OBSERVATIONS	CSA COMMENTS
		(e.g., geographical region, product type, type of customer, such as wholesale or retail). [11]
IFRS 8: Operating Segments	❖ Some issuers do not provide the factors used to identify the entity's reportable segments, the basis of organization and the judgements made by management in applying aggregation criteria.	❖ Two or more operating segments may be aggregated into a single operating segment if they have similar economic characteristics, and the segments are similar in each of the following respects[12]: ○ the nature of the products and services, ○ the nature of the production processes, ○ the type or class of customer for their products and services, ○ the methods used to distribute their products or provide their services, and ○ if applicable, the nature of the regulatory environment, for example, banking, insurance or public utilities. ❖ Issuers are reminded that the judgements made by management in applying the aggregation criteria must be disclosed. This includes a brief description of the operating segments that have been aggregated and the economic indicators that have been assessed in determining that the aggregated operating segments share similar economic characteristics.[13] ❖ Issuers are also reminded that their CD documents should provide consistent disclosure about their reportable segments.
IFRS 3: Business Combinations	❖ Some issuers do not disclose certain information related to business combinations which occurred during the reporting period.	❖ To enable investors to evaluate the nature and financial effect of business combinations, issuers are required to disclose the following information[14]: ○ the amounts of revenue and profit or loss of the acquiree since the acquisition date included in the consolidated statement of comprehensive income for the reporting period, and ○ the revenue and profit or loss of the combined entity for the current reporting period as though the acquisition date for all business combinations that occurred during the year had been as of the beginning of the annual reporting period.

11 IFRS 9 *Financial instruments*, paragraph B5.5.35, IFRS 7 *Financial Instruments: disclosures,* paragraphs 35M-35N
12 IFRS 8 *Operating segments*, paragraph 12
13 IFRS 8 *Operating segments*, paragraph 22
14 IFRS 3 *Business Combinations*, paragraphs 59 and B64(q)

MD&A DEFICIENCIES

Hot Topics

	OBSERVATIONS	CSA COMMENTS
Venture issuers and early-stage/ development-stage issuers	❖ We continue to see venture and early-stage/ development-stage issuers that announce significant projects but fail to disclose sufficient information to enable users to understand the project, including timing and costs associated with such project.	❖ Issuers should describe each project in sufficient detail, including, but not limited to, the following information[15]: ○ the issuer's plan for the project and the status of the project relative to that plan. The discussion should include short and long term plans. For research and development (**R&D**) activity, this discussion should be included for each stage, ○ identification of concrete milestones in the plan and what specific events need to occur to meet each milestone, ○ for each project/ stage/ milestone, a description of the expenditures made to date and how these relate to anticipated timing and costs to take the project to the next stage of the project plan, ○ a discussion of license(s) and regulatory approval(s) the issuer must obtain. The discussion should include the anticipated timeline and expenditures associated with obtaining the license and regulatory approval and risks and associated impact if they are not obtained, and ○ updates on the status of the project in each MD&A, including any delays in the disclosed timeline and/or anticipated cost overruns. In addition, the MD&A must include a discussion of events and circumstances that occurred during the period that are reasonably likely to cause actual results to differ materially from material forward-looking information previously disclosed and the expected differences.
	❖ Some venture issuers that have not yet generated significant revenue from operations do not provide sufficient disclosure about costs incurred in operations and R&D or exploration.	❖ Venture issuers without significant revenue from operations must provide a breakdown of the material components of the following, including the cost incurred:[16] ○ exploration and evaluation assets or expenditures, ○ expensed research and development costs, ○ intangible assets arising from development, and ○ general and administration expenses. ❖ If the business primarily involves mining exploration and development, the analysis of exploration and evaluation assets or expenditures must be presented on a property-by-property basis.

[15] Form 51-102F1 *Management's Discussion & Analysis*, item 1.4(d)
[16] National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.3(1)

MD&A DISCLOSURE EXAMPLES

Forward-looking Information (FLI); Future-oriented Financial Information & Financial Outlooks

Backlog/ Order Intake and Future Expected Revenues

An issuer must not disclose FLI unless the issuer has a reasonable basis for the FLI. Any disclosure regarding material FLI should include the material factors or assumptions used to develop the FLI. We have seen instances where backlog, order book or order intake estimates are not based on firm purchase orders, but the basis of the estimate has not been disclosed. As such, any material factors and/or assumptions used to develop backlog or order intake must be disclosed.

For example:

Backlog

XYZ Company has announced that "Our sales activity has improved over the quarter, resulting in a backlog of $25 million as at June 30, 2022, which we expect to support strong revenue and earnings growth in the coming years".

In the above example, it is not clear what "sales activity" refers to, and whether the backlog is based on firm purchase orders. Given that information referred to as "backlog" is typically presented outside of the financial statements and may not be comparable across entities because there is no standardized definition or calculation, issuers should provide clear and transparent disclosure of how the backlog is derived in order to ensure that backlog estimates do not mislead investors.[17] Issuers must state the material factors and assumptions as well as the material risk factors that are relevant to the FLI.[18] Issuers are also reminded to limit the period covered by FLI to a period for which the information can be reasonably estimated, for example, any agreements with indefinite delivery or quantity should be excluded from the backlog. In addition, some material factors issuers should consider when disclosing FLI include the issuer's ability to make appropriate assumptions, the nature of the issuer's industry, and the issuer's operating cycle.

Issuers are reminded that when a backlog measure is disclosed, the supplementary financial measures requirements in section 11 of NI 52-112 generally apply. For example, if an issuer includes items other than firm purchase orders in their calculation of backlog, the supplementary financial measure should be labelled using a term that, given the measure's composition, describes the measure, such as "adjusted backlog".

Improved disclosure:

Adjusted backlog

XYZ Company has announced that "Our quoting and order intake activity has improved over the quarter, resulting in an adjusted backlog of $25 million as at June 30, 2022, which is comprised of $15 million based on firm purchase orders and $10 million of quotes based on on-going projects that are highly probable. Approximately $15 million of the $25 million of adjusted backlog is expected to convert to recognised revenue in the next 12 months, the remaining $10 million in the subsequent year. Our adjusted backlog includes remaining performance obligations[19] and is net of expected cancellations, which we have estimated based on historical cancellation volumes. Please see "Forward-Looking Statements" and "Non-GAAP and other financial measures" for further information on pages X and Y".

Overly Optimistic Financial Outlook

FLI also includes financial outlooks of prospective financial performance based on assumptions about future economic conditions. Examples of financial outlook in FLI include revenue projections, projected earnings, projected earnings per share and projected operating costs.

We continue to see instances where issuers disclose an overly optimistic financial outlook of revenue projections which is not supported by reasonable assumptions.

[17] National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, section 11
[18] National Instrument 51-102 *Continuous Disclosure Obligations*, parts 4A and 4B
[19] IFRS 15 *Revenue from contracts with customers*, paragraph 120

For example:

ZXC Company reported $180 thousand of gross revenue for the 2021 fiscal year.

Before the end of its 2021 fiscal year, ZXC Company disclosed in a news release a gross revenue target for the 2022 fiscal year of $3-5 million. Additionally, with the issuer planning to open a new facility, sign new agreements, and perceived high demand of product, ZXC Company projects a gross revenue target of $10-15 million for the fiscal year 2023.

The issuer in the above example made inappropriate optimistic revenue projections as an issuer must not disclose FLI unless the issuer has a reasonable basis for the FLI. The disclosure of financial outlook of revenue projections must be based on assumptions that are reasonable and comply with the requirements of Part 4B of NI 51-102.

In the above example, the issuer did not provide supportable assumptions because:

- a 1600% gross revenue increase from $180 thousand to $3 million in sales is highly unusual/ unlikely. The issuer only made vague statements regarding the material factors and assumptions, and did not provide supporting detail as to how this is achievable such as:
    - no discussion of the capacity of the new facility and whether these production levels are even possible,
    - necessary inputs to produce the product,
    - sufficient demand for the product,
    - required working capital, and
    - being able to deliver product to their customers.
- the issuer has not explained whether they have the infrastructure in place, and
- the issuer has not explained whether they have the trained personnel in place such as shipping and receiving, production, quality control, administration, etc.

Updates to previously disclosed material FLI

Updates to FLI are required in the MD&A to assist readers with understanding how an issuer is progressing towards achieving its disclosed targets and objectives and to understand how actual results differ materially from previously disclosed FLI.[20] There is flexibility to disclose the updated information in a news release before filing the MD&A. This approach would help ensure the new information is communicated to the market on a timely basis. The MD&A must refer to the news release to satisfy the requirement in NI 51-102 as including the information in a news release instead of the MD&A is not permitted.

We have seen issuers that have made financial projections where it is clear that they are not going to achieve them and they have not disclosed this fact in the MD&A. For example, an issuer may have projected annual revenue of $3 million yet after Q2 they have only reported $800 thousand in sales and the business does not experience seasonality. In this circumstance we would expect an issuer to update the FLI.[21]

In this case an issuer should:

- disclose the events and circumstances that are reasonably likely to cause actual results to differ materially from the previously disclosed FLI,
- disclose the expected differences between actual results and previously disclosed FLI[22],
- update the quantified data that relate to factors and assumptions that may impact future performance and discuss how and why these changes may impact future performance, and

[20] National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(2)
[21] National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(4)
[22] National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(4)

- disclose the decision to withdraw previously disclosed FLI and discuss events and circumstances that led to the decision to withdraw material FLI, including a discussion of any assumptions in the previously disclosed FLI that are no longer valid.[23]

The following is an example of updated FLI:

During the second quarter ended June 30, 2022, the Company became aware of certain factors which have deemed our assumptions relating to revenue projections unreasonable, and as such, the Company is withdrawing our fiscal 2022 and 2023 revenue projections. Our expected demand has decreased as a result of new entrants into the market, which has decreased our market share. In addition, the estimated opening of 3 more locations will not be completed until next year due to capital requirements and other unforeseen issues.

If an issuer decides to withdraw previously disclosed material FLI during the period to which the MD&A relates, the issuer must disclose the decision to withdraw previously disclosed FLI and discuss the events and circumstances that led to the decision to withdraw the material FLI, including a discussion of any assumptions in the previously disclosed FLI that are no longer valid.[24]

OTHER REGULATORY DISCLOSURE DEFICIENCIES

Hot Topics

	OBSERVATIONS	CSA COMMENTS
Business acquisitions	❖ Some issuers did not file a business acquisition report for a significant acquisition under which securities of the acquired business were exchanged for the issuer's securities.	❖ We generally consider that an acquisition of securities of a separate entity to be an acquisition of a business[25], regardless of the type of consideration paid or transferred. ❖ Issuers are required to determine whether an acquisition of a business or related business(es) is a significant acquisition by performing the required significance tests and may re-calculate the significance of the acquisition using the optional significance test, if applicable[26]. ❖ Issuers seeking relief from the requirements to file a business acquisition report or to include financial statements of an acquired business or related businesses are required to apply for exemptive relief before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable[27].
	❖ Some issuers filed a business acquisition report where the transaction or series of transactions met the definition of a restructuring transaction such that the issuer was required to file a material change report or an information circular, for which prospectus level disclosure is required. This includes the prescribed financial statements for the issuer and each entity whose securities are being	❖ Issuers are required to determine whether a transaction or series of transactions meet the definition of a restructuring transaction[28]. ❖ A restructuring transaction includes a reverse takeover, which includes a reverse acquisition, determined under Canadian GAAP applicable to publicly accountable enterprises[29]. ❖ Upon the closing of a restructuring transaction under which securities are changed, exchanged, issued or distributed, an issuer is required to file a

[23] National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(5)
[24] National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(5)
[25] Companion Policy 51-102 CP *Continuous Disclosure Obligations*, subsection 8.1(4)
[26] National Instrument 51-102 *Continuous Disclosure Obligations*, section 8.3, Companion Policy 51-102CP *Continuous Disclosure Obligations*, sections 8.2 and 8.3
[27] Companion Policy 51-102CP *Continuous Disclosure Obligations*, sections 8.4, 8.8 and 8.9, National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*
[28] National Instrument 51-102 *Continuous Disclosure Obligations*, section 1.1, Companion Policy 51-102CP *Continuous Disclosure Obligations*, section 1.4
[29] National Instrument 51-102 *Continuous Disclosure Obligations*, section 1.1, Companion Policy 51-102CP *Continuous Disclosure Obligations*, section 1.4

	OBSERVATIONS	CSA COMMENTS
	changed, exchanged, issued or distributed.	material change report to provide the disclosure required by Item 14.2 of Form 51-102F5 Information Circular (**Form 51-102F5**)[30] for each entity that would result from the restructuring transaction. Issuers may satisfy the requirement to include this disclosure by incorporating the information by reference into another document, such as an information circular sent to the issuer's securityholders, a prospectus, or a securities exchange takeover bid circular. It is important to note that the disclosure requirements under Item 14.2 of Form 51-102F5 are different from the requirements of the business acquisition report referred to in the above bullet point. ❖ Determining whether a restructuring transaction is a reverse takeover requires analysis of facts and circumstances against the relevant guidance and involves significant judgement. Issuers should disclose in the financial statements any significant judgements involved for a transaction that occurred during the period covered by the financial statements[31].
Inconsistencies and outdated information in disclosure documents	❖ We have observed a number of instances where issuers provided inconsistent disclosure between documents that are required to be filed under securities legislation and voluntary disclosures. ❖ Some issuers failed to provide up-to-date information in their reporting documents.	❖ Information should be consistently disclosed in all public documents, including voluntary disclosures. Voluntary disclosure documents are typically published on an issuer's website or on a social media platform and include documents such as presentations, sustainability reports, and public surveys. ❖ Including material information in voluntary disclosure but omitting it from CD documents may indicate that the issuer has failed to provide the disclosure required in the CD documents. ❖ Disclosures should be factual and balanced. For example, unfavourable news must be disclosed just as promptly and completely as favourable news.[32] ❖ Issuers are required to update disclosures on a timely basis. ❖ Disclosure in the MD&A must be current so that it will not be misleading when it is filed. For example, explain how the issuer is performing during the period covered by the financial statements and remove information that is no longer relevant to current operations.[33] ❖ When a material change occurs, issuers are required to immediately issue and file a news release disclosing the material change in their business as soon as practicable, and in any event

30 Form 51-102F3 *Material Change Report*, item 5.2, Companion Policy 51-102 CP *Continuous Disclosure Obligations*, section 9.2, Form 51-102F5 *Information Circular*, item 14.2, Form 41-101F1 *Information Required in a Prospectus*, Form 44-101F1 *Short Form Prospectus*

31 IFRS 3 *Business Combinations*, paragraphs B13 to B18, IAS 1 *Presentation of Financial Statements*, paragraph 122

32 National Policy 51-201 *Disclosure Standards*, subsection 2.1(2)

33 Form 51-102F1 *Management's Discussion & Analysis*, item 1.2 and 1.4

	OBSERVATIONS	CSA COMMENTS
		within 10 days of the date on which the change occurs, and file a material change report.[34]
Audit Committees; composition and responsibilities	❖ Some issuers do not have an appropriate audit committee composition and inappropriately rely on exemptions in National Instrument 52-110 *Audit Committees* (**NI 52-110**) to appoint less than three members to the audit committee.	❖ For non-venture issuers, an audit committee must meet the following requirements[35]: o must be composed of a minimum of three members, o every audit committee member must be a director of the issuer, o except in very limited circumstances, every audit committee member must be independent[36], as defined in NI 52-110, and o except in very limited circumstances, every audit committee member must be financially literate[37], as defined in NI 52-110. ❖ For venture issuers, an audit committee must meet the following requirements[38]: o must be composed of a minimum of three members, o every audit committee member must be a director of the issuer, and o except in very limited circumstances, a majority of the members must not be executive officers, employees or control persons of the venture issuer or of an affiliate of the venture issuer. o Issuers should carefully consider whether the exceptions in NI 52-110 to the above composition requirements apply before relying on them. The exceptions are generally available for a limited timeframe.[39]
	❖ Some audit committee members may not fully understand their responsibilities as directors and members of an audit committee.	❖ The responsibilities of an audit committee member are extensive and should be considered before taking on an appointment. Responsibilities include, but are not limited to, the following[40]: o overseeing the work of the external auditor engaged for the purpose of preparing or issuing an auditor's report or performing other audit, review or attest services for the issuer, including the resolution of disagreements between management and the external auditor regarding financial reporting, and

[34] National Policy 51-201 *Disclosure Standards*, subsection 2.1(1), National Instrument 51-102 *Continuous Disclosure Obligations*, section 7.1, Form 51-102F3 *Material Change Report*
[35] National Instrument 52-110 *Audit Committees*, section 3.1
[36] National Instrument 52-110 *Audit Committees*, section 1.4, definition of "independence"
[37] National Instrument 52-110 *Audit Committees*, section 1.6, definition of "financially literacy"
[38] National Instrument 52-110 *Audit Committees*, section 6.1.1
[39] National Instrument 52-110 *Audit Committees*, sections 3.2 – 3.9 and subsections 6.1.1(4)-(6)
[40] National Instrument 52-110 *Audit Committees*, section 2.3

	OBSERVATIONS	CSA COMMENTS
		○ review the issuer's financial statements, MD&A and annual and interim profit or loss press releases before the issuer publicly discloses this information; and must be satisfied that adequate procedures are in place for the review of the issuer's public disclosure of financial information extracted or derived from the issuer's financial statements.

DISCLOSURE EXAMPLE

Overly Promotional Disclosure (Greenwashing) Example

The use of disclosures pertaining to ESG or sustainability factors has grown rapidly in recent years as companies look to be more transparent on how they manage ESG factors and related risks.

The terms ESG or sustainability are used to refer to a wide variety of factors – e.g., pollution and waste management, biodiversity, climate risks, carbon and other greenhouse gas emissions, energy efficiency, diversity and inclusion, human rights, indigenous reconciliation, labour standards, corporate governance, shareholder engagement, bribery and corruption. The breadth of what is encompassed by the terms can make using the terms misleading if there is not more specific disclosure about the particular factors being considered and how they are being measured and evaluated.

We have observed an increase in issuers making potentially misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service being offered, conveying a false impression commonly referred to as "greenwashing".

We have identified greenwashing in CD documents as well as voluntary documents, such as sustainability or ESG reports and public surveys. When describing current and proposed ESG related activities, issuers should avoid misleading promotional language. With increased access to data and information online, it is important to ensure that all public disclosures, whether voluntary or required are factual and balanced.

Example of Deficient Disclosure – Greenwashing Disclosure

Included in a news release:

ESG Highlights:

Environment:

- The Company plans to be carbon neutral by 2023.
- Strategic relationship with high-quality partners attentive to environmental stewardship and performance enhance our long-term value. Our key partner exemplifies this by setting aggressive emissions reduction targets and investing in multiple environmental/economic-enhancing technologies.
- The Company is a global leader in environmental solutions.

Social:

- Established relationships with several organizations focused on (i) promoting healthier and more sustainable communities, (ii) supporting educational opportunities and (iii) fostering employee engagement in the community.

Governance:

High rating on national corporate governance survey.

First, in the above example, the issuer made an unsubstantiated claim stating that it would be carbon neutral in the very near term. Unless this statement can be supported by facts and corporate activities it is misleading and promotional to include. Further, this type of statement will typically constitute FLI. The issuer must have a reasonable basis for the FLI, identify the material risks factors

that could cause actual results to differ materially, state the material factors or assumptions used to develop the FLI and describe its policies for updating the information.[41]

Second, the issuer included promotional language with respect to its partnerships, as there were no accompanying disclosures to support the issuer's claims about a key partner being "high-quality" or its "aggressive emissions reduction targets". Third, the issuer described itself as being a global leader despite having generated only nominal revenue from its operating activities.[42]

Next, the issuer discusses its social impact by making a broad statement about its relationships with other organizations without support. This statement should be supported with information about with whom these relationships are and what specifically these organizations are doing. Further, without additional detail regarding the particular aspects of sustainability being pursued or how these will be measured and evaluated, the reference to promoting "more sustainable" communities is vague, potentially misleading and promotional.

Lastly, the issuer discusses its corporate governance and discloses that it scored high on a national survey. While the use of ratings and other metrics can be useful tools, ratings can vary significantly among different raters, due to differences in the factors considered and the weight assigned to the factors. In order to not be misleading the actual rating should be disclosed and it should be clear what specific set of criteria the rating is based on and what, if any, third party certified the rating.

MINERAL PROJECT DISCLOSURE

National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**) governs public disclosure of scientific and technical information about an issuer's mining and mineral exploration projects including written documents, websites, and oral statements. Issuers must base their scientific and technical disclosure on information provided by a "qualified person" (**QP**), as defined in NI 43-101. NI 43-101 also requires issuers to file a "technical report", in a prescribed format, Form 43-101F1 *Technical Report* (**Technical Report**), for significant disclosures on mineral projects.[43] The purpose of the Technical Report is to support disclosure of the issuer's exploration, development, and production activities with additional information to assist current and prospective investors in making investment decisions. In some circumstances, QPs authoring the Technical Report must be independent of the issuer and the mineral property.[44]

In 2020 travel restrictions were introduced to retard the progress of the COVID-19 pandemic, which made it difficult for issuers filing Technical Reports to bring QPs to mineral projects to complete the personal inspection required by NI 43-101.[45] CSA jurisdictions prepared guidance on meeting the requirement or obtaining exemptive relief, but it was evidently not clear to all issuers, or to their QPs, that no blanket relief from site visits was available, or contemplated.

CSA staff also conducted an IOR of news releases that disclosed exploration results or mineral resource estimates in terms of equivalent grades. Issuers often defend the use of equivalent grades as providing investors with a single number to represent the metal content of a drill intersection or resource block, but staff note that equivalent grades may obscure the real economic potential when different metals are recovered at different rates.

Hot Topics

	OBSERVATIONS	CSA COMMENTS
Equivalent Grade Disclosure	❖ Some issuers have disclosed equivalent grades calculated entirely by price-weighting. Our view is that price-weighting, without taking the differential recovery of each component element into account, is potentially misleading.	❖ Potentially misleading grade equivalents can be avoided by calculating them based on the results of metallurgical tests or – where test results are not available – including reasonable assumptions for recovery of the constituent species.[46]
	❖ Algebraically, a price-weighted equivalent grade is simply a gross currency value divided by a metal price. It is denominated in metal units rather than in currency, but is otherwise indistinguishable from a gross value.	❖ Foreign disclosure codes such as JORC, SAMREC, and SME have requirements for disclosure of grade equivalents that explicitly require the issuer to include recovery, and in some instances, treatment, smelting, and other costs. The applicable clauses of those codes may reasonably be used as guidance

41 National Instrument 51-102 *Continuous Disclosure Obligations*, parts 4A and 4B
42 CSA Staff Notice 51-356 *Problematic Promotional Activities by Issuers*
43 National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, subsections 4.1 and 4.2
44 National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, section 1.1, definition of "qualified person"
45 National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, section 6.2
46 National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, subsection 2.3(1)(d)

	OBSERVATIONS	CSA COMMENTS
		for disclosure of equivalent grades under NI 43-101.[47]
Technical Report: Personal Inspection	❖ Due to travel restrictions during the 2020-2021 COVID-19 pandemic period, many issuers preparing Technical Reports enquired about an exemption from the requirement for a current personal inspection.	❖ The CSA provided guidance for mining companies during the COVID-19 pandemic, but with the more recent relaxation of travel restrictions, we take the view that loosening the requirement for a current personal inspection could compromise the integrity of Technical Reports. At no time was it ever possible for QPs to dispense with the requirement.[48]
	❖ Some issuers filed Technical Reports where the authors purported to "self-exempt" from the personal inspection requirement.	❖ Unless an exemption is granted, there is no mechanism for issuers or their QPs to override an element of NI 43-101 or the Technical Report.
	❖ Some practitioners proposed using remote technologies (helmet cameras or video-capable drones) to perform "virtual" personal inspections.	❖ While drones or helmet-cams provide a view of a mineral project and the processes being followed by the project operator, they cannot substitute for active engagement on the site, including physical examination of drill cores and cuttings, and independent sampling by the report author.
	❖ Some issuers have filed Technical Reports relying on the temporary deferral provision of NI 43-101, but have never followed up with a Technical Report documenting a site visit.	❖ An issuer is permitted a deferral of the personal inspection for "early-stage exploration properties", defined in NI 43-101[49], provided the issuer files a new Technical Report once the personal inspection has been done. This deferral does not exempt the issuer from the requirement.[50]
Qualified Persons: Relevant Experience	❖ Some disclosure of scientific or technical information about mineral projects appears to have been approved by geoscientists or engineers lacking relevant experience in the subject matter. When professionals have limited experience with certain exploration techniques or extraction processes, they frequently rely on consultants' reports, reproducing the conclusions verbatim without interpreting the result for the investor.	❖ To act as a QP for a particular element of scientific or technical information, individuals must have sufficient relevant experience with the subject matter being disclosed. A person approving disclosure as a QP should make sure they meet the criteria in NI 43-101.[51]

[47] *Australasian Code for Reporting of Exploration Results, Mineral Resources, and Ore Reserves* (JORC Code 2012), Joint Ore Reserves Committee, clause 50, *The South African Code for the Reporting of Exploration Results, Mineral Resources, and Mineral Reserves* (SAMREC Code 2016), South African Mineral Resource Committee, clause 74, and *SME Guide for Reporting Exploration Results, Mineral Resources, and Mineral Reserves* (SME Guide 2014), Society for Mining, Metallurgy, and Exploration, clause 23, and *Estimation of Mineral Resources and Mineral Reserves – Best Practice Guidelines (2003),* Canadian Institute of Mining, Metallurgy, and Petroleum, "Technical Reports – (n)"

[48] National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, subsection 6.2(1)

[49] National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, section 1.1, definition of "early stage exploration property"

[50] National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, subsections 6.2(2) and (3)

[51] National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, section 1.1, definition of "qualified person"

APPENDIX B – STAFF REVIEW OF NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE

NI 52-112, issued in 2021[52] to replace the guidance in CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures* (**SN 52-306**), addresses the disclosure surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures (i.e., capital management measures, supplementary financial measures, and total of segments measures, as defined in NI 52-112).

To assess compliance with certain aspects of NI 52-112, staff reviewed the disclosures in the annual MD&A, related earnings release, and investor presentation of approximately 85 issuers with financial years ended on or after October 15, 2021. The review primarily focused on disclosures that were "new or different" compared to SN 52-306. Issuers selected for review varied by size and industry. The reviews have resulted in outcomes where no action was required, requests for prospective disclosure enhancements were made, requests for retrospective restatements were made, or communication is ongoing to resolve the identified issues.

The CSA Notice of Publication accompanying the issuance of NI 52-112 provides, among other things, the background on NI 52-112 including some of the changes as compared to SN 52-306.

The topic of non-GAAP and other financial measures remains a focus area that staff will continue to monitor.

Common Deficiencies

From the review, staff identified the following common deficiencies:

Earnings Release

Observation: Some issuers failed to include the required quantitative reconciliation and failed to comply with no more prominence in an earnings release.

CSA Comments: An earnings release that discloses a non-GAAP financial measure (either historical or forward-looking), a total of segments measure, or a capital management measure must, among other things, include the required quantitative reconciliation in the earning release[53] – reference to a quantitative reconciliation disclosed in the MD&A is not permitted.

In addition, we remind issuers that a non-GAAP financial measure should not be presented with more prominence than that of the most directly comparable financial measure disclosed in the primary financial statements. We refer issuers to the Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (**Companion Policy**) that provides guidance on the topic of "prominence".

> When multiple non-GAAP financial measures are used for the same or similar purpose, they may obscure disclosure of the most directly comparable financial measure.

Non-GAAP Financial Measures that are FLI

Observation: Some issuers failed to describe the significant differences between the forward-looking non-GAAP financial measure and its equivalent historical non-GAAP financial measure.

CSA Comments: The material factors and assumptions that were used to develop the FLI, as specified in paragraph 4A.3(c) of NI 51-102, will complement this disclosure but are not necessarily sufficient on their own to satisfy paragraph 7(2)(d) of NI 52-112 that requires a *description of any significant difference* as noted above.

> If an issuer discloses projected 20X3 adjusted net income of $160 (i.e., determined to be a non-GAAP financial measure that is forward-looking information), it must also disclose:
>
> - 20X2 adjusted net income of $100 (i.e., the equivalent historical non-GAAP financial measure) with the required disclosures complying with section 6 of NI 52-112 for that equivalent historical non-GAAP financial measure, and
> - explain the significant differences between the two financial measures (e.g., the expected increase of $60 in projected adjusted net income arises primarily from expanded capacity at the issuer's facility resulting in increased adjusted net income of $60 (range of $90-$100 in sales less associated range of $30-$40 cost of sales, with no material increase in operating expenses)).

[52] All reporting issuers, except investment funds, SEC foreign issuers, and designated foreign issuers, were required to apply NI 52-112 to disclosures for a financial year ending on or after October 15, 2021 and an issuer that was not a reporting issuer was required to apply NI 52-112 in filings after December 31, 2021.

[53] National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, subsection 5(4)

Total of Segments Measures

Observation: Some issuers did not appropriately identify a total of segments measure and consequently, did not include the required disclosures.

CSA Comments: A total of segments measure, is a measure that, among other things, is disclosed in the notes to the financial statements of the entity – meaning, it is a financial measure that is disclosed in accordance with the entity's GAAP, such as IFRS 8 *Operating Segments* (**IFRS 8**).[54]

The mere inclusion of a financial measure among information on reportable segments (e.g., in the reportable segment note) is not sufficient, on its own, to conclude that the financial measure (or its aggregation) is disclosed in accordance with IFRS 8 and therefore eligible for consideration as a total of segments measure under NI 52-112.

When staff identify a financial measure that is inconsistent with the core principle of IFRS 8, we may request that measure be removed from the financial statements, which would result in that financial measure being classified as a non-GAAP financial measure if disclosed outside of the financial statements.

Some issuers incorrectly assumed that because a total of segments measure is disclosed in the notes to the financial statements of the entity, when such a measure is disclosed *outside* the financial statements no additional disclosures are needed.

To ensure investors appreciate the context of other financial measures, including total of segment measures, NI 52-112 contains disclosure requirements if such financial measures are disclosed outside of the financial statements.[55]

> When a total of segments measure first appears in the MD&A a quantitative reconciliation must be disclosed[56]. The Companion Policy provides guidance on how such disclosure can be made with ease and efficiency.[57] In addition, issuers are reminded that a total of segments measure must be presented with no more prominence than that of the most directly comparable financial measure.

Supplementary Financial Measures

Observation: Some issuers used confusing labels to name supplementary financial measures.

CSA Comments: An issuer must not disclose a supplementary financial measure in a document unless, among other things, the supplementary financial measure is labelled using a term that, given the measure's composition, describes the measure.[58]

Considering that some supplementary financial measures, although not necessarily authoritatively defined, have well-established (often industry-rooted) compositions, it would be confusing to label a supplementary financial measure using a well-established term when its composition is inconsistent with well-established expectations on that term's composition.

> Labelling a supplementary financial measure as "backlog", generally understood to represent a firm purchase order, when its composition includes other orders such as letters of interest or proposals outstanding would not be appropriate. In these cases, the label should be modified accordingly, such as "adjusted backlog".

Investor Presentation

Observation: Some issuers inappropriately incorporate by reference information in an investor presentation.

CSA Comments: An investor presentation document often attempts to incorporate information by reference but fails to appropriately do so, because, among other things, the incorporation by reference:

- is to an MD&A yet to be filed, making it impossible for an investor to examine the referenced information,
- is to an MD&A that does not include information about the specific financial measure disclosed in the investor presentation (e.g., the investor presentation often contains more non-GAAP financial measures than disclosed in the associated MD&A), and
- does not specify the location of the information in the MD&A (e.g., the reference does not identify the reporting period of the MD&A, and the *specific* section or page reference within the MD&A or does not provide a hyperlink to the specific section or page within the MD&A where the information is located). A general statement such as

54 National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, section 1, definition of "total of segments measure"
55 National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, section 9
56 National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, paragraph 9(c)
57 *Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure*, paragraphs 6(1)(e), 7(2)(d), 8(c), 9(c), 10(1)(b), 11(b) -- Proximity to the first instance
58 National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, subparagraph 11(a)(i)

"this presentation refers to certain non-IFRS financial measures. For further details on certain of these non-IFRS measures, including relevant reconciliations, see the non-IFRS measures section in the MD&A" is not sufficient.

Other

In addition to the above common areas of deficiencies noted in our reviews, the following were also noted:

- failure to provide required comparative information, such as a quantitative reconciliation, for all comparative periods presented[59], and
- failure to disclose each non-GAAP financial measure that is used as a component of the non-GAAP ratio (including non-GAAP ratios that contain forward-looking information)[60].

During our review, we identified financial measures for which it was unclear whether the financial measure was a non-GAAP financial measure, non-GAAP financial ratio, or a supplementary financial measure. To support informed decision-making, investors expect financial measures to be understandable and transparent. Investors should be able to examine a financial measure and understand whether the financial measure is from the entity's financial statements and if not, the source of the financial measure (i.e., where it comes from and how it is derived).

We encourage issuers to consider the findings from our review and use this information to determine whether enhancements to their disclosure are necessary.

59 National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, such as clause 6(1)(e)(ii)(C), paragraph 9(c) and clause 10(1)(b)(ii)(C)
60 National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, subparagraph 8(c)(ii)

APPENDIX C

CATEGORIES OF OUTCOMES

1. Referred to Enforcement/Cease-Traded/Default List

If the issuer has substantive CD deficiencies, we may add the issuer to our default list, issue a cease-trade order and/or refer the issuer to enforcement.

2. Refiling

The issuer must amend and refile certain CD documents or must file a previously unfiled document.

3. Prospective Changes

The issuer is informed that certain changes or enhancements are required in its next filing as a result of deficiencies identified. Prospective changes also include education awareness where the issuer receives a proactive letter alerting it to certain disclosure enhancements that should be considered in its next filing or when staff of local jurisdictions publish staff notices and reports on a variety of CD subject matters reflecting best practices and expectations.

4. No Action Required

The issuer does not need to make any changes or additional filings. The issuer could have been selected in order to monitor overall quality disclosure of a specific topic, observe trends and conduct research.

Questions – Please refer your questions to any of the following:

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B.1.2 CSA Staff Notice 31-362 OBSI Joint Regulators Committee Annual Report for 2021

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Staff Notice 31-362
OBSI Joint Regulators Committee Annual Report for 2021

November 3, 2022

Introduction

This notice is being published jointly by the Canadian Securities Administrators (**CSA**), the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) to serve as the Annual Report of the Joint Regulators Committee (**JRC**) of the Ombudsman for Banking Services and Investments (**OBSI**).

Members of the JRC are representatives from the CSA (in 2021, CSA designated representatives were from British Columbia, Alberta, Ontario and Québec) and the two self-regulatory organizations (**SROs**), IIROC and MFDA.

The JRC believes that a fair and effective independent dispute resolution service is important for investor protection in Canada and is vital to the integrity and confidence of the capital markets. The JRC supports a fair, accessible and effective OBSI dispute resolution process. The JRC meets regularly with OBSI to discuss governance and operational matters and other significant issues that could influence the effectiveness of the dispute resolution system.

The purpose of this notice is to provide an overview of the JRC and to highlight the major activities conducted by the JRC in 2021.

Background to Establishment of the JRC

In May 2014, amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Amendments**) came into force requiring all registered dealers and advisers to make OBSI available to their clients as their dispute resolution service, except in Québec where the dispute resolution services administered by the Autorité des marchés financiers (**AMF**) would continue to apply. In Québec, the AMF provides dispute resolution services to those clients of all registered dealers and advisers who reside in Québec. The Québec regime remains unchanged and firms registered in Québec have to inform clients residing in Québec of the availability of the AMF's dispute resolution services. Investors in Québec are nevertheless entitled to use the services of OBSI for disputes that fall within OBSI's mandate, in lieu of the dispute resolution services provided by the AMF.

Memorandum of Understanding / Amendments: In conjunction with the passing of the Amendments, the CSA and OBSI signed a Memorandum of Understanding (**MOU**) which provides an oversight framework intended to ensure that OBSI continues to meet the standards set by the CSA.[1] The MOU also provides a framework for the CSA members and OBSI to cooperate and communicate constructively.

In 2015, the MOU was amended to include the AMF as a signatory,[2] with it joining all other CSA members. The amended MOU also clarifies certain provisions, including those relating to information sharing and the requirement for an independent evaluation of OBSI.[3]

JRC Mandate: The CSA jurisdictions and OBSI agreed with the SROs to form the JRC with a mandate to:

- facilitate a holistic approach to information sharing and monitor the dispute resolution process with an overall view to promoting investor protection and confidence in the external dispute resolution system;
- support fairness, accessibility and effectiveness of the dispute resolution process; and
- facilitate regular communication and consultation among JRC members and OBSI.

1 The MOU sets out the standards that OBSI is expected to meet on: governance, independence and standard of fairness, processes to perform functions on a timely and fair basis, fees and costs, resources, accessibility, systems and controls, core methodologies, information sharing, and transparency.
2 The AMF became a party to the MOU effective as of December 1, 2015.
3 For a copy of the MOU, please see the Amended and Restated Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments among the Canadian Securities Administrators and OBSI.

Overview of JRC Activities in 2021

In 2021, four regularly scheduled meetings were held in March, June, September and December. The JRC also met with OBSI's Board of Directors (the **OBSI Board**) and engaged with OBSI on an *ad hoc* basis. These meetings provided OBSI with an opportunity to update the JRC on specific matters as contemplated by the MOU.

The following matters were considered and advanced by the JRC, and include matters on which OBSI provided updates to the JRC throughout 2021:

1. **OBSI's 2021 independent evaluation:** The MOU requires that an independent evaluation of OBSI's operations and practices on the investment side of OBSI's mandate commence every five years. In 2021, OBSI kept the JRC apprised of the competitive request for proposal process (**RFP**) and consulted with the JRC on the selection of the independent evaluator and timelines for completion of the evaluation. Concurrent independent evaluations of OBSI's banking and investment mandates contributed to some delays to the RFP process. OBSI kept the JRC apprised of efforts to address these delays. In October 2021, the OBSI Board appointed Professor Poonam Puri to lead independent evaluations of OBSI's banking and investments mandates. As stakeholder consultation is a key component, the JRC concurred with an extension to the stakeholder consultation period to ensure that stakeholders who wished to participate in the consultation regarding the evaluation of OBSI's investments mandate had sufficient time to do so.

   Subsequent event: OBSI delivered the *Independent Evaluation of the Ombudsman for Banking Services and Investments (OBSI) Investments Mandate* (**Report**) to the JRC in 2022 and published it on June 13, 2022. The independent evaluators found that, overall, OBSI met and exceeded its obligations under the MOU. In particular, the Report noted that:

   1. OBSI dealt with complaints in a timely manner;
   2. investigators were able to identify key issues in a complaint and requested additional documents where necessary;
   3. investigators were skilled at conducting interviews and assessing credibility;
   4. investigators kept the parties apprised of progress in the investigation, were candid with the parties about the merits of the case, and explained their views well and as early as possible;
   5. OBSI's reasons were fair, proportionate and explained in plain language; and
   6. OBSI's conclusions flowed from the evidence.

   The independent evaluators made 22 recommendations in the Report for improvement on the topics of governance, strategy, operations, additional value and awareness, including that OBSI should be empowered to make awards that are binding.

   The JRC issued a statement[4] following the Report's publication reaffirming the importance of a fair, efficient and accessible dispute resolution system and its strong support for OBSI as the dispute resolution service. The JRC has met with the independent evaluators to discuss the Report, has met and will continue to meet with OBSI staff and met with the OBSI Board in late September 2022 to learn more about OBSI's position on the Report's findings and recommendations.

   The JRC is analyzing the findings and recommendations, along with other stakeholder input, in considering next steps in response to the Report.

2. **CSA's project to strengthen OBSI:** In 2021, the JRC continued to receive quarterly progress updates about the CSA's continued work to strengthen OBSI as an independent dispute resolution service. The CSA working group informed the JRC that it met frequently, and reviewed OBSI's processes for making recommendations as well as international best practices for financial sector ombudsmen. The CSA working group also considered legal issues relating to binding decisions and conducted significant design work on a binding authority framework for OBSI that is fair, efficient and accessible[5], with the goal of improving investor protection and achieving fair outcomes for both individuals and firms.

3. **Continuous monitoring of OBSI quarterly reports, compensation refusals and settling for lower amounts than recommended by OBSI:** The JRC continued to monitor data on investment-related complaints, including compensation refusals and settlements below OBSI's recommendations, through the review of OBSI's quarterly reporting. The JRC believes this data can sometimes provide risk-based indications of potential problems with a firm's complaint handling

[4] See *OBSI Joint Regulators Committee Responds to Independent Evaluator's Report,* June 13, 2022.
[5] Please refer to CSA Business Plans, including CSA Business Plan 2019-2022 Achievement Highlights

practices, or raise questions about whether a firm is participating in OBSI's services in good faith or consistently with the applicable standard of care.

In 2021, there were no compensation refusals. A CSA jurisdiction maintained its engagement with a firm about a refusal that occurred in late 2020 (and was reported in JRC's Annual Report for 2020), and the CSA jurisdiction's effort[6] in communicating with the firm to better understand the reasons for the refusal resulted in the firm subsequently compensating the client. This firm is no longer registered.

For OBSI's fiscal years 2018 to 2021, out of 674 cases that ended with monetary compensation, 39 cases (approximately 6%) involving 23 firms settled below OBSI recommendations. About 56% of these low settlement cases involved recommendations over $50,000. On average, low settlement cases settled for 60% of OBSI's recommended amount of compensation. In the same four-year period, 10 of the 23 firms settled below OBSI's recommended amount more than once. Subsequent to follow up efforts by CSA jurisdictions and SROs regarding low settlement cases, two of the 10 firms made additional payments to the clients in three cases in 2021 to align compensation amounts with OBSI recommendations. Overall, since OBSI's 2018 fiscal year, clients received approximately $1.5 million less than what OBSI recommended. This continues to be an area of concern for the JRC.

The JRC recognizes the impact on complainants when firms refuse to compensate clients consistent with OBSI recommendations or settle for lower amounts than recommended by OBSI. Complainants rely on OBSI to help achieve a fair resolution to their complaint through a dispute resolution process that requires both engagement and resources from the parties involved. When a firm refuses to settle or makes a lower settlement offer, complainants may feel they are unable to pursue the matter further due to the time and cost involved, including to obtain legal representation and initiate a civil action against the firm. Settlement refusals and low settlements erode confidence in the fairness and effectiveness of the dispute resolution process for investors.

4. **Systemic issues:** Under the MOU, the Chair of the OBSI Board is to inform the CSA Designates of any issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients of one or more firms (referred to as **Systemic Issues**). In 2015, the JRC finalized with OBSI a protocol to define potential Systemic Issues and to set out a regulatory approach to address these issues when reported by OBSI under the MOU. Information sharing about individual complaints relating to Systemic Issues allows for evaluation of whether a systemic issue exists and assessment of its impact on the applicable registrant, the registrant category and/or investors. Please see OBSI and JRC Protocol for Handling Systemic Issues for further information.

   In 2021, two Systemic Issues were reported to the JRC by OBSI or by the Chair of the OBSI Board:

   - A portfolio manager was the subject of multiple complaints alleging understating and misrepresenting the risk of a fund and disregarding documented investor risk tolerance in multiple cases. The issue was referred to the relevant CSA jurisdiction. Staff noted OBSI's systemic issue report and OBSI cases in their on-going review of the portfolio manager's activity.

   - A scholarship plan dealer (SPD) was the subject of multiple complaints alleging inadequate disclosure with respect to the consequences of an important deadline that, if missed, would result in the significant forfeiture of plan income for consumers of a widely sold scholarship trust plan. The issue was referred to the relevant CSA jurisdiction for further investigation. Staff reviewed the complaints relating to the issue and followed up with the SPD. Staff reviewed the relevant documents provided by the SPD and did not find inadequate disclosure of the deadline.

5. **Impact of Covid-19 on OBSI and on complaint trends:** The JRC worked with OBSI to monitor the ongoing impact of the COVID-19 pandemic on complaint volumes. OBSI reported a significant increase in complaint volume during 2021, with a 24% increase in cases from 2020. The elevated complaint volume was partially attributable to ongoing market volatility and economic stressors related to COVID-19. OBSI also reported that despite higher case volumes and the challenges of remote work, it continued to meet service delivery and productivity standards.

   Since mid-2020, there has been an increase in IIROC member firm complaints relating to order execution only (**OEO**) dealers, commonly referred to as discount brokers. Complaints about OEO dealers corresponded with an overall increase in newly opened accounts in this sector, with top complaint issues relating to margin, transaction errors and service issues relating to the trading platforms. As noted below in item 6, IIROC has established a working group to assess if a regulatory response is needed to address service issues relating to OEO dealers.

[6] As set out in Joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin #0736-M Complying with requirements regarding the Ombudsman for Banking Services and Investments, the CSA or SROs may conclude that enquiries are appropriate if a firm shows a pattern of either refusing to compensate clients after recommendations by OBSI or settling for lower amounts than recommended by OBSI. Where patterns are detected, this may lead to regulatory responses where warranted.

The JRC reviewed complaint data from IIROC, MFDA and OBSI to identify potential predictive relationships and assist with anticipating future complaint volumes. Analysis of this data found that although some correlation may exist between SRO complaint volumes and complaints received by OBSI, additional data and analysis is required to establish a more predictive relationship.

6. **IIROC follow-up with OEO dealers regarding systems issues and analysis:** IIROC provided updates to JRC on its efforts to gather and analyze data relating to an increase in complaints regarding system outages and service levels of OEO dealers. As a first step IIROC sent a survey to all OEO dealers requesting information regarding various aspects of the technology services they provide to their clients. Although the survey responses provided an important initial view, in order to assess various options for strengthening investor protection standards in this area, IIROC established an OEO service-level working group with membership open to all OEO dealers. The working group meetings have now concluded and IIROC is considering next steps. The JRC continues to receive quarterly updates from IIROC.

7. **IIROC's qualitative research among complainants**: The JRC reviewed a research report commissioned by IIROC to explore the experiences of investors that dealt with IIROC's Complaints & Inquiries team. IIROC staff presented findings to the JRC, noting details relevant to OBSI and complainants' experiences with the overall complaint process. The research showed considerable confusion among the interviewed complainants about the complaint process.

8. **Ontario Capital Markets Modernization Taskforce, Final Report:** The JRC discussed the recommendation in the Final Report relating to designation of a dispute resolution service with the power to issue binding decisions, noting similar objectives with the CSA's project to strengthen OBSI, such as improving retail investor protection through a binding, reputable and efficient dispute resolution framework and increasing investor confidence in the capital markets by improving mechanisms for redress.

9. **Federal developments relating to external complaint handling in banking:** The JRC discussed the potential impacts for OBSI of the federal consultation on external complaint handling bodies, the federal government's commitment to establishing a single, independent ombudsperson for banking complaints with binding authority, and inclusion of this commitment in the Mandate Letter of the Deputy Prime Minister and Minister of Finance.

10. **CSA member website information regarding complaint handling:** The JRC worked with OBSI and the CSA Communications Committee to enhance communication regarding complaint handling and OBSI's services across CSA member websites. The JRC noted that investor education websites of some CSA jurisdictions already provided extensive information about complaint handling and OBSI.

11. **Monitoring of general inquiries and complaints:** The JRC continues to monitor and respond to general inquiries and complaints relating to OBSI received by the JRC members or through the JRC email address. The JRC values the feedback submitted by stakeholders and regularly considers opportunities to enhance the effectiveness of its oversight in accordance with the MOU.

12. **Development of OBSI's 2022-2026 Strategic Plan:** In 2021, OBSI developed its five-year strategic plan for 2022-2026. The new plan was released in the first quarter of 2022.

13. **Recruitment of the new Chair for OBSI's Board:** In December 2021, Maureen Jensen joined the OBSI Board and was subsequently appointed Chair. Ms. Jensen is the past Chair and Chief Executive Officer of the Ontario Securities Commission.

JRC Meeting with OBSI's Board of Directors

As required by the MOU, an annual meeting of the JRC with the OBSI Board was held on September 23, 2021. In addition to broader discussions on operating and governance issues and the effectiveness of OBSI's processes, topics discussed included the importance of prompt selection of an independent reviewer and initiation of the independent review, strategic direction and development of OBSI's five-year strategic plan, work underway to strengthen OBSI's powers to secure redress for investors, and OBSI complaint volumes, including the marked increase in investment complaints relating to service issues.

OBSI Annual Report

For additional information on OBSI, readers may wish to review OBSI's Annual Report for its fiscal year ending October 31, 2021.

Comments

We appreciate the feedback received on previous annual reports from various stakeholders and welcome comments on this annual report and any matter relating to the JRC's oversight of OBSI. Please send your comments to ContactJRC-CMOR@acvm-csa.ca.

Questions

Please refer your questions regarding this CSA Staff Notice to any of the following CSA staff:

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B.3
Reasons and Decisions

B.3.1 Gardner Russo & Quinn LLC

Headnote

U.S. registered investment adviser exempted from adviser registration requirement in section 25 of the Act to allow the Filer to conduct advising activities with "Additional Category Permitted Clients" on the same terms and conditions as if the Filer had relied on international adviser exemption in NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – "Additional Category Permitted Clients" includes certain family trusts, similar to clause (w) added to the "accredited investor" definition in NI 45-106 Prospectus Exemptions in May 2015 – requested relief intended to benefit individual permitted clients in Canada in that it allows the Filer to provide services to individual permitted clients and their immediate family members collectively as a family unit, allowing the individual permitted client to make use of a family trust or otherwise organize their financial affairs in an efficient manner for estate planning, business succession planning, charitable or other purposes.

Applicable Legislative Provisions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(3) and 74(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 definition of "permitted client" and s. 8.26.
National Instrument 45-106 Prospectus Exemptions, clause (w) of the definition of "accredited investor" in s. 1.1.

October 26, 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
GARDNER RUSSO & QUINN LLC
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application)** for a decision under the securities legislation of the Jurisdiction (the **Legislation)** exempting the Filer from the adviser registration requirement under the Legislation in respect of advising Additional Category Permitted Clients (as defined below) in respect of investing in or buying or selling Prescribed Securities (as defined below) on the same terms and conditions as would apply to the Filer as if the Filer had provided such advice to a permitted client in reliance on the international adviser exemption (as defined below) in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (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 passport 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 Alberta and Québec (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

For the purposes of this decision, the following terms have the following meaning:

"**Additional Category Permitted Client**" means any of the following:

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

(b) an individual who is not a permitted client under paragraph (o) of the definition of "permitted client" in NI 31-103 but who, together with a spouse and/or a family trust as described in paragraph (a) above established by the individual or the individual's spouse, beneficially own financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**), having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million;

(c) a person or company that distributes securities of its own issue in Canada only to persons or companies who are permitted clients or who are referred to in paragraphs (a) and (b) above;

"**foreign security**" has the meaning ascribed to that term in subsection 8.18(1) of NI 31-103;

"**international adviser exemption**" means the exemption in section 8.26 of NI 31-103;

"**permitted client**" means a "permitted client" as defined in section 1.1 of NI 31-103;

"**Prescribed Security**" means a foreign security or other security in respect of which a person or company may provide advice to a permitted client in reliance on the international adviser exemption in NI 31-103.

Representations

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

1. The Filer is a limited liability company incorporated under the laws of the State of Delaware. Its head office is located at 223 East Chestnut Street, Lancaster, Pennsylvania, United States of America ("**U.S.**").

2. The Filer provides discretionary investment advisory services. The Filer's clients consist of high net worth individuals, family funds (other than private funds), charitable organizations, corporations, and pooled investment vehicles.

3. The Filer is an investment advisor registered with the U.S. Securities and Exchange Commission.

4. The Filer relies on the international advisor exemption in the Jurisdictions.

5. The definition of permitted client in NI 31-103 includes various categories that are generally similar to corresponding categories of the definition of "accredited investor" in subsection 73.3(1) of the *Securities Act* (Ontario) and section 1.1 of NI 45-106. However, as a result of minor differences in drafting, it appears that the categories in the definition of permitted client in NI 31-103 do not include certain persons or companies included in the corresponding categories in the definition of "accredited investor" in NI 45-106.

6. Specifically, under paragraph (o) of the definition of "permitted client" in section 1.1 of NI 31-103, "permitted client" includes "an individual who beneficially owns financial assets, as defined in section 1.1 of NI 45-106, having an aggregated realizable value that, before taxes but net of any related liabilities, exceeds $5 million" (an **Individual Permitted Client**).

7. The financial test under paragraph (o) only applies to the Individual Permitted Client, and not to a spouse of the Individual Permitted Client. Under paragraph (o) as it is currently written a spouse of the Individual Permitted Client would also be required to satisfy the financial test under paragraph (o) separately.

8. Additionally, trusts are often used by individual investors for estate planning, business succession planning, charitable and other purposes. Under the current definition of "permitted client", the only categories that apply to a trust are paragraphs (q) and (r) (i.e., "a person or company, other than an individual or an investment fund, that has net assets of at least $25 million as shown on its most recently prepared financial statements" and "a person or company that distributes securities of its own issue in Canada only to persons or companies referred to in paragraphs (a) to (q)"). Therefore, in order to qualify as a "permitted client" a trust would be required to meet the $25 million net asset test or to distribute securities of its own issue in Canada only to persons or companies that are "permitted clients". Under the current definition of "permitted client", this is too restrictive because it would exclude many family-oriented trusts, including most spousal trusts.

9. On or about May 5, 2015, the definition of "accredited investor" in section 1.1 of NI 45-106 was amended to include a new paragraph (w):

> (w) a trust established by an accredited investor for the benefit of the accredited investor's family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor's spouse or of that accredited investor's former spouse.

10. However, a corresponding change has not been made to the definition of "permitted client" in NI 31-103.

11. The Filer currently has Canadian clients who are Individual Permitted Clients or who were, up until recently, Individual Permitted Clients. The Filer would also like to establish relationships with prospective Canadian clients who may not qualify as Individual Permitted Clients because they are unable to satisfy the financial test under paragraph (o). Such current and prospective Canadian clients often want to receive advisory services for their spouses, children and dependents as part of an integrated family wealth management and tax and succession planning program.

12. There are many possible scenarios in which a Canadian client and his or her spouse, children and dependents may collectively satisfy the financial test, but fail to do so individually, including where:

    (a) the Canadian client accumulated the bulk of the family's assets and has sole beneficial ownership of those assets, so that the Canadian client qualifies as an Individual Permitted Client;

    (b) the Canadian client accumulated the bulk of the family's assets but put those assets in the name of his or her spouse, so that the spouse qualifies as an Individual Permitted Client; and

    (c) the family's assets are divided among the family members so that no individual family member satisfies the financial test to qualify as an Individual Permitted Client, but the family unit satisfies the financial test collectively.

13. In the above scenarios, one or more members of the family unit fail to satisfy the financial test and therefore do not qualify as an Individual Permitted Client. As a result, the Filer is prohibited under the terms of the international advisor exemption from servicing such individual family members or collectively as a family unit.

14. In addition, the Filer currently has a Canadian client that is a corporate entity, where all of the initial shareholders were permitted clients (and accordingly was able to satisfy the requirements of paragraph (p) of the definition of "permitted client"). When one of the permitted client shareholders passed away, such shareholder's shares were transferred to a trust for such shareholder's children who each do not meet the permitted client definition, but the trust itself would meet the definition in (w) of the "accredited investor" definition (as the majority of the trustees are permitted clients).

15. The Filer wishes to treat (i) Canadian clients that are Individual Permitted Clients and their spouses, and (ii) Canadian clients that do not qualify as Individual Permitted Clients, but who collectively with their family members satisfy the financial test under paragraph (o) of the definition of "permitted client", as applicable, as a single investing unit for purposes of the international adviser exemption, regardless of the actual ownership allocation.

16. Similarly, the Filer wishes to treat Canadian clients that are Individual Permitted Clients and their family trusts as described in paragraph (a) of the definition of "Additional Category Permitted Client" as a single investing unit. In determining whether a trust is a family trust as described in paragraph (a) of the definition of "Additional Category Permitted Client", the Filer will take reasonable steps to confirm that:

    (a) a majority of the trustees are permitted clients;

    (b) engagement of an investment advisor by the trustees requires consent of at least a majority of the trustees; and

(c) all of the beneficiaries of the trust are within the class of persons described in paragraph (a) of the definition of "Additional Category Permitted Client".

17. The Filer would also like to ensure that family investment vehicles, such as corporations, are able to be advised by the Filer if all of the shareholders are controlled by permitted clients.

18. The Filer is a "market participant" as defined under the Legislation. As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under the Legislation, which include the requirement to keep such books, records and other documents (a) as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario securities law, and (c) as may reasonably be required to demonstrate compliance with Ontario securities laws, and to deliver such records to the Ontario Securities Commission if required.

19. The Filer is in compliance in all material respects with U.S. securities laws. Due to a change in the characteristics of one of its Canadian clients that the Filer was made aware of on November 4, 2021, the Filer has been advising such Canadian client without technically being able to rely on the international adviser exemption in section 8.26 of NI 31-103. Except as stated above, the Filer is not in default of securities legislation in any jurisdiction of Canada.

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 the Filer complies with the terms and conditions of the international adviser exemption as if the Filer had provided such advice to a permitted client in reliance on the international adviser exemption.

It is further the decision of the principal regulator that this decision shall expire on the date that is the earlier of

(a) the date on which amendments to NI 31-103 come into force that address the subject matter of this decision; and

(b) five years after the date of this decision.

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

Application File #: 2022/0224

B.3.2 EHP Funds Inc. and EHP Global Multi-Asset Absolute Return Alternative Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) and 15.1.1 of National Instrument 81-102 Investment Funds to permit a new prospectus qualified alternative mutual fund that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months to include in its sales communications past performance data relating to a period when the fund's securities were previously distributed to investors on a prospectus-exempt basis and to use this past performance data to calculate its investment risk level in accordance with Appendix F Investment Risk Classification Methodology – New alternative mutual fund having substantially the same investment objectives and fee structure as for a period when its securities were offered on a prospectus-exempt basis;

Relief granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of the relief requested from Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus to permit the new alternative mutual fund to use the past performance data for a period when its securities were offered on a prospectus-exempt basis to calculate its investment risk rating in its simplified prospectus, and Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document to permit the alternative mutual fund to include in its fund facts document past performance data for a period when the fund was offered on a prospectus-exempt basis;

Relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, to permit the new alternative mutual to include in its annual and interim management reports of fund performance the past performance and financial data relating to a period when the fund was previously offered on a prospectus-exempt basis.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), 15.8(3)(a.1), 15.1.1 and 19.1.
National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1 and 6.1.
Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus.
Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document.
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.
Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B and Items 3(1) and 4 of Part C of Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance.

October 26, 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
EHP FUNDS INC.
(the Filer)

AND

EHP GLOBAL MULTI-ASSET ABSOLUTE RETURN ALTERNATIVE FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Class A, Class UA, Class F, Class UF, Class I and Class S units (collectively, the **Units**) of the Fund from:

(a) sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit the Fund to include its past performance data in sales communications notwithstanding that the past performance data will relate to a period prior to the Fund offering its Units under a simplified prospectus;

(b) section 15.1.1(a) of NI 81-102 and Items 2 and 4 of Appendix F *Investment Risk Classification Methodology to NI 81-102* (**Appendix F**) to permit the Fund to include its past performance data in determining its investment risk level in accordance with Appendix F;

(c) section 15.1.1(b) of NI 81-102 and Item 4(2)(a) and Instruction (1) of Item 4 of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**) to permit the Fund to disclose its investment risk level as determined by including its past performance data in accordance with Appendix F;

(d) Item 10(b) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) to permit the Fund to use its past performance data to calculate its investment risk rating in its simplified prospectus;

(e) section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for the purposes of the relief requested herein from Form 81-101F1 and Form 81-101F3;

(f) Items 5(2), 5(3) and 5(4) and Instructions (1) and (5) of Part I of Form 81-101F3 in respect of the requirement to comply with sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102 to permit the Fund to include in its fund facts the past performance data of the Fund notwithstanding that such performance data relates to a period prior to the Fund offering its Units under a simplified prospectus and the Fund has not distributed its Units under a simplified prospectus for 12 consecutive months;

(g) section 4.4 of National Instrument 81-106 *Investment Fund Continuous* Disclosure (**NI 81-106**) for the purposes of relief requested herein from Form 81- 106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**); and

(h) Items 3.1(7), 4.1(1) in respect of the requirement to comply with subsections 15.3(2) and 15.3(4)(c) of NI 81-102, 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Fund to include in its annual and interim management reports of fund performance (**MRFP**) the past performance data and financial highlights of the Fund notwithstanding that such performance data and financial highlights relate to a period prior to the Fund offering its Units under a simplified prospectus.

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

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

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

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

Interpretation

Terms defined in National Instrument 14-101 Definitions, MI 11-102, NI 81-101, NI 81-102 and NI 81-106 have the same meanings if used in this decision, unless otherwise defined.

Representations

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

1. The Fund is an open-ended mutual fund trust established under the laws of the Province of Ontario and governed by an amended and restated declaration of trust dated as of August 2, 2022, as same may be amended and/or restated from time to time.

2. The Filer is the investment fund manager, trustee and portfolio manager of the Fund. The head office of the Filer is located in Toronto, Ontario.

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

4. Since the Fund's commencement of operations on November 1, 2021 (the **Effective Date**) through August 1, 2022, the Units of the Fund were distributed to investors on a prospectus-exempt basis in accordance with National Instrument 45-106 *Prospectus Exemptions* in the Canadian Jurisdictions other than Ontario and in accordance with the *Securities Act* (Ontario) in Ontario.

5. The Fund commenced distributing Units of the Fund pursuant to a simplified prospectus and, to that end, filed a simplified prospectus, annual information form, and fund facts documents dated August 2, 2022 (the **Disclosure Documents**). Upon the issuance of the final receipt for the Disclosure Documents of the Fund, the Fund became a reporting issuer in each of the Canadian Jurisdictions and became subject to the requirements of NI 81-102 that relate to alternative mutual funds and the requirements of NI 81-106 that apply to investment funds that are reporting issuers.

6. The investment objective of the Fund is to generate superior risk adjusted investment returns over the long-term by utilizing a multi-strategy approach consisting of diversified quantitative and systematic investment strategies. The Fund will also seek to preserve capital and mitigate risk through the application of portfolio and risk management tools. In order to seek to achieve its investment objective, the Fund invests, directly or indirectly, in a wide range of liquid financial instruments that may be listed on recognized stock, futures or options exchanges. The Fund uses leverage, through the use of cash borrowings, short sales of securities and derivative contracts.

7. The Fund is managed substantially similarly after it became a reporting issuer as it was during the period commencing as of the Effective Date through prior to becoming a reporting issuer. As a result of the Fund becoming a reporting issuer:

   (a) the Fund's investment objective did not change, other than minor grammatical changes;

   (b) the only changes to the fee structure associated with the Units were:

      (i) the management fee and performance fee rates associated with the Class A Units, Class UA Units, Class F Units, Class UF Units, were reduced. In addition, the management fee associated with the Class I Units were capped to not exceed the management fee payable on the Class A Units. Based on its calculations, the Filer believes the change to the performance fee calculation methodology will be immaterial; and

      (ii) (ii) the performance fee is calculated and accrued for each class of units of the Fund on a daily basis as opposed to a weekly basis during the quarterly determination period of each performance fee;

   (c) the day-to-day administration of the Fund did not change, other than to comply with exemptive relief obtained on behalf of, among others, the Fund and the additional regulatory requirements associated with being a reporting issuer (none of which impact the portfolio management of the Fund) and to provide additional features that are available to investors of mutual funds managed by the Filer, as described in the Disclosure Documents.

8. Since its inception, as a "mutual fund in Ontario", the Fund has complied with the applicable obligation to prepare and send audited annual and unaudited interim financial statements to all holders of its securities in accordance with NI 81-106.

9. Since the inception of the Fund and except as set out in any exemptive relief received by, among others, the Fund, the Fund has complied and will comply with the investment restrictions and practices contained in NI 81- 102 that relate to alternative mutual funds.

10. The Filer and the Fund are not in default of securities legislation in any of the Canadian Jurisdictions.

11. The Filer proposes to present the performance data of each class of Units for the time period commencing as of the Effective Date in sales communications pertaining to the Fund. Without the Exemption Sought, the sales communications pertaining to the Fund cannot include performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer, and the Fund cannot provide performance data in its sales communications until it has distributed securities under a simplified prospectus for at least 12 consecutive months.

12. As a reporting issuer, the Fund is required under NI 81-101 to prepare and file a simplified prospectus and fund facts documents.

13. The Filer proposes to use the Fund's past performance data for the time period commencing as of the Effective Date to determine its investment risk level and to disclose that investment risk level in the simplified prospectus and the fund facts documents for each class of Units. Without the Exemption Sought, the Filer, in determining and disclosing the

Fund's investment risk level in the simplified prospectus and the fund facts documents for each class of Units, cannot use performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer.

14. The Filer proposes to include in the fund facts documents for each class of Units past performance data for the time period commencing as of the Effective Date in the charts required by Items 5(2), 5(3) and 5(4) of Part I of Form 81-101F3 under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to periods prior to the Fund becoming a reporting issuer in the Canadian Jurisdictions. Without the Exemption Sought, the fund facts documents of the Fund cannot include performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer.

15. As a reporting issuer, the Fund is required under NI 81-106 to prepare and send MRFPs to all holders of its securities on an annual and interim basis. Without the Exemption Sought, the MRFPs of the Fund cannot include financial highlights and performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer.

16. The performance data and other financial data of the Fund for the time period commencing as of the Effective Date and before it became a reporting issuer is significant and meaningful information for existing and prospective investors of Units of the Fund.

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) any sales communication, fund facts documents and MRFP that contains performance data of the Units of the Fund relating to a period of time prior to when the Fund was a reporting issuer discloses:

  (i) that the Fund was not a reporting issuer during such period;

  (ii) the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

  (iii) the Filer obtained exemptive relief on behalf of the Fund to permit the disclosure of performance data of the Units relating to a period prior to when the Fund was a reporting issuer; and

  (iv) with respect to any MRFP, the financial statements of the Fund for such period are posted on the Fund's website and are available to investors upon request; and

(b) the Filer posts the financial statements of the Fund since the Effective Date on the Fund's website and makes those financial statements available to investors upon request.

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

Application File #: 2022/0457
SEDAR File #: 3444057

B.3.3 C.S.T. Spark Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act to permit extension of lapse date of funds' prospectus to facilitate its combination with the prospectus of another fund under common management.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

October 31, 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
C.S.T. SPARK INC.
(the Filer)

AND

CST SPARK GRADUATION PORTFOLIO
CST SPARK 2026 EDUCATION PORTFOLIO
CST SPARK 2029 EDUCATION PORTFOLIO
CST SPARK 2032 EDUCATION PORTFOLIO
CST SPARK 2035 EDUCATION PORTFOLIO
CST SPARK 2038 EDUCATION PORTFOLIO
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limits for the renewal of the simplified prospectus and fund facts of the Funds dated November 2, 2021 (the **Current Prospectus**) be extended to the time limits that would apply as if the lapse date was January 5, 2023 (the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

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

2. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador and as a mutual fund dealer and scholarship plan dealer in each province and territory in Canada

3. The Filer is the investment fund manager of the Funds.

4. Each of the Funds was established as an open-end unit trust under the laws of Ontario pursuant to separate supplemental trust agreements between the Filer and RBC Investor Services Trust (the **Trustee**) each dated as of October 1, 2021, each of which incorporates the terms and conditions of a master trust agreement dated August 24, 2021 between the Filer and the Trustee.

5. Each of the Funds is a reporting issuer in each of the Canadian Jurisdictions.

6. Neither the Filer nor any of the Funds are in default of securities legislation in any of the Canadian Jurisdictions.

7. The units of each Fund are currently distributed to the public in the Canadian Jurisdictions pursuant to the Current Prospectus dated November 2, 2021 which is the first simplified prospectus of the Funds.

8. Pursuant to subsection 62(1) of the Securities Act (Ontario) (the **Act**), the lapse date for the Current Prospectus is November 2, 2022 (the **Lapse Date**).

9. Under subsection 62(2) of the Act, the distribution of securities of the Funds would have to cease on the Lapse Date unless: (i) the Funds file a *proforma* simplified prospectus at least 30 days prior to the Lapse Date; (ii) the final simplified prospectus is filed no later than 10 days after the Lapse Date; and (iii) a receipt for the final simplified prospectus is obtained within 20 days after the Lapse Date.

10. The Funds filed a *proforma* simplified prospectus on September 30, 2022, within the time limit prescribed under the Act.

11. The Filer is also the investment fund manager of the CST Spark 2041 Education Portfolio (the "**2041 Fund**").

12. The 2041 Fund was established as an open-end unit trust under the laws of Ontario pursuant to a supplemental trust agreement between the Filer and the Trustee dated December 13, 2021, which incorporates the terms and conditions of a master trust agreement dated August 24, 2021 between the Filer and the Trustee.

13. The 2041 Fund is a mutual fund that is subject to the provisions of NI 81-102 and is a reporting issuer in each of the Canadian Jurisdictions.

14. The units of the 2041 Fund are currently distributed to the public in the Canadian Jurisdictions pursuant to a simplified prospectus dated January 5, 2022 (the **2041 Fund Prospectus**), having a lapse date of January 5, 2023.

15. The Filer wishes to combine the Current Prospectus with the 2041 Fund Prospectus to reduce renewal, printing and related costs of the Funds and the 2041 Fund.

16. Offering the Funds and the 2041 Fund under one simplified prospectus would facilitate the distribution of units of the Funds and the 2041 Fund in the Canadian Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. The Funds and the 2041 Fund share many common operational and administrative features and combining them under one prospectus will allow investors to more easily compare the features of the Funds and the 2041 Fund.

17. Absent the Requested Relief being granted, it will be necessary to renew the Current Prospectus twice within a short period of time in order to consolidate the Current Prospectus with the 2041 Fund Prospectus.

18. There have been no material changes in the affairs of the Funds since the filing of the Current Prospectus. Accordingly, the Current Prospectus represents current information regarding the Funds.

19. Given the disclosure obligations of the Funds, should a material change in the affairs of the Funds occur, the Current Prospectus will be amended as required under the Legislation.

20. New investors in the Funds will receive delivery of the most recently filed fund facts documents of the Funds. The Current Prospectus will still be available upon request.

21. The Requested Relief will not affect the currency or accuracy of the information contained in the Current Prospectus and therefore will not be prejudicial to the public interest.

Decision

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

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

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

Application File #: 2022/0478

B.3.4 Imperial Oil Limited

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Dual application – Issuer bid – Modified Dutch auction – Application for relief from the requirement to take up and pay for shares on a pro rata basis and the related disclosure requirements for the issuer bid circular (Section 2.26 of National Instrument 62-104 Take-Over Bids and Issuer Bids and Item 8 of Form 62-104F2 Issuer Bid Circular) – Application for relief from the requirement that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the issuer first takes up all Shares deposited under the Offer and not withdrawn (Section 2.32 of NI 62-104).

Citation

Re Imperial Oil Limited, 2022 ABASC 145

October 31, 2022

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

AND

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

AND

IN THE MATTER OF
IMPERIAL OIL LIMITED
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting the Filer, in connection with the proposed purchase of a portion of its outstanding common shares (the **Shares**) pursuant to an issuer bid (the **Offer**), an exemption from the following requirements (the **Exemption Sought**):

(a) the proportionate take-up requirements in section 2.26 of National Instrument 62-104 *Take-over Bids and Issuer Bids* (**NI 62-104**) (the **Proportionate Take-Up Requirement**);

(b) the requirements in Item 8 of Form 62-104F2 Issuer Bid Circular to provide disclosure of the proportionate take-up and payment in the issuer bid circular (the **Proportionate Take-Up Disclosure Requirement**);

(c) the requirements in subsection 2.32(4) of NI 62-104 that an issuer bid not be extended if all the terms and conditions of the issuer bid have been complied with or waived unless the Filer first takes up all securities deposited under the issuer bid and not withdrawn (the **Extension Take-Up Requirement**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each jurisdiction of Canada, other than Alberta and Ontario; and

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

Interpretation

Terms defined in National Instrument 14-101 Definitions and NI 62-104 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

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

2. The Filer is a reporting issuer in each jurisdiction of Canada. The Filer's Shares are listed for trading on the Toronto Stock Exchange (the **TSX**) and have unlisted trading privileges and trade on the NYSE American LLC (the **NYSE American**). The Filer is not in default of securities legislation in any jurisdiction of Canada.

3. The authorized share capital of the Filer consists of 1,100,000,000 Shares. As of September 30, 2022, there were 611,515,571 Shares issued and outstanding.

4. On September 30, 2022, the closing price of the Shares on the TSX was $59.81 and US$43.27 on the NYSE American.

5. As at September 30, 2022, Exxon Mobil Corporation (**ExxonMobil**) beneficially owned 425,614,397 Shares, which represented approximately 69.6% of the issued and outstanding Shares.

6. The Filer intends to make the Offer pursuant to which it would offer to purchase that number of Shares having an aggregate purchase price of up to $1,500,000,000 (the **Specified Dollar Amount**).

7. The board of directors of the Filer has determined that the Offer is in the best interests of the Filer.

8. The purchase price per Share will be determined by the Filer through a modified "Dutch auction" procedure in the manner described below, but will not be less than $72.50 and not more than $87.00 per Share (the **Price Range**).

9. The Specified Dollar Amount has been determined and will be announced by the Filer in a press release issued on October 31, 2022. Both the Specified Dollar Amount and the Price Range will be specified in the Circular.

10. The Filer expects to fund the purchase of Shares pursuant to the Offer, together with the fees and expenses of the Offer, with cash on hand. In any event, the Offer will not be conditional upon the receipt of any financing.

11. Any holder of Shares (**Shareholder**) wishing to tender to the Offer will be able to do so in the following ways:

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

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

    (c) by making proportionate tenders in which the tendering Shareholders agree to sell to the Filer, at the Purchase Price to be determined by the Auction Tenders, a number of Shares that will result in them maintaining their respective proportionate equity ownership in the Filer following completion of the Offer (the **Proportionate Tenders**).

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

13. A registered Shareholder who makes a Proportionate Tender must deposit either all of its Shares or a sufficient number of Shares to satisfy the Shareholder’s Proportionate Tender. A beneficial Shareholder who wishes its nominee to make a Proportionate Tender must deposit all of its Shares.

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

15. The Filer will determine the purchase price payable per Share (the **Purchase Price**) based on the Auction Prices and the number of Shares deposited pursuant to valid Auction Tenders and Purchase Price Tenders. The Purchase Price will be the lowest price that enables the Filer to purchase that number of Shares tendered pursuant to valid Auction Tenders and Purchase Price Tenders having an aggregate purchase price not to exceed an amount (the **Auction Tender Limit Amount**) equal to

    (a) the Specified Dollar Amount, less

    (b) the product of

        (i) the Specified Dollar Amount, and

        (ii) a fraction, the numerator of which is the aggregate number of Shares owned by Shareholders making valid Proportionate Tenders, and the denominator of which is the aggregate number of Shares outstanding at the time of expiry of the Offer.

16. If the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders is less than or equal to the Auction Tender Limit Amount, the Filer will purchase at the Purchase Price all Shares so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders.

17. If the aggregate purchase price for Shares validly tendered pursuant to (i) Auction Tenders at Auction Prices at or below the Purchase Price; and (ii) Purchase Price Tenders is greater than the Auction Tender Limit Amount, then the Filer will purchase at the Purchase Price a portion of the Shares so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders, determined as follows:

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

    (b) second, the Filer will purchase on a pro rata basis that portion of such Shares tendered pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders having an aggregate purchase price, based on the Purchase Price, equal to

        (i) the Auction Tender Limit Amount, less

        (ii) the aggregate amount paid by the Filer for Shares tendered pursuant to Odd-Lot Tenders.

18. The Filer will purchase at the Purchase Price that portion of the Shares deposited by Shareholders making valid Proportionate Tenders that results in the tendering Shareholders maintaining their proportionate equity ownership in the Filer following completion of the Offer.

19. The number of Shares that the Filer will purchase pursuant to the Offer and the aggregate purchase price will vary depending on whether the aggregate purchase price payable in respect of Shares required to be purchased pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders (the **Auction Tender Purchase Amount**) is equal to or less than the Auction Tender Limit Amount. If the Auction Tender Purchase Amount is equal to the Auction Tender Limit Amount, the Filer will purchase Shares for an aggregate purchase price equal to the Specified Dollar Amount. If the Auction Tender Purchase Amount is less than the Auction Tender Limit Amount, the Filer will purchase proportionately fewer Shares in the aggregate, with a proportionately lower aggregate purchase price.

20. ExxonMobil has advised the Filer that it intends to make a Proportionate Tender.

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

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

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

24. The Offer is scheduled to expire at 5:00 p.m. (Calgary time) on December 9, 2022 (the **Expiration Time**).

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

26. Shareholders who do not accept the Offer will continue to hold the same number of Shares as before the Offer and their proportionate Share ownership will increase following completion of the Offer.

27. The Filer may, in connection with the Offer, elect to extend the Offer if the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders is less than the Auction Tender Limit Amount. 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 the Auction Tender Limit Amount.

28. Under the Extension Take-Up Requirement contained in subsection 2.32(4) of NI 62-104, an offeror may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the offeror first takes up all the securities deposited and not withdrawn under the issuer bid.

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. In the event the Offer is extended, the Filer will be unable to take up Shares following the initial expiry of the Offer since the Purchase Price depends on all Auction Prices. Not all Auction Prices will be known at the time of the initial expiry of the Offer since there may be additional Auction Tenders during the extension period. As such, relief from the Extension Take-Up Requirement is required. Providing relief from the Extension Take-Up Requirement would enable the Filer to make a final determination regarding the Purchase Price, taking into account all Shares tendered during the period prior to the initial expiry of the Offer, as well as any subsequent extension period.

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

32. There will be a "liquid market" for the Shares, as such term is defined in MI 61-101, as of the date of the making of the Offer because the test in paragraph 1.2(1)(a) of MI 61-101 will be satisfied. In addition, an opinion has been voluntarily sought by the Filer in accordance with section 1.2 of MI 61-101 confirming that a liquid market exists for the Shares as of the date of the making of the Offer and such opinion will be included in the Circular (the **Liquidity Opinion**).

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

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

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

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

    (c) that the Filer has filed for, or has then obtained, as the case may be, an exemption from the Proportionate Take-Up Requirement, the Proportionate Take-Up Disclosure Requirement and the Extension Take-Up Requirement;

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

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

    (f) as applicable, the name of each Shareholder that has advised the Filer that it intends to make a Proportionate Tender;

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

    (h) except to the extent exemptive relief is granted further to the Exemption Sought, the disclosure prescribed by applicable securities laws for issuer bids.

Decision

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

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

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

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

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

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta 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 WEEK.				

Failure to File Cease Trade Orders

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

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

Company Name	Date of Order	Date of Lapse
Radient Technologies Inc.	August 5, 2022	October 27, 2022

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	October 27, 2022
AION THERAPEUTIC INC.	August 31, 2022	
iMining Technologies Inc.	September 30, 2022	

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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:
Tangerine Balanced ETF Portfolio
Tangerine Balanced Growth ETF Portfolio
Tangerine Balanced Growth Portfolio
Tangerine Balanced Growth SRI Portfolio
Tangerine Balanced Income ETF Portfolio
Tangerine Balanced Income Portfolio
Tangerine Balanced Income SRI Portfolio
Tangerine Balanced Portfolio
Tangerine Balanced SRI Portfolio
Tangerine Dividend Portfolio
Tangerine Equity Growth ETF Portfolio
Tangerine Equity Growth Portfolio
Tangerine Equity Growth SRI Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 28, 2022
NP 11-202 Final Receipt dated Oct 31, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3438063

Issuer Name:
TD Active Global Income ETF
TD Active Global Real Estate Equity ETF
TD Active U.S. High Yield Bond ETF
TD Canadian Long Term Federal Bond ETF
TD Global Technology Innovators Index ETF
TD Income Builder ETF
TD Morningstar ESG Canada Corporate Bond Index ETF
TD Morningstar ESG Canada Equity Index ETF
TD Morningstar ESG International Equity Index ETF
TD Morningstar ESG U.S. Corporate Bond Index ETF
TD Morningstar ESG U.S. Equity Index ETF
TD Q Canadian Dividend ETF
TD Q Global Dividend ETF
TD Q Global Multifactor ETF
TD Q U.S. Small-Mid-Cap Equity ETF
TD U.S. Long Term Treasury Bond ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Oct 28, 2022
NP 11-202 Final Receipt dated Oct 28, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3437965

Issuer Name:
Manulife Smart Core Bond ETF
Manulife Smart Corporate Bond ETF
Manulife Smart Defensive Equity ETF
Manulife Smart Dividend ETF
Manulife Smart International Defensive Equity ETF
Manulife Smart International Dividend ETF
Manulife Smart Short-Term Bond ETF
Manulife Smart U.S. Defensive Equity ETF
Manulife Smart U.S. Dividend ETF
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Oct 25, 2022
NP 11-202 Final Receipt dated Oct 26, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3438865

Issuer Name:
Picton Mahoney Fortified Core Bond Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Oct 28, 2022
NP 11-202 Final Receipt dated Oct 31, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3367424

Issuer Name:
Counsel All Equity Portfolio
Counsel Balanced Portfolio
Counsel Canadian Dividend
Counsel Canadian Growth
Counsel Canadian Value
Counsel Conservative Portfolio
Counsel Fixed Income
Counsel Global Dividend
Counsel Global Real Estate
Counsel Global Small Cap
Counsel Growth Portfolio
Counsel High Yield Fixed Income
Counsel International Growth
Counsel International Value
Counsel Money Market
Counsel Retirement Accumulation Portfolio
Counsel Retirement Foundation Portfolio
Counsel Retirement Preservation Portfolio
Counsel Short Term Bond
Counsel U.S. Growth
Counsel U.S. Value
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 28, 2022
NP 11-202 Final Receipt dated Oct 31, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3437723

Issuer Name:
Dynamic Active Discount Bond ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Oct 27, 2022
NP 11-202 Final Receipt dated Oct 28, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3439242

Issuer Name:
DAMI Corporate Bond Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 27, 2022
NP 11-202 Final Receipt dated Oct 31, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3442025

Issuer Name:
TD FundSmart Managed Aggressive Growth Portfolio
TD FundSmart Managed Balanced Growth Portfolio
TD FundSmart Managed Income & Moderate Growth Portfolio
TD Managed Aggressive Growth ETF Portfolio
TD Managed Aggressive Growth Portfolio
TD Managed Balanced Growth ETF Portfolio
TD Managed Balanced Growth Portfolio
TD Managed Income & Moderate Growth ETF Portfolio
TD Managed Income & Moderate Growth Portfolio
TD Managed Income ETF Portfolio
TD Managed Income Portfolio
TD Managed Index Aggressive Growth Portfolio
TD Managed Index Balanced Growth Portfolio
TD Managed Index Income & Moderate Growth Portfolio
TD Managed Index Income Portfolio
TD Managed Index Maximum Equity Growth Portfolio
TD Managed Maximum Equity Growth ETF Portfolio
TD Managed Maximum Equity Growth Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 26, 2022
NP 11-202 Final Receipt dated Oct 26, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3437210

Issuer Name:
Purpose Behavioural Opportunities Fund
Purpose Canadian Financial Income Fund
Purpose Conservative Income Fund
Purpose Emerging Markets Dividend Fund
Purpose Enhanced Dividend Fund
Purpose Global Bond Fund
Purpose High Interest Savings ETF
Purpose International Dividend Fund
Purpose International Tactical Hedged Equity Fund
Purpose Premium Money Market Fund
Purpose Premium Yield Fund
Purpose U.S. Preferred Share Fund
Purpose US Cash Fund
Purpose US Dividend Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 25, 2022
NP 11-202 Final Receipt dated Oct 28, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3439956

Issuer Name:
3iQ CoinShares Bitcoin ETF
3iQ CoinShares Ether ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 21, 2022
NP 11-202 Final Receipt dated Oct 27, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3345426

Issuer Name:
Franklin Emerging Markets Multifactor Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Long Form Prospectus dated October 25, 2022
NP 11-202 Final Receipt dated Oct 28, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3366160

Issuer Name:
Caldwell U.S. Dividend Advantage Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 25, 2022
NP 11-202 Final Receipt dated Oct 31, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3370145

Issuer Name:
The Bitcoin Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated October 21, 2022 to Final Shelf Prospectus dated November 5, 2020
NP 11-202 Receipt dated October 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
3iQ Corp.
Project #3125542

Issuer Name:
The Ether Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 21, 2022 to Final Shelf Prospectus dated February 8, 2021
NP 11-202 Receipt dated October 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
3iQ Corp.
Project #3166566

NON-INVESTMENT FUNDS

Issuer Name:
1319275 B.C. Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 28, 2022
NP 11-202 Preliminary Receipt dated October 31, 2022
Offering Price and Description:
[2,650,000] RESULTING ISSUER SHARES ISSUABLE UPON DEEMED EXERCISE OF [2,650,000] OUTSTANDING SPECIAL WARRANTS
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brenton Scott
Andrew Hill
Faramarz Haddadi
Project #3450147

Issuer Name:
BGP Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 26, 2022
NP 11-202 Preliminary Receipt dated October 26, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3448450

Issuer Name:
Cascade Copper Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 25, 2022
NP 11-202 Preliminary Receipt dated October 26, 2022
Offering Price and Description:
10,000,000 UNITS AT A PRICE OF $0.10 PER UNIT
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Jeffrey S. Ackert
Project #3448433

Issuer Name:
Equinox Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 24, 2022
NP 11-202 Preliminary Receipt dated October 26, 2022
Offering Price and Description:
$500,000,000.00 - Common Shares Debt Securities Subscription Receipts Share Purchase Contracts Units Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3447876

Issuer Name:
FRONTIER LITHIUM INC.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 25, 2022
NP 11-202 Preliminary Receipt dated October 26, 2022
Offering Price and Description:
$20,020,000.00 - 9,100,000 UNITS
Price: $2.20 per Offered Unit
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
GOLDMAN SACHS CANADA INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #3446820

Issuer Name:
INEO Tech Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 20, 2022
NP 11-202 Preliminary Receipt dated October 27, 2022
Offering Price and Description:
Up to $2,000,400.00 - Up to 16,670,000 Units
Price: $0.12 per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
Greg Watkin
Project #3448943

Issuer Name:
Rush Uranium Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 27, 2022
NP 11-202 Preliminary Receipt dated October 28, 2022
Offering Price and Description:
5,000,000 Common Shares for $500,000.00 (Minimum Offering)
10,000,000 Common Shares for $1,000,000.00 (Maximum Offering)
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Echelon Wealth Partners Inc.
Promoter(s):
Peter Smith
Project #3449406

Issuer Name:
Vox Royalty Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 25, 2022
NP 11-202 Preliminary Receipt dated October 26, 2022
Offering Price and Description:
US$100,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3448291

Issuer Name:
CareRx Corporation (formerly Centric Health Corporation)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated October 31, 2022
NP 11-202 Receipt dated October 31, 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:
Propel Holdings Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated October 27, 2022
NP 11-202 Receipt dated October 28, 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:
Spectral Medical Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 28, 2022
NP 11-202 Receipt dated October 28, 2022
Offering Price and Description:
Up to $4,024,500.00 - Up to 10,061,250 Units
Price: $0.40 per Offered Unit
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #3443410

Issuer Name:
TAG Oil Ltd
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated October 28, 2022
NP 11-202 Receipt dated October 28, 2022
Offering Price and Description:
$22,000,000.00 - 55,000,000 Common Shares
Per Common Share: $0.40
Underwriter(s) or Distributor(s):
RESEARCH CAPITAL CORPORATION
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #3444570

Issuer Name:
The Bitcoin Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated October 21, 2022 to Final Shelf Prospectus dated November 5, 2020
NP 11-202 Receipt dated October 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
3iQ CORP.
Project #3125542

Issuer Name:
The Ether Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 21, 2022 to Final Shelf Prospectus dated February 8, 2021
NP 11-202 Receipt dated October 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
3iQ CORP.
Project #3166566

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Crowdmatrix Inc.	Exempt Market Dealer	October 20, 2022
Voluntary Surrender	Edinburgh Partners Limited	Portfolio Manager	October 26, 2022
New Registration	Sagard EMD Inc.	Exempt Market Dealer	October 31, 2022
Change in Registration Category	Placements iA Clarington Inc. / iA Clarington Investments Inc.	From: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager and Exempt Market Dealer	October 31, 2022
Change in Registration Category	Kayak Capital Management Inc.	From: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager, Exempt Market Dealer and Commodity Trading Manager	October 31, 2022

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B.11
SROs, Marketplaces, Clearing Agencies and Trade Repositories

B.11.3 Clearing Agencies

B.11.3.1 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Rules of the CDCC to Modify the Final Settlement Price of the One-Month CORRA Futures (COA) – OSC Staff Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

PROPOSED AMENDMENTS TO
THE RULES OF THE CDCC TO MODIFY
THE FINAL SETTLEMENT PRICE OF THE ONE-MONTH CORRA FUTURES (COA)

The Ontario Securities Commission is publishing for public comment the proposed amendments to Rule C-17 of the CDCC to modify the final settlement price calculation of the one-month CORRA Futures (COA).

The purpose of the proposed amendments is to align the CDCC Rules with the proposed amendments of Bourse de Montréal Inc. to modify the final settlement price of the COA.

The comment period ends on December 5, 2022.

A copy of the **CDCC Notice** is published on our website at http://www.osc.ca.

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