The Ontario Securities Commission

OSC Bulletin

December 8, 2022

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

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

A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Mark Odorico

FOR IMMEDIATE RELEASE
December 1, 2022

MARK ODORICO,
File No. 2022-18

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

A copy of the Reasons for Decision dated November 30, 2022 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
December 2, 2022

BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE,
File No. 2022-9

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

A copy of the Order dated December 2, 2022 is available at capitalmarketstribunal.ca.

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For General Inquiries:

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inquiries@osc.gov.on.ca

A.2.3 Mark Edward Valentine

FOR IMMEDIATE RELEASE
December 2, 2022

MARK EDWARD VALENTINE,
File No. 2022-7

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

A copy of the Order dated December 2, 2022 is available at capitalmarketstribunal.ca.

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A.3
Orders

A.3.1 Bridging Finance Inc. et al.

IN THE MATTER OF
BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE

File No. 2022-9

Adjudicators: Timothy Moseley (chair of the panel)
Sandra Blake
Dale R. Ponder

December 2, 2022

ORDER

WHEREAS on November 28, 2022, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Ontario Securities Commission and for each of the receiver of Bridging Finance Inc., David Sharpe, Natasha Sharpe and Andrew Mushore, and on reading the written submissions delivered by those parties on November 30, 2022;

IT IS ORDERED, for reasons to follow, that:

1. the motions for disclosure brought by each of David Sharpe and Natasha Sharpe are scheduled to be heard by videoconference on January 30, 2023, at 10:00 a.m., or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat, and materials for the motions shall be delivered as follows:

    a. Natasha Sharpe shall serve and file her motion record by 4:30 p.m. on December 2, 2022;

    b. Staff of the Ontario Securities Commission shall serve and file its responding motion record, if any, by 4:30 p.m. on December 16, 2022;

    c. David Sharpe and Natasha Sharpe shall each serve and file a reply record, if any, and written submissions by 4:30 p.m. on January 6, 2023;

    d. Staff of the Ontario Securities Commission shall serve and file responding written submissions by 4:30 p.m. on January 18, 2023; and

    e. David Sharpe and Natasha Sharpe shall each serve and file reply written submissions, if any, by 4:30 pm. on January 24, 2023;

2. the motions for a stay of this proceeding brought by each of David Sharpe and Natasha Sharpe are scheduled to be heard by videoconference on May 23, 2023, at 10:00 a.m., or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat; and

3. the merits hearing shall take place by videoconference and commence on June 26, 2023, at 10:00 a.m., and continue on June 27, 28 and 29, July 24, 25, 26, 27, 28 and 31, September 12, 13, 14, 26, 27, 28 and 29, October 2, 3, 4, 5, 23, 24, 25 and 26 and December 4, 5, 6, 7, 8, 11, 12, 13, 14 and 15, 2023, at 10:00 a.m. on each day, or on such other dates and times as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

“Timothy Moseley”

“Sandra Blake”

“Dale R. Ponder”

A.3.2 Mark Edward Valentine

IN THE MATTER OF
MARK EDWARD VALENTINE

File No. 2022-7

Adjudicators: Cathy Singer (chair of the panel)
Dale Ponder

December 2, 2022

ORDER

WHEREAS on December 2, 2022, the Capital Markets Tribunal held a hearing by videoconference;

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

IT IS ORDERED THAT:

1. each party shall serve the other party with a hearing brief containing copies of the documents, and identifying the other things, that the party intends to produce or enter as evidence at the merits hearing, by 4:30 p.m. on August 11, 2023;

2. each party shall provide to the Registrar a completed copy of the *E-hearing Checklist for Videoconference Hearings* by 4:30 p.m. on August 18, 2023;

3. a further attendance in this matter is scheduled for August 23, 2023 at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat;

4. if Staff elects to file affidavits for any of its witnesses, Staff shall serve on the respondent a final unsworn draft of any affidavit, by 4:30 p.m. on September 5, 2023, and shall serve and file a final sworn version of any affidavit by 10:00 a.m. on September 26, 2023;

5. each party shall provide to the Registrar the electronic documents that the party intends to rely on or enter into evidence at the merits hearing, along with an index file containing hyperlinks to the documents in the hearing brief, in accordance with the *Protocol for E-hearings*, by 4:30 p.m. on September 21, 2023; and

6. the merits hearing shall take place by videoconference and commence on September 26, 2023 at 10:00 a.m., and continue on September 28, 29 and October 2, 3, 4, 5, 10, 11, 12, 13, 17, 18, 19, and 20, 2023 at 10:00 a.m. on each day, or on such other dates and times as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

“Cathy Singer”

“Dale Ponder”

A.4
Reasons and Decisions

A.4.1 Mark Odorico –s. 2(2) of the TAR, Rule 22(4) of the CMT Rules of Procedure and Forms

Citation: *Odorico (Re)*, 2022 ONCMT 36
Date: 2022-11-30
File No. 2022-18

IN THE MATTER OF
MARK ODORICO

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

Adjudicators:	Andrea Burke (chair of the panel) Sandra Blake Dale Ponder	
Hearing:	In writing; final written submissions received November 21, 2022	
Appearances:	Mark Odorico	On their own behalf
	Kathryn Andrews Marie Abraham	For Staff of the Investment Industry Regulatory Organization of Canada
	Erin Hoult	For Staff of the Ontario Securities Commission

REASONS FOR DECISION

1. OVERVIEW

[1] Mark Odorico (**Odorico**) requested a confidentiality order over certain documents contained in the Record of Original Proceeding (**Record**) filed within his application seeking hearing and review of two decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**). We initially ordered that the entire Record would remain confidential pending further order of the Tribunal.

[2] Odorico, IIROC Staff and Staff of the Ontario Securities Commission (**OSC**) were able to reach agreement on the requested redactions, except for two redactions sought by Mr. Odorico which were opposed by IIROC Staff and OSC Staff.

[3] On November 22, 2022, we issued a confidentiality order over the agreed upon redactions to the Record and dismissed the two additional requests by Mr. Odorico. These are our reasons for that decision.

2. ANALYSIS

[4] Under Rule 22(4) of the *Capital Market Tribunal Rules of Procedure and Forms* and subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*,[1] a panel may order that an adjudicative record be kept confidential, if it determines that "intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public."[2]

[5] The redactions sought to the Record relate to intimate personal medical information regarding Odorico. The Tribunal has previously acknowledged that disclosure of medical information may infringe on privacy and avoiding the disclosure of

[1] SO 2019, c 7, Sch 60
[2] *Kitmitto (Re)*, 2022 ONCMT 12 (***Kitmitto***) at para 80

those medical specifics which are not relevant to the proceeding outweighs the desirability that the medical information be made available to the public.[3]

[6] We accordingly ordered that the portions of the Record regarding Odorico's medical information, as agreed to by the parties, be marked as confidential and only redacted versions be available to the public. We find that the redactions requested appropriately balance the principles of transparency and privacy.

[7] Odorico made two additional requests for a confidentiality order, which were opposed by IIROC Staff and OSC Staff. Firstly, he requested that his doctor's name and contact information be redacted from Exhibit 9 of the Record as Mr. Odorico did not want the doctor "bothered by members of the public."

[8] We dismissed this request. The doctor's professional contact information is presumably publicly available and the fact that members of the public "may bother him", as submitted by Odorico, is not a relevant consideration in these circumstances. Furthermore, it is not "personal information" of the nature that should presumptively be redacted in accordance with section 3 of the *Capital Markets Tribunal Practice Guideline*.

[9] Secondly, he requested that a document contained at tab 74 of Exhibit 1 of the Record be fully redacted. The document is a letter of reprimand and warning from Odorico's former employer relating to events which were connected to the subject of the IIROC proceedings below. Odorico submits that because the letter is marked "Personal and Confidential" he feels that there is no need for it to be in the public record.

[10] We dismissed this request. Simply because a document is marked as "personal and confidential" does not mean it meets the standard required to depart from the principle that Tribunal hearings and the documents submitted must be open to public. The letter contains information which relates to this proceeding and which is also contained in the IIROC merits decision below. Odorico has not persuaded us that this letter meets the test for a confidentiality order.

CONCLUSION

[11] For the reasons set out above, we ordered that only the redacted version of the Record be available to the public and that Odorico's additional requests for confidentiality be dismissed.

Dated at Toronto this 30th day of November, 2022

"Andrea Burke"

"Sandra Blake"

"Dale Ponder"

[3] *Kitmitto* at para 81

B. Ontario Securities Commission

B.1
Notices

B.1.1 Ontario Securities Commission Staff Notice 51-734 Corporate Finance Branch 2022 Annual Report

Ontario Securities Commission Staff Notice 51-734 ***Corporate Finance Branch 2022 Annual Report*** is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

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ONTARIO SECURITIES COMMISSION

OSC Staff Notice 51-734

Corporate Finance Branch
2022 Annual Report

December 1, 2022

Ontario

Director's Message and Executive Summary

I am proud to share our annual Report, which provides an overview of the Branch's operational and policy work and guidance about our expectations and our interpretation of regulatory requirements in certain areas.

This year has brought new challenges to Ontario and capital markets worldwide, including geopolitical tensions, surging inflation, volatile crypto asset prices and continuing supply chain issues. These challenges and the resulting capital market uncertainty reinforce the need for balanced, tailored, flexible and responsive regulation to carry out the OSC's mandate to protect investors, to foster fair, efficient and competitive capital markets and confidence in capital markets, to foster capital formation and to contribute to the stability of the financial system and the reduction of systemic risk.

Capital raising in Ontario continued at a fast pace during Fiscal 2022, leading to a record number of prospectus filings; over 700 prospectuses were filed in Ontario.

Throughout Fiscal 2022, the Branch, with its CSA partners, continued to advance its policy work, including projects related to climate-related disclosure and diversity on board and in executive officer positions.

At the same time, the Branch, with its CSA partners, continued work on initiatives designed to reduce regulatory burden. On January 4, 2022, Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)* came into effect, providing novel temporary exemptions from certain base shelf prospectus requirements for qualifying well-known seasoned issuers. On April 7, 2022, the CSA published proposed amendments to implement an access equals delivery model for prospectuses generally, annual financial statements, interim financial reports and related MD&A for non-investment fund Reporting Issuers.

These initiatives will continue to be part of the Branch's main policy focus in fiscal 2023. The Branch will continue to monitor and consider new market trends and potential areas of concern that may warrant a regulatory response.

This Report is an important tool for engaging with our stakeholders. We hope that this Report will serve as a guide to better understand disclosure and other regulatory obligations under Securities Law. We welcome any questions or feedback that you may have.

Kind regards,

Winnie Sanjoto
Director, Corporate Finance
Ontario Securities Commission

OSC ONTARIO SECURITIES COMMISSION

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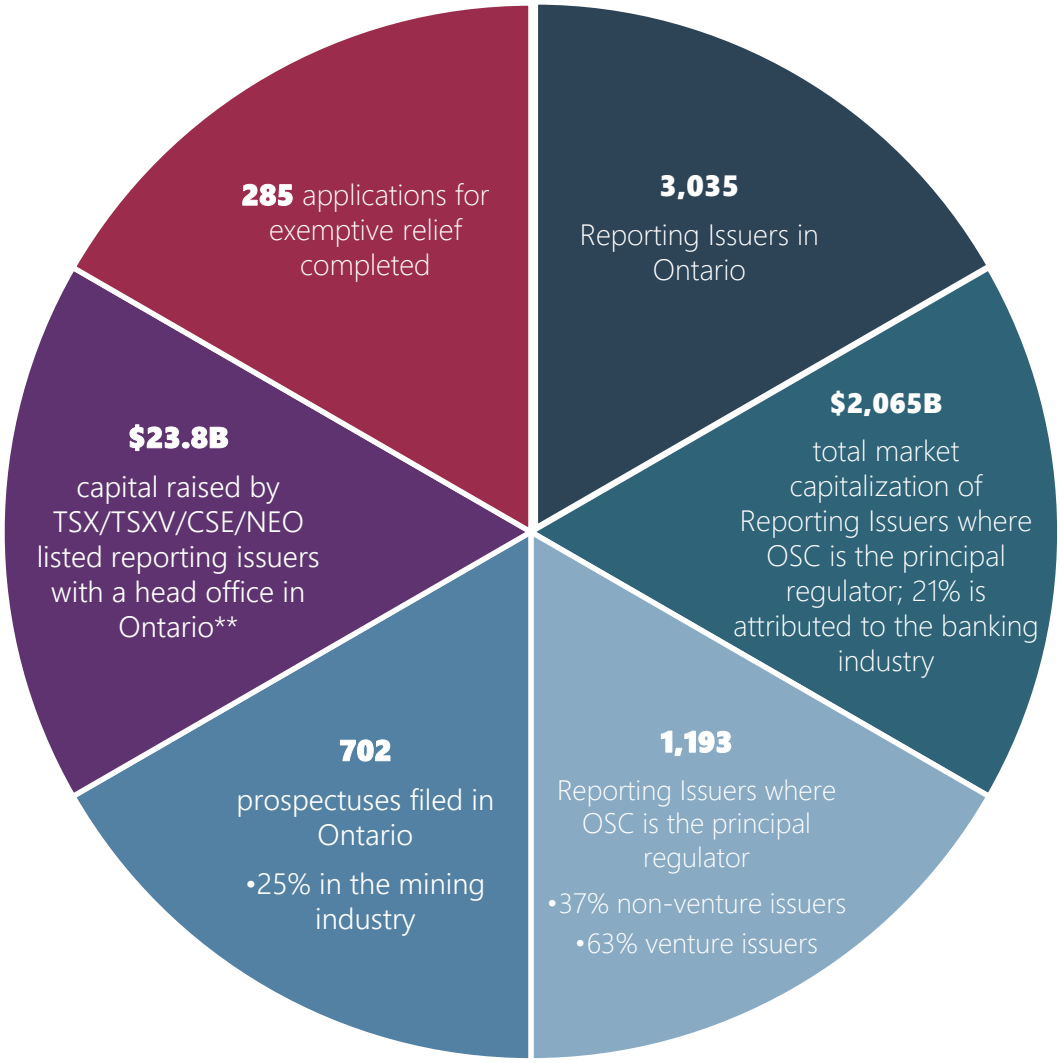
Glossary

The following terms are used widely throughout the Report and have the meanings set forth below unless otherwise indicated. Words importing the singular number include the plural, and vice versa.

Act: means the Securities Act, R.S.O. 1990, chapter s.5.
AIF: means an annual information form as such term is defined in Form 51-102F2 *Annual Information Form*.
AMF: means the Autorité des marchés financiers.
Branch: means the Corporate Finance branch at the OSC.
CD: means the continuous disclosure obligations of a reporting issuer as set out in NI 51-102.
CDR program: means the harmonized program established in 2004 by the CSA for continuous disclosure reviews.
COVID-19: means the global pandemic of coronavirus disease declared on March 11, 2020.
CPC: means a capital pool company as such term is defined in TSXV Policy 2.4 Capital Pool Companies.
CSA: means the Canadian Securities Administrators.
CSE: means the Canadian Securities Exchange.
ESG: means environmental, social and governance.
Fiscal 2021: means the fiscal year ended March 30, 2021.
Fiscal 2022: means the fiscal year ended March 31, 2022.
Form 51-102F1: means Form 51-102F1 *Management's Discussion & Analysis*.
FLI: means forward-looking information as such term is defined in NI 51-102.
IOR: means an issue-oriented review conducted by the Branch.
IOSCO: means the International Organization of Securities Commissions.
IPO: means an initial public offering as such term is defined in the Act.
Issuer: means an issuer as such term is defined in the Act.
MD&A: means management's discussion and analysis as such term is defined in Form 51-102F1.
NEO: means the Neo Exchange Inc.
NI 31-103: means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*
NI 41-101: means National Instrument 41-101 *General Prospectus Requirements*.
NI 43-101: means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.
NI 44-101: means National Instrument 44-101 *Alternative Forms of Prospectus*.

NI 44-102: means National Instrument 44-102 *Shelf Distributions*.
NI 45-106: means National Instrument 45-106 *Prospectus Exemptions*.
NI 51-102: means National Instrument 51-102 *Continuous Disclosure Obligations*.
NI 52-112: means National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*.
NP 11-202: means National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*.
NGFM: Non-GAAP Financial Measures as such term is defined in NI 52-112.
OSC: means the Ontario Securities Commission.
PIF: means a personal information form as such term is defined in NI 41-101.
R&D: means research and development.
Report: means this 2022 annual report, published by the Branch.
Reporting Issuer: means a reporting issuer as defined in the Act.
Securities Law: means Ontario securities law as defined in the Act.
SEDAR: means the system for electronic document analysis as such term is defined in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* of the Act.
SEDI: means the system for electronic disclosure by insiders as such term is defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.
Staff: means staff at the Branch.
TSX: means the Toronto Stock Exchange.
TSXV: means the TSX Venture Exchange.
Venture Issuer: means a venture issuer as defined in NI 51-102.

Fiscal 2022 Snapshot*



* Note: all figures are as at / for Fiscal 2022 and are approximate or rounded.

** Includes public offerings and private placements of equity and convertible debentures.

Introduction

This Report provides an overview of the Branch's operational and policy work during Fiscal 2022, including a summary of key findings and outcomes from our regulatory oversight program (Part A), and the nature, purpose and status of ongoing issuer-related policy initiatives (Part B). The Report is intended for entities and individuals we regulate, their advisors, as well as investors.

In publishing this Report we aim to

- **REINFORCE** the importance of compliance with regulatory obligations,
- **PROVIDE GUIDANCE** to improve disclosure in regulatory filings,
- **HIGHLIGHT** trends in the capital markets, and
- **INFORM AND UPDATE** stakeholders on new and ongoing policy initiatives.

Ontario Securities Commission

The OSC continues to implement the Ontario government's five-point capital markets plan focused on strengthening investment in Ontario, promoting competition and facilitating innovation.[1]

- **OSC VISION:** to be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.
- **OSC MANDATE:** to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient and competitive capital markets and confidence in the capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk.
- **OSC VALUES:**

  Professional, People, and Ethical:

  - protecting the public interest is our purpose and our passion;
  - we value dialogue with the marketplace;
  - we are professional, fair-minded and act without bias.

[1] See the 2022 Annual Report published by the Ontario Securities Commission.

Each year, the OSC publishes a statement of priorities that sets out the OSC's strategic goals, priorities, and specific initiatives for the year. Our priorities are aligned with our statutory mandate and the annual mandate letter from the Minister of Finance.

Our 2022–2023 OSC Goals are

- GOAL 1 promote confidence in Ontario's capital markets,
- GOAL 2 reduce regulatory burden,
- GOAL 3 facilitate financial innovation, and
- GOAL 4 strengthen our organizational foundation.

Corporate Finance Branch: Who We Are & What We Do

In support of the OSC's mandate, the Branch regulates approximately 1,200 Reporting Issuers in Ontario that are not investment funds. The Branch assesses whether Reporting Issuers in Ontario provide the required level of disclosure of material information to investors so they can make informed investment decisions. Through this oversight role, the Branch supports the OSC's goal to improve transparency, trustworthiness, and efficiency in Ontario's capital markets.

To do this, our operational work includes:

- ✓ review of public offerings of securities;
- ✓ review of capital raising activities in the exempt market;
- ✓ review of CD filed by Reporting Issuers;
- ✓ review and consideration of applications for exemptive relief from regulatory requirements;
- ✓ review of insider reporting;
- ✓ review of credit rating agencies that are designated rating organizations;
- ✓ oversight of designated benchmarks and benchmark administrators;
- ✓ oversight of the listed Issuer function for OSC recognized exchanges;
- ✓ engagement with stakeholders through a number of activities, including external advisory committees;
- ✓ provision of guidance to stakeholders through staff notices that communicate expectations and interpretations of regulatory requirements in certain areas;

- ✓ delivery of Issuer education and outreach programs.

We regularly consult and partner with other branches across the OSC in executing our operational work. For example, we partner with the Market Regulation branch for oversight of recognized exchanges, the Compliance and Registrant Regulation branch for oversight of the exempt market and the Enforcement branch on matters of non-compliance with Securities Law requirements.

In addition, we also engage in policymaking to update, enhance and streamline securities regulation in alignment with the OSC's mandate.

Part A: Compliance

1. Continuous Disclosure Review Program

2. Public Offerings

3. Exemptive Relief Applications

4. Insider Reporting

5. Our Service Commitments

6. Administrative Matters

1. Continuous Disclosure Review (CDR) Program

This section of the Report provides an overview of the key findings and outcomes from our Fiscal 2022 CDR program. We discuss key or novel issues, suggest best practices, and specify applicable legislation and relevant guidance to assist Issuers in addressing each of the topic areas.

Under Canadian Securities Law, a Reporting Issuer must provide timely and periodic CD about its business and affairs.

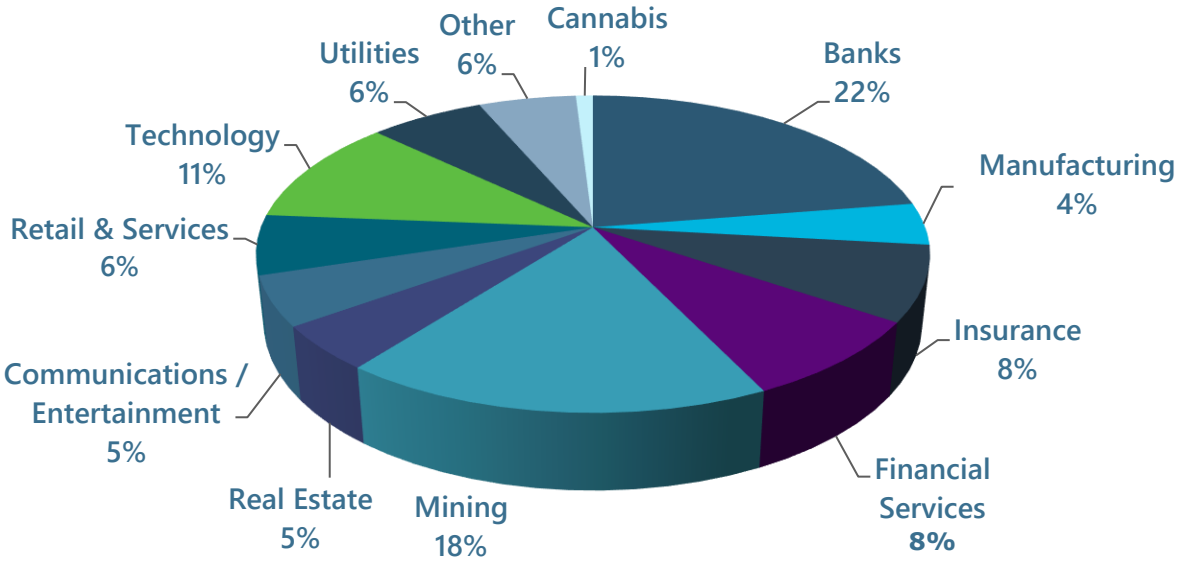
CD includes periodic filings such as:

- interim and annual financial statements;
- MD&As;
- certificates of annual and interim filings;
- management information circulars;
- AIFs;
- technical reports.

The Branch has primary responsibility as principal regulator[2] over approximately 1,200 Reporting Issuers with an aggregate market capitalization of approximately $2,065 billion as at March 31, 2022. The three largest industries by market capitalization were banking, mining, and technology.

[2] For a prospectus filing, pursuant to NP 11-202, an Issuer's principal regulator is the regulator of the jurisdiction in which the Issuer's head office is located. If the regulator identified is not in a specified jurisdiction, the principal regulator is the regulator in the specified jurisdiction with which the Issuer has the most significant connection. See subsections 3.4(4) – 3.4(8) of NP 11-202.

Market capitalization of Ontario Reporting Issuers by industry as at March 31, 2022



A) Overview

Our CDR program is risk-based and outcome focused. It includes planned reviews based on risk criteria as well as ongoing monitoring through news releases, media articles, complaints, and other sources. The CDR program is conducted pursuant to the powers in subsection 20(1) of the Act and is part of a harmonized CD review program conducted by the CSA.[3]

I) Objectives of the CDR program

Compliance

to **assess** whether Reporting Issuers are complying with disclosure obligations and to **identify** material disclosure deficiencies that affect the reliability and accuracy of an Issuer's disclosure record.

Issuer Education and Outreach

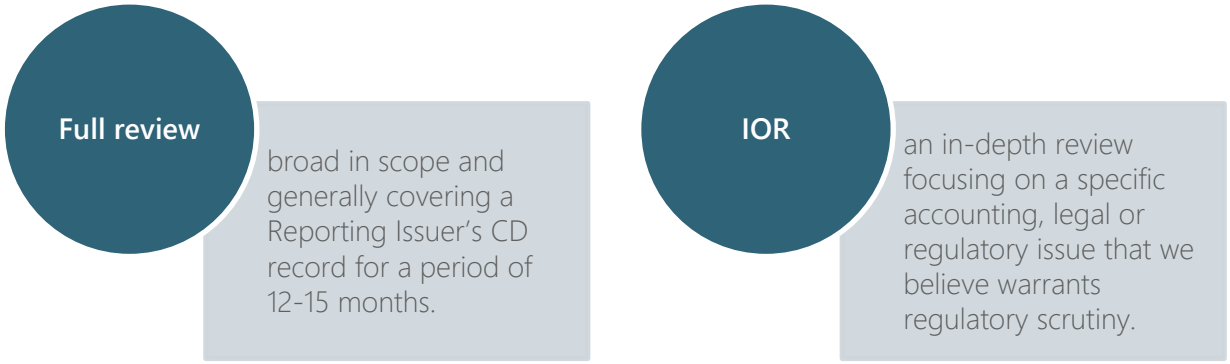
to **help** Reporting Issuers better **understand** disclosure obligations.

[3] For more information see CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program*.

The goal of the CDR program is to improve the completeness, quality and timeliness of CD provided by Reporting Issuers. This program assesses compliance with CD requirements through a review of a Reporting Issuer's filed documents, its website and social media. This review function is critical to facilitating fair and efficient markets, investor protection, and informed investment decision making and trading. Disclosure about a Reporting Issuer and its business is important not only when a Reporting Issuer first enters the market, but also on an ongoing basis; for example, many Reporting Issuers raise funds through short form prospectuses which incorporate CD documents by reference.

II) Types of CD reviews

In general, we conduct either a full review or an IOR of a Reporting Issuer's CD.



In planning full reviews, we draw on our knowledge of Reporting Issuers and the industries in which they operate and use risk-based criteria to identify Reporting Issuers with a higher risk of deficient disclosure. The criteria are designed to identify Reporting Issuers whose disclosure is likely to be materially improved or brought into compliance with Securities Law or accounting standards as a result of our intervention. Our risk-based assessment incorporates both qualitative and quantitative factors that we review regularly to keep current with our evolving capital markets.[4] We also monitor new or novel and high growth areas of financing activity when developing our review program and consider any complaints received regarding the Reporting Issuer.

IORs are generally focused on a specific accounting, legal or regulatory issue, an emerging issue or industry or to assess compliance with a new or amended rule that recently came into force.

Conducting CD reviews helps us to

- monitor compliance with CD requirements by Reporting Issuers,

[4] A full review generally includes a review of the Issuer's most recent annual and interim financial statements and MD&As, AIF, annual reports, information circulars, news releases, material change reports, website, social media disclosure, investor presentations, and SEDI filings.

- communicate Staff interpretations and expectations on specific requirements, and identify areas of concern,
- address specific areas where there is heightened risk of investor harm,
- identify common deficiencies,
- provide industry-specific or topic-specific disclosure guidance that may assist preparers in complying with regulatory requirements, and
- assess compliance with new accounting standards and new or amended rules.

III) Tips for Reporting Issuers that are selected for a CD review

Below are tips on what to do if you receive a comment letter from Staff in connection with a CD review:

- ✓ read the first paragraph of the letter which will state whether we are conducting a full review or an IOR;
- ✓ consider whether you need to seek advice from legal, accounting, and/or other advisors. If so, engage them early in the process;
- ✓ reach out to Staff if you require clarification about any of the comments. Note that Staff cannot provide legal or accounting advice;
- ✓ provide a thorough response, referencing Securities Law or IFRS[5], where relevant;
- ✓ continue to file required CD documents during the review. An ongoing review does not alleviate or alter a Reporting Issuer's ongoing CD obligations;
- ✓ note the response deadline and plan accordingly. Reach out to Staff well in advance of the deadline, should you require additional time to provide a response letter. In appropriate circumstances, Staff may grant an extension request.

B) CDR program outcomes for Fiscal 2022

We track three categories of outcomes of the CD program: no action is required, prospective continuous disclosure enhancements are required, or immediate corrective action is required for deficiencies. Immediate corrective action includes the refiling of a previously filed CD document, a referral to the Enforcement branch or the issuance of a cease trade order. A CD review may result in more than one outcome. For example, a Reporting Issuer may be required to refile certain CD documents while also committing to prospective disclosure enhancements. Tracking these outcomes

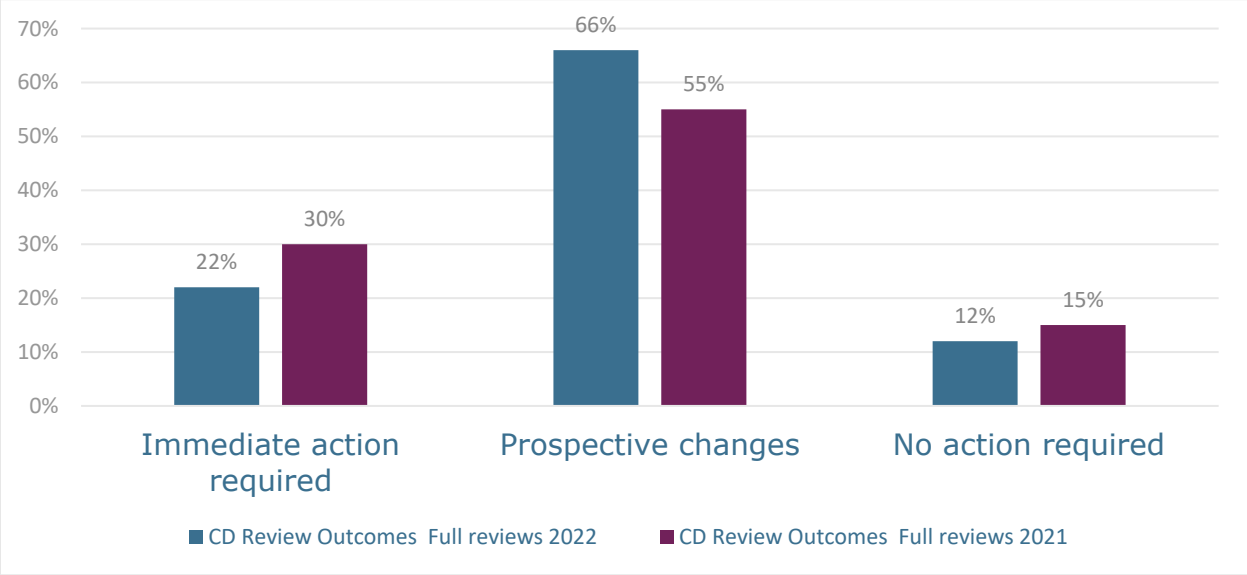
[5] The standards and interpretations issued by the International Accounting Standards Board, as amended from time to time.

assists us in planning the CDR program in subsequent years, including the re-evaluation of existing risk-based factors.

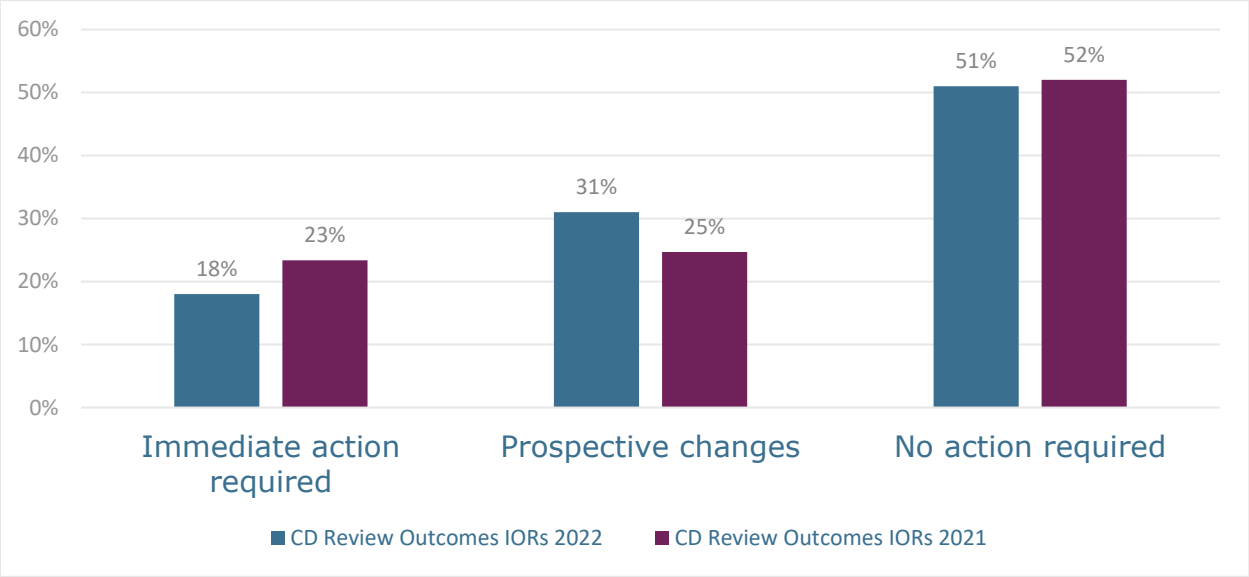
Given our risk-based criteria to identify Reporting Issuers for review, the outcomes on a year-over-year basis should not necessarily be interpreted as trends since the issues and Reporting Issuers reviewed each year are generally different. Reviews may be issue-specific, focusing on a particular CD requirement for which we have noted widespread deficiencies. These reviews may result in an increased number of outcomes categorized as "prospective changes" or "immediate action required" if deficiencies identified are prevalent among several Reporting Issuers.

The following is the summary of the CD review outcomes for Fiscal 2022 and Fiscal 2021.

Outcomes of full CD reviews



Outcomes of IORs



The most common types of immediate action required from Reporting Issuers were the following:

- refiling of financial statements to correct material misstatements;
- refiling of an MD&A where the MD&A was materially deficient and did not meet the form requirements of Form 51-102F1;
- filing of a clarifying news release when a Reporting Issuer failed to include sufficient disclosure of material assumptions, milestones and risk factors pertaining to FLI or failed to update the market on FLI;
- refiling or filing (in instances when documents were not filed in the first place) of material contracts;
- refiling of a technical report where the report filed was not in compliance with NI 43-101.

Reporting Issuers that refile CD documents during a Staff review are placed on the Refilings and Errors List found on the OSC Website.

C) Trends and guidance

This section highlights some of the common deficiencies that were observed during our CD reviews in Fiscal 2022, and includes some best practices and guidance to assist Reporting Issuers and their advisors in meeting their regulatory obligations. We encourage Reporting Issuers to continue to review and improve the quality of their CD, including with reference to the guidance below.

I) Management's discussion & analysis

The MD&A is the cornerstone of an Issuer's overall financial disclosure and is intended to provide an analytical and balanced discussion of the Issuer's results of operations and financial condition through the eyes of management. MD&A disclosure should be specific, useful, and understandable. The MD&A requirements are set out in Part 5 of Form 51-102F1.

Over the past year, the world has been impacted by a number of major, ongoing events including COVID-19, geopolitical tensions (notably the war in Ukraine), rising interest rates, inflationary pressures and supply chain disruptions. These events have generally had a material adverse impact on the economy and continue to pose challenges for many Issuers. It is critical that Issuers provide meaningful disclosure about the impact of these events on their business. An Issuer should consider its specific business and operations, and provide clear, transparent and balanced disclosure of the business impacts and potential uncertainties regarding these events in its MD&A. Such information is necessary to meet Securities Law requirements and for investors to make informed investment decisions. It is important that each Issuer tailors its disclosure to provide investors with insight into the specific and material operational challenges, financial impacts and risks it faces, and its related responses. Issuers should also keep in mind that the financial statements may also need to reflect and disclose the impacts of these events.

Staff have discussed certain MD&A deficiencies below but refer Issuers to previous Branch reports (links in Part C) that discuss other MD&A matters that remain relevant.

Discussion of operations - development stage issuers and significant projects without revenue

Issuers are required to discuss significant projects that have not yet generated significant revenue in their MD&A (Item 1.4(d) of Form 51-102F1). Staff frequently raised comments in respect of this requirement over the past year, both in the context of CD and prospectus reviews. We continue to see Issuers that do not provide sufficient information to enable the reader to understand the project, including timing and costs associated with the project. While this issue is most often observed with early-stage/development-stage Issuers or those with a change in business, this requirement applies to *all* Issuers that have significant projects that have not yet generated significant revenue. Over the past year, this has been particularly prevalent for technology-based and manufacturing Issuers conducting

R&D and those developing new products or technologies. Issuers will often disclose the total expense incurred during the period in the variance analysis but will fail to provide sufficient disaggregation of the material components of the costs, how those costs impact timing and the remaining costs to take the project to the next stage. In addition, the disclosure often does not include sufficient detail to understand the Issuer's plan for the project, including significant milestones.

Tip: Issuers should describe *each* significant project in sufficient detail, including, but not limited to, the following information:

- the Issuer's overall plan for the project and the status of the project relative to that plan. The discussion should include short and long-term plans. For R&D activity, this discussion should be included for each stage;
- the expected timeline of the project, including the Issuer's progress compared to the timeline;
- the key concrete milestones in the plan and what specific events need to occur to meet each milestone;
- the expenditures made to date for each project/stage/milestone, and how these expenditures relate to anticipated timing and costs to take the project to the next stage of the project plan;
- the license(s) and regulatory approval(s) that the Issuer must obtain. The discussion should include the anticipated timeline and expenditures associated with obtaining the license/regulatory approval and the risks and associated impact if regulatory approval and licenses are not obtained;
- the status of the project, including any delays in the disclosed timeline and/or anticipated cost overruns. In addition, if the Issuer previously disclosed material FLI, 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 the FLI and the expected differences.

Reminder: Venture Issuers without significant revenue from operations must provide a breakdown of material costs incurred, including, but not limited to, the following:

- **exploration and evaluation assets or expenditures;**
- **expensed research and development costs;**
- **intangible assets arising from development;**
- **general and administration expenses.**

If the Venture Issuer's 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.

See item 5.3 of NI 51-102.

Non-Venture Issuers must also include disclosure in their AIF about R&D. Item 5.1(1)(a)(iv) of Form 51-102F2 *Annual Information Form* requires Issuers with R&D to describe

- the stage of development of the products and services and, if the products are not at the commercial production stage, the timing and stage of R&D programs,
- whether the Issuer is conducting its own R&D, subcontracting out the R&D or using a combination of those methods, and
- the additional steps required to reach commercial production and an estimate of costs and timing.

Discussion of operations – variance analysis

In discussing period-over-period financial statement variances, Issuers reviewed continued to provide limited narrative discussion of the factors resulting in the variances and any trends or potential trends.

Simply stating the percentage change or amount, which is information that is readily available from the financial statements, is not sufficient and does not provide investors with insight into the Issuer's operations, or how the economic environment and trends, events and uncertainties impact its business. It is important to be specific and to disclose information that readers need to make informed investment decisions.

When discussing variances in financial statement line items, Issuers should

- quantify changes and clearly explain the factors, drivers and reasons contributing to the period-over-period variances that affect revenues and expenses. For example, in discussing

revenues, discuss variables such as price, volume or quantity of goods or services being sold, introduction of new products or services (or discontinuation) or other significant factors by segment. In discussing expenses, quantify the material components of the expense and provide a detailed explanation of each variance, and

- provide insight into the Issuer's past and future performance.

When discussing the changes in financial condition and results, it is also important to include an analysis of the effect on continuing operations of any acquisition, disposition, write-off, abandonment or other similar event.

Forward-looking information (FLI)

FLI is an area of interest to many investors and can provide valuable insight about a Reporting Issuer's business and how it intends to attain its corporate objectives and targets. It is important that investors receive transparent and clear disclosure that is specific, understandable, and relevant. The FLI, together with the accompanying disclosures, should be presented in an easy-to-read manner by, for example, providing the required disclosures near the FLI statement and presenting the information in tabular form that clearly links the particular FLI to the associated factors, assumptions and material risks. These disclosures will enable investors to interpret the FLI and simplify monitoring of progress in subsequent reporting periods.

FLI continued to be an area of challenge for Reporting Issuers over the past year, whether in the context of a prospectus or CD. We continue to see deficiencies, including a lack of balanced discussion of key factors and assumptions used and the material risk factors that could cause actual results to differ materially from the FLI. We have highlighted a few of the more common deficiencies below.

Updating and withdrawing FLI

We continue to see Reporting Issuers that do not provide updates to previously disclosed FLI or do not explain the reasons why they have withdrawn FLI.

Reporting Issuers that have previously disclosed FLI have an obligation to update the FLI in CD documents. Simply providing an update to the figures, without disclosing the underlying factors and assumptions that drive the change, does not provide insight on why the FLI is being updated. Reporting Issuers must provide a comparison of actual results to the previously disclosed FLI. The comparison of actual results to previously disclosed FLI is important for investors in making investment decisions, in their assessment of management and of the current and future business performance of the Reporting Issuer.

In certain circumstances, which may include broader economic and market developments, Reporting Issuers must consider whether they should withdraw previously published guidance and financial

outlooks if these outlooks can no longer be supported by reasonable assumptions and there is no longer a reasonable basis for the achievement, or accurate updating, of conclusions, forecasts or projections in the FLI. Reporting Issuers that choose to withdraw or cease to report previously disclosed material FLI must disclose the decision to withdraw and discuss events and circumstances that led to the decision to withdraw previously disclosed FLI, including a discussion of any assumptions that are no longer valid. Simply deleting the FLI from the CD documents does not relieve the Reporting Issuer of its disclosure obligations under section 5.8 of NI 51-102.

FLI disclosed outside of MD&A

Many Reporting Issuers disclose FLI in news releases, marketing materials, investor presentations, social media platforms or on their website. Often, FLI in these documents is not supported by the required FLI disclosures. Most notably, some Reporting Issuers do not include the accompanying factors and assumptions to support such FLI and fail to discuss and/or update the FLI in the MD&A. Irrespective of where the FLI is disclosed, Reporting Issuers must comply with the disclosure requirements of Parts 4A/4B and section 5.8 of NI 51-102.

Multi-Year FLI

Some Reporting Issuers present FLI that span multiple years, without providing reasonable and sufficient quantitative and qualitative assumptions to support the FLI. While such multi-year FLI is more prevalent in prospectus filings, we have also observed multi-year FLI on a CD basis. Reporting Issuers must not disclose a financial outlook unless it is based on assumptions that are reasonable in the circumstances. The assumptions for financial projections should be specific and comprehensive, particularly with respect to quantitative details, such that an investor is able to clearly understand how each assumption was used to develop the FLI that contributes to the projections. In general, FLI or future-oriented financial information, must be limited to a time period that can be reasonably estimated, which generally will not go beyond the end of the Reporting Issuer's next fiscal year. Where FLI is presented for multiple years without sufficient support, Staff may ask Reporting Issuers to limit the disclosure of FLI to a shorter period that can be more clearly supported (for example, one or two years, depending on facts and circumstances).

We may also raise questions in cases where a Reporting Issuer's FLI assumptions are not reflected in the Reporting Issuer's track record. For example:

- the Reporting Issuer projects aggressive growth targets (i.e. revenue; store openings) over a certain number of years without the benefit of historical experience or concrete plans in place to support the growth;
- the disclosure does not provide detailed explanations for expected changes to items such as revenue, gross margins, costs or does not provide a reasonable basis for the targets, including

the key drivers behind the projected growth with reference to specific plans and objectives that support the projected growth;

- the disclosure does not explain why management believes that each of the targets/FLI is reasonable;
- factors and assumptions do not appear reasonable in light of the Reporting Issuer's size and the scope of the Reporting Issuer's current business plans.

In some cases, Reporting Issuers have been able to address our concerns by amending the FLI disclosure in one or more of the following ways:

- providing more robust factors and assumptions to support the FLI;
- providing more recent information about its operations since the date of the Reporting Issuer's last MD&A in support of the FLI included in the prospectus;
- limiting the disclosure of FLI to a shorter period;
- removing the FLI.

Practice Points

Where FLI is presented for multiple years, we may also ask Issuers to specifically confirm that updates will be provided at least annually, in their continuous disclosure documents of their progress towards achieving the targets. The disclosure includes information on the previously disclosed targets, actual results, and a discussion of the variances.

We may also ask the Issuer to disclose its policy and processes should it decide to withdraw previously disclosed FLI.

II) Non-GAAP and other financial measures

NI 52-112 was issued in 2021 to replace the guidance in CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures (SN 52-306). Whereas SN 52-306 outlined disclosure expectations for non-GAAP financial measures (as previously defined in SN 52-306), NI 52-112 outlines disclosure requirements for six different categories of measures, being historical NGFMs, forward-looking NGFMs, non-GAAP ratios, capital management measures, total of segments measures and supplementary financial measures (as each are now defined in NI 52-112).

To assess compliance with certain aspects of NI 52-112, during Fiscal 2022, CSA 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. Reporting Issuers selected for review varied by size and industry.

Our reviews resulted in outcomes where no action was required, where prospective disclosure enhancements were made, where retrospective restatements were made, or where communication is ongoing to resolve any issues identified. While we were generally pleased with the quality of the disclosure that we observed, we noted the following areas where Reporting Issuers should improve their disclosure:

CSA staff identified the following key deficiencies:

- ✓ failure to include the required quantitative reconciliation to the most directly comparable financial measure disclosed in the primary financial statements (i.e. GAAP measure), in earnings releases;
- ✓ failure to comply in earnings releases with the requirement that NGFM must be presented with no more prominence than that of the most directly comparable financial measure disclosed in the primary financial statements of the entity to which the measure relates;
- ✓ failure to describe the significant differences between NGFMs that are FLI and the equivalent historical NGFMs;
- ✓ inappropriate identification of a total of segments measure and consequently, failure to include the required disclosure;
- ✓ mislabeling of supplementary financial measures that could lead to confusion or misleading disclosure;
- ✓ inappropriate incorporation of information by reference in investor presentations.

For a more fulsome discussion of CSA staff's findings, including examples, please refer to CSA Staff Notice 51-364 *Continuous Disclosure Review Program Activities for fiscal years ended March 31, 2022 and March 31, 2021.*

Non-GAAP and other financial measures continue to be an area of focus for Staff and we will continue to monitor and review disclosure of NGFMs as part of our normal course CD review program.

III) Overly promotional press releases

Disclosure must be factual and balanced, giving equal prominence to favorable and unfavorable information, with unfavorable information being disclosed as promptly and completely as favorable information.

Increasingly, we are observing Reporting Issuers that disseminate numerous news releases that include overly promotional or "good news" announcements and do not balance this disclosure with unfavorable information that may exist. This trend is particularly prevalent with early stage, pre-revenue Reporting Issuers that are engaged in multiple business opportunities. These Reporting Issuers provide news releases that frequently do not disclose material information or any new material facts and may obscure the true business activity of the Reporting Issuer. We have concerns that this type of promotional disclosure may cause an artificial increase in a Reporting Issuer's share price or trading volume, thereby undermining the integrity of the capital markets, and putting investors at risk of harm by making misinformed investment decisions. In these instances, we may request Reporting Issuers to limit these types of news releases or to issue a clarifying news release. In certain instances, it may also lead to further regulatory action. Further guidance is provided in CSA Staff Notice 51-356 *Problematic Promotional Activity by Issuers* and National Policy 51-201 *Disclosure Practices* (NP 51-201).

We have also observed Reporting Issuers that provide news releases announcing multiple partnerships, agreements, transactions or findings from R&D activities, but fail to provide an update on such matters in their MD&A or subsequent news releases. We emphasize that the MD&A is a core document of a Reporting Issuer's continuous disclosure (as well as the AIF, if applicable) and should provide investors with ***all*** the relevant material information impacting the Reporting Issuer's business and operations. Reporting Issuers providing a chronology of news releases issued in the description of business and/or recent developments section of the MD&A should also supplement that disclosure with the necessary updates about the status of these developments.

Reporting Issuers are reminded that if a news release includes information that is forward-looking in nature (for example, estimating production targets, profitability and/or revenue estimates), supporting material factors and assumptions must be provided as required by Part 4A/B of NI 51-102.

Tip: Reporting Issuers should consider the following disclosure best practices:

- establish appropriate written disclosure policies focused on promoting consistent disclosure practices aimed at providing informative, timely and broadly disseminated disclosure of material information to the market;
- consult with advisors, as appropriate, to ensure that the information in the news release is balanced and not misleading or overly-promotional;
- assess the materiality of the information being disseminated and consider whether a material change report should be filed;
- ensure that disclosure in any news release is sufficiently detailed to understand its substance and importance to the Reporting Issuer's business and operations;
- ensure the disclosure is consistent with disclosures previously filed by the Reporting Issuer in news releases or continuous disclosure documents;
- ensure FLI is appropriately supported by material factors and assumptions and updated as required;
- have the board of directors or audit committee review the disclosure in advance of public release, which may increase the quality, credibility and objectivity of such disclosure. Refer to 6.4 (1) of NP 51-201;
- ensure all material information has been included and discussed in the MD&A.

IV) Material contracts

Timing of filing

We continue to see Reporting Issuers who do not file material contracts on a timely basis or at all. We encourage Reporting Issuers to review all contracts entered into within the last financial year, or before the last financial year if the contract is still in effect, to determine whether the contract is a "material contract" that must be filed on SEDAR. While material contracts entered into in the ordinary

course of business are generally exempt from filing, we remind Reporting Issuers that any material contract on which the Reporting Issuer's business is substantially dependent must be filed.

The following chart sets out the timeline for filing material contracts that are required to be filed under NI 51-102.

Description	Timeline for Filing
If the Reporting Issuer is required to file an AIF	
• A material contract for which a material change report is filed	The material contract must be filed no later than the material change report
• All other material contracts	Material contracts made or adopted before the date of the AIF must be filed no later than the time of filing the AIF
If the Reporting Issuer is not required to file an AIF	
• A material contract for which a material change report is filed	The material contract must be filed no later than the material change report
• All other material contracts	Material contracts must be filed within 120 days after the end of the financial year in which they were made/adopted

Tip: A Reporting Issuer must file any material contracts that are required to be filed under NI 51-102, but that have not been previously filed, at the same time as filing a preliminary prospectus, accelerating the timing for filing a material contract in the context of a prospectus offering. If a material contract is not executed at the time the final prospectus is filed, the Reporting Issuer must file an undertaking to file the contract no later than seven days after the document becomes effective.

Redactions

Reporting Issuers may omit or redact a provision of a material contract that is required to be filed if there are reasonable grounds to believe that disclosing the omitted or redacted provision would violate a confidentiality provision. In these cases, subsection 12.2(5) of NI 51-102 directs the Reporting

Issuer to include a *description* of the type of information that has been omitted or redacted. A brief description immediately following the omitted or redacted information is generally sufficient.

Staff have identified instances where redacted material contracts are filed without these required disclosures. Staff may ask Reporting Issuers to re-file material contracts in instances where the required description of omitted or redacted information has not been included.

V) Diversity on boards and in executive officer positions

Disclosure requirements for the representation of women on boards and in executive officer positions are set out in NI 58-101 and have been in place for eight annual reporting periods. The disclosure requirements are intended to increase transparency for investors and other stakeholders regarding the representation of women in these roles and the approach that specific TSX-listed Reporting Issuers take in respect of such representation. This transparency is intended to assist investors when making investment and voting decisions.

CSA Multilateral Staff Notice 58-314 *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions - Year 8 Report* (SN 58-314) was published on October 27, 2022. SN 58-314 reports the findings of our eighth review of disclosure regarding women on boards and in executive officer positions. Of note, 45% of board vacancies filled during the year were filled by women, resulting in 24% of overall board seats being occupied by women, compared to 22% in the prior year. 87% of Reporting Issuers in the review sample had at least one woman on the board and 70% of Reporting Issuers in the review sample had at least one woman in an executive officer position.

The CSA Diversity Initiative Working Group also concluded research and consultations with various stakeholders between June 2021 and October 2021 to determine whether and how the disclosure needs of Canadian investors and corporate governance practices among public companies have evolved since the above noted gender diversity requirements were originally adopted. A virtual 'Diversity in Capital Markets' roundtable, moderated and hosted by the OSC, was held on October 13, 2021. The AMF and ASC also held public roundtables on October 14, 2021 and December 10, 2021, respectively. CSA Staff are continuing to consider feedback received during these consultations.

VI) Related-party transactions/cross financial interests

Staff have observed M&A transactions where either the acquiror or the acquiree (or a director/executive officer of either entity) had an undisclosed financial interest in the other entity. Staff are of the view that, in the context of M&A transactions, detailed disclosure of the cross-ownership of financial interests (held either by the acquirer, the acquiree, or either of their directors or executive officers) is material information for investors and their investment/voting decisions and should be disclosed in the applicable disclosure document.

The cross-ownership of financial interests could give rise to conflicts of interest that may lead investors to re-examine other variables such as purchase price, transaction timing or contingent payments. These variables may not otherwise be considered in the same manner if the potential conflict of interest is not disclosed. Non-disclosure of the cross-ownership of financial interests may also cause investors to question whether the M&A transaction occurred on its own merits.

The document in which disclosure is required will vary depending on the structure of the proposed transaction, whether the Reporting Issuer is the acquiror or acquiree, and the applicable requirements of the stock exchange on which the Reporting Issuer's securities are listed. For example, an M&A transaction may give rise to an obligation to file a material change report, a take-over bid circular, a listing statement / filing statement, or an information circular. A prospectus may also be filed in connection with the M&A transaction. Regardless of the form of document required to be filed, we remind Reporting Issuers to disclose the cross-ownership of financial interests based on the broader materiality requirements of the applicable disclosure document.

Further information on this topic can be found in CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*. We note that, while this topic was initially presented in a staff notice specific to the cannabis industry, the same principles are applicable to Reporting Issuers, especially those in emerging growth industries.

VII) Disclosure considerations pertaining to the war in Ukraine (the Conflict)

The unprecedented sanctions imposed by most major governments and disruptions to the global economy as a result of the Conflict have contributed to financial market volatility, and directly and indirectly impacted businesses in Canada and around the world. Issuers that have been or could be materially impacted should provide timely, meaningful, transparent, and balanced disclosures about the impact and the uncertainties to allow investors to make informed investment decisions. Issuers should also keep apprised of ongoing changes and continuously evaluate the necessity to update previously issued disclosure or to provide new disclosure.

Issuers should think broadly when assessing the impact and the uncertainties the Conflict has on its business and operations, for instance, disruption to supply-chains and the ability to access raw materials, and the prices paid for such raw materials, or heightened cybersecurity risks given the potential for cyberattacks perpetuated by state actors. While this list is not exhaustive, some disclosures that may be relevant to understanding the impact of the Conflict include:

- key risks that the conflict presents to the Issuer. Risks should be tailored and disclosures relating to such risks should not be boilerplate;

- known and expected trends, demands, events or uncertainties related to the Conflict that management reasonably believes will materially affect the Issuer's financial condition, future revenue, expenses or projects;
- operational challenges and other measures taken by management in response to the Conflict, including any detailed plans to divest investments or exit operations in Russia, Belarus or Ukraine;
- whether the Issuer has been impacted by the sanctions imposed by the Canadian Federal government or by other jurisdictions. Additionally, Issuers should disclose how management is monitoring compliance with the sanctions imposed;
- discussions about challenges relating to flow of funds and other resources (e.g. raw materials, utilities and labor) that might not be as accessible as a result of the Conflict;
- financial reporting considerations including areas subject to significant judgment and measurement uncertainties relating to the Conflict.

Issuers should carefully consider whether the requirement to file a material change report has been triggered as a result of the impact of the Conflict. Additionally, while Issuers might have provided detailed operational updates via news releases, we remind Issuers that such disclosure should also be included and updated in prospectuses and CD documents, such as MD&A and AIFs.

VIII) Syndicated mortgages

Following amendments to NI 45-106, NI 31-103, and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* related to syndicated mortgages that came into force on July 1, 2021, the OSC assumed oversight of higher risk syndicated mortgages sold to retail investors in Ontario and introduced requirements for non-qualified syndicated mortgages distributed to non-permitted clients that are the same as, or stricter than, the requirements for the distribution of other forms of real estate investments.

Over the past 12 months, filers reported the issuance of syndicated mortgages for which the OSC has principal oversight under the amended regime with a value of approximately $390 million. The capital raising activity in the syndicated mortgage sector continues to increase at a steady pace.

	Capital Raised	Number of Distributions	Number of Issuers	Number of Exempt Market Dealers
Q3 & Q4 2021	$201,453,531	31	8	4
Q1 & Q2 2022	$189,195,336	29	14	3
Total 12-month period	$390,648,868	60	19	4

Most distributions (98.3%) were completed under the accredited investor prospectus exemption under section 73.3 of the Act. The remaining distributions were completed using the minimum amount investment prospectus exemption under section 2.10 of NI 45-106 and the family, friends and business associates prospectus exemption under sections 2.5 and 2.6.1 of NI 45-106.

Based on our review of syndicated mortgage investment (SMI) filings, Staff note that Issuers have quickly aligned themselves with the new compliance and reporting requirements, and that legacy loans are being repaid or refinanced through conventional channels. Staff have also observed that non-qualifying SMI issuances are concentrated in a handful of Issuers and exempt market dealers, suggesting that the market is maturing and becoming more specialized.

The OSC works closely with the Financial Services Regulatory Authority to ensure that market participants are licensed or registered with the appropriate regulatory authority and meet the appropriate requirements. Educational information for investors is also regularly updated on https://www.getsmarteraboutmoney.ca/.

IX) Filing reports of exempt distribution

Issuers and underwriters that rely on certain prospectus exemptions to distribute securities are required to file a report of exempt distribution (RED Report) on Form 45-106F1 *Report of Exempt Distribution* within a prescribed timeframe set out in NI 45-106. We sometimes see Issuers that either file the RED Report late or not at all. The deadline for filing the report is generally 10 days after the distribution.

A distribution occurs in the jurisdiction where a purchaser is resident. In most cases, a distribution also occurs in the jurisdiction where the Issuer's head office is located. A distribution may also occur in a jurisdiction if the Issuer has a significant connection to that jurisdiction. A RED Report must be filed in each jurisdiction in which a distribution takes place.

To determine if a distribution has occurred in one or more jurisdictions of Canada, consult applicable Securities Law. If an Issuer is uncertain as to whether a distribution has occurred in a jurisdiction of Canada, should seek advice as to where the distribution occurred.

For more information on filing a RED Report, please refer to the "Frequently Asked Questions – Form 45-106F1 *Report of Exempt Distribution*" document, available on the OSC's website.

X) Crypto asset industry

The crypto asset industry has continued to see growth as well as significant volatility. We have made the following observations regarding recent disclosure by Issuers in the crypto asset industry but also remind Issuers of previous guidance listed at the end of this section. We will continue to monitor disclosure in the crypto asset industry through our review program activities moving forward.

Applicable regulatory regime

Given that the regulatory environment for the crypto asset industry differs across jurisdictions and may, in some cases, be evolving or lack certainty, we consider the following disclosure to be necessary to fairly present all material facts, risks and uncertainties:

- For each jurisdiction in which the Issuer operates:
    - details of the Issuer's operations in the jurisdiction;
    - the applicable regulatory regime;
    - any registrations, exemptions or no action letters relied upon by the Issuer;
    - any terms and conditions on those registrations, exemptions or no action letters;
    - discussion of any statements or other available guidance made by applicable regulators;
    - whether legal advice has been obtained, either in the form of a legal opinion or otherwise, regarding compliance with applicable regulatory regimes;
- Discussion of the Issuer's policies and procedures for monitoring compliance with applicable regulatory regimes, including monitoring for any changes to those regimes;
- Related risks, which may include uncertainty around regulatory regimes applicable to the Issuer's business or crypto assets that are material to the issuer.

We expect the above disclosures to be clearly and prominently disclosed in prospectus filings and other required documents such as an Issuer's AIF, marketing materials, and MD&A (see for example Part 2, Item 1.2 of Form 51-102F1). We also expect Issuers that enter our capital markets through a reverse takeover or spinoff transaction to include these disclosures in their listing statement or other documents, as applicable.

Further to the OSC and CSA news releases from March 29, 2021[6], we also remind Issuers with operations in Canada (whether providing products or services from a location in Canada or to residents of Canada) that there are potential public interest concerns if an Issuer that is not in compliance with Securities Law were to become an Reporting Issuer. For example, this would be the case if an Issuer that is conducting business that requires registration under Securities Law is not yet registered. If we receive a prospectus from such an Issuer , or an Issuer that is already a Reporting Issuer and not in compliance with Securities Law, we would likely have receipt refusal concerns. We

[6] OSC news release: https://www.osc.ca/en/news-events/news/osc-working-ensure-crypto-asset-trading-platforms-comply-securities-law
CSA news release: https://www.osc.ca/en/news-events/news/canadian-securities-regulators-outline-regulatory-framework-compliance-crypto-asset-trading

encourage Issuers engaged in novel crypto businesses to consider submitting a confidential prospectus pre-file, if eligible.

Material changes

The determination of whether something is a material fact or material change under Securities Law is fact specific. The CSA has provided guidance on this determination in NP 51-201, which is applicable to Issuers in all industries.

In addition to the examples provided in section 4.3 of NP 51-201, we note the following non-exhaustive list of types of events or information that may be material to Issuers in the crypto asset industry:

- a collapse in the price of a crypto asset to which an Issuer has material exposure;
- an announcement by a regulator of its views about whether a crypto asset that an issuer has material exposure to is a security and/or derivative, or regulatory action taken that includes a view that it is a security and/or derivative;
- entering into by an Issuer of an arrangement for the borrowing or lending of a significant amount of crypto assets or any significant encumbering of the Issuer's crypto assets, including details of the counterparty;
- announcements by a regulator of its views about the business in which the Issuer is engaged, or regulatory action taken against an Issuer with a similar business;
- the issuance by a regulator of a cease-and-desist order against the Issuer, and if the regulator allows the Issuer to operate in the interim, any restrictions placed on its business.

In addition to disclosure requirements regarding material changes and material facts under Securities Law, we remind listed Issuers that the exchange on which they are listed may have timely disclosure policies in respect of material information.

Material contracts

We have observed Issuers that have not filed material contracts on SEDAR as required. We remind Issuers that the exception in subsection 12.2(2) of NI 51-102, for material contracts entered into in the ordinary course of business, is not available in respect of a contract on which the Issuer's business is substantially dependent. For example, if an Issuer enters into a crypto asset loan agreement upon which the solvency of its business is dependent, we would consider this to be a material contract required to be filed.

We also refer Issuers to section 12.3 of NI 51-102 as well as the above guidance regarding material changes (including whether entering into a contract constitutes a material change for the issuer) in regard to the timing for filing a material contract on SEDAR.

Corporate governance

We note there has recently been significant consolidation of Issuers within the crypto asset industry. We remind Issuers that the guidance in Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations* (SN 51-359) for Reporting Issuers in the cannabis industry is equally applicable to Issuers in other emerging growth industries, like the crypto asset industry.

As discussed in SN 51-359, Issuers should

- disclose the cross-ownership of financial interests by Issuers (or their directors and officers) involved in mergers, acquisitions or other significant corporate transactions (M&A transactions), as Staff are of the view that this is material information for investors and their investment/voting decisions,
- give adequate consideration to potential conflicts of interest, or other factors that may compromise their independence when identifying board members as being independent, and
- adopt a written code of business conduct and ethics, which includes standards for ethical decision making and compliance, and which addresses potentially challenging situations that may arise during the normal course of business.

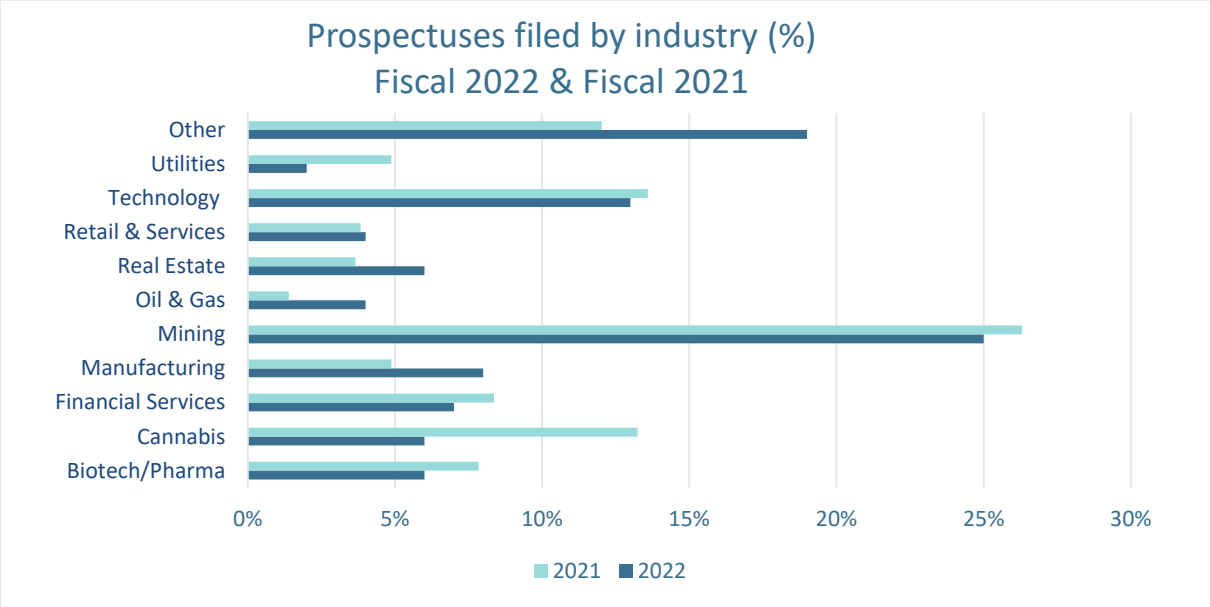
For more information and guidance issuers should also review:

- CSA Staff Notice 51-363 *Observations on Disclosure by Crypto Assets Reporting Issuers*
- Joint CSA/IIROC Staff Notice 21-330 *Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use*
- CSA Staff Notice 51-356 P*roblematic promotional activities by issuers*
- National Policy 51-201 *Disclosure Standards*
  Multilateral Staff Notice 51-359

2. Public Offerings

Under Canadian Securities Law, to distribute securities, an Issuer must file and obtain a receipt for a prospectus or rely upon a prospectus exemption. Another key component of our compliance work stream is the review of prospectuses in connection with public offerings. This section outlines data and trends with respect to public offerings and provides guidance on common issues that arise during our prospectus reviews.

In Fiscal 2022, 702 prospectuses were filed in Ontario (Fiscal 2021: 574). These filings covered a wide range of industries with mining, technology and cannabis being the most active sectors based on the number of offerings.



A) Trends and guidance

Fiscal 2022 was another record-breaking year for prospectus volumes, particularly in the first half of the year. Overall capital raising activity was high for that period, driven by an increase in offerings in the manufacturing and technology industries, as well as a range of other[7] industries. The last quarter of the year saw a drop in activity, partly attributed to geopolitical tensions, volatile markets and other economic factors.

[7] Other includes industries such as CPCs, hospitality, gaming, cryptocurrency and transportation.

Tip: The guidance in this section also applies to prospectus-level disclosure included in an information circular in connection with a proposed significant acquisition or a restructuring transaction as required by section 14.2 of Form 51-102F5 *Information Circular*.

Key takeaways from our reviews of prospectuses in Fiscal 2022 are set out below.

I) Primary business requirements in an IPO

Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1) requires an Issuer that is not an investment fund to include certain financial statements in its long form prospectus. This includes the financial statements of the Issuer and any business or businesses acquired, or proposed to be acquired, if a reasonable investor reading the prospectus would regard the primary business of the Issuer to be the business or businesses acquired, or proposed to be acquired. The purpose of the primary business requirements is to provide investors with the financial history of the business of the Issuer even if this financial history spanned multiple legal entities over the relevant time period.

On April 14, 2022, changes were made to Companion Policy 41-101CP related to primary business requirements. The purpose of the changes was to harmonize the interpretation of the financial statement requirements for a long form prospectus in situations where an Issuer has acquired a business, or proposes to acquire a business, that a reasonable investor would regard as being the primary business of the Issuer[8]. The changes provide additional guidance on the interpretation of primary business, including in what situations, and for which time periods, financial statements should be required. The changes provide guidance in circumstances when additional information may be necessary for the prospectus to meet the requirement to contain full, true and plain disclosure of all material facts relating to the securities being distributed.

The changes also clarify when an Issuer can use the optional tests in Part 8 of NI 51-102 to calculate the significance of an acquisition, and when an acquisition of mining assets would not be considered an acquisition of a business. The changes were informed by stakeholder feedback that certain inconsistent interpretations of the primary business requirements add time, cost and uncertainty for Issuers. These changes will facilitate a harmonized approach for Issuers across Canada and will reduce regulatory burden by giving Issuers additional clarity on the historical financial information required in an IPO, without compromising investor protection.

The changes came into effect on April 14, 2022.

[8] For more information, see CSA Notice of Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* Related to Financial Statement Requirements.

II) Description of business

Where the business of the Issuer is in the early stages of development, and the business has little or no operations or revenues, we find that Issuers often do not provide sufficient detail on the business itself and/or its business plan. We note this trend particularly with Issuers completing CPC qualifying transactions and reverse takeover transactions. In order to comply with the requirements in Item 5 of Form 41-101F1, we remind Issuers that the disclosure of the business and/or business plan must be entity-specific and clear in the prospectus. Issuers should consider including this disclosure in one section (rather than dispersing the information throughout the prospectus). This is important for investors to be able to clearly understand the business and/or business plan of the Issuer.

We also encourage Issuers to segregate their disclosures about the business into two parts: (i) the current business of the Issuer, describing the Issuer's current operations, if any, and stage of product/service development, and (ii) future business plans of the Issuer, describing the Issuer's anticipated business plans and milestones, including any/applicable research and development.

In discussing current business and future business plans, Issuers should provide disclosure on at least all the following:

Current business

- description of the product/service currently provided,
- markets in which the products/services are being offered,
- regulatory framework applicable to those products/services,
- licenses and permits obtained,
- agreements/partnerships in place with individuals and/or entities to conduct the current business (such as distribution, manufacturing, construction, R&D agreements),

Future business plans

- identification of specific milestones in the issuer's business plans,
- for each milestone, a description of the steps and associated costs required to complete it or to take it to the next stage,
- identification of the anticipated timing of completion or timing to achieve the various stages in the business plan,
- regulatory framework applicable to these anticipated operations,
- discussion of material risk and uncertainties regarding these plans,
- if an R&D program is part of the anticipated operations, a discussion of the various stages of R&D, regulatory approvals required to achieve the objectives of the program, the activities completed to date, costs incurred to date and timing and costs anticipated to achieve the next stage.

Where business plans are preliminary in nature and there are no binding agreements, or where an Issuer currently has not commenced its execution of such plans, these facts should also be clearly disclosed in the prospectus.

In discussing future or anticipated business plans, Issuers should avoid using overly promotional language that is not based on the Issuer's current stage of development. For example, phrases such as "the largest of its type", "best in the market", or "leader in the field" should be supported by objective data that provides the Issuer with a reasonable basis on which to conclude that the statement is accurate.

In addition, Issuers should avoid disclosing FLI and long-range projections reflecting revenue, growth, and market share assumptions that appear speculative in comparison to the size and scope of the Issuer's current business plans. For example, without further information, it would appear speculative for an Issuer to forecast production targets of 50,000 units and sales of $10 million by 2024, when the production facilities have not been built. FLI must be supported by material factors and assumptions or removed from the disclosure as it may be misleading.

Further information on FLI is included throughout this Report.

III) Prospectus filings by investment issuers

We continue to review initial public offerings by Issuers that intend to invest the proceeds of the offering into a portfolio of assets, to determine if there are any novel business models giving rise to public interest concerns that cannot be addressed by disclosure alone. Where an Issuer is structured as a corporate finance Issuer, but its business objectives are similar to an investment fund or private equity fund, public interest concerns may arise due to the fact that substantive investor protections and registration requirements that apply to investment funds may not apply to the Issuer. Structural investor protections may be required to address such public interest concerns. We encourage Issuers to submit a pre-file application and consult with Staff in these circumstances.

IV) Base shelf prospectus - sufficiency of proceeds and financial condition

For certain Reporting Issuers, the filing of a base shelf prospectus may not be appropriate given the Reporting Issuer's financial condition and uncertainty of financing. Typically, receipt refusal concerns on financial condition arise if the Reporting Issuer does not appear to have sufficient cash resources to continue operations for the next 12 months. In these cases, to address our concern that incremental drawdowns may be insufficient to satisfy the Reporting Issuer's short-term liquidity requirements, we may request that the Reporting Issuer

- withdraw the base shelf and file a short form prospectus with a minimum subscription amount,

- withdraw the base shelf and file a short form prospectus with a fully underwritten commitment, or
- arrange for additional committed sources of financing.

Staff note that any arrangements to address our concerns about a Reporting Issuer's financial condition should be finalized before a Reporting Issuer's prospectus is cleared for final.

In addition, Staff may question the size of a base shelf offering if it appears that the amount contemplated under the base shelf is significantly higher than the Reporting Issuer's current market capitalization. This imbalance may indicate a potential significant acquisition, transaction or change of business and, as such, Staff will inquire about the rationale for filing a base shelf prospectus with a contemplated offering in excess of its market capitalization.[9]

V) Prospectus lapse date

Under NI 41-101, an Issuer must not file its first amendment to a preliminary prospectus more than 90 days after the date of the receipt for the preliminary prospectus and must not file a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus or an amendment to the preliminary prospectus. In addition, the final prospectus must be filed within 180 days from the date of the receipt for the preliminary prospectus.

Issuers are reminded to track the number of days that have passed since the date of the receipt of a preliminary prospectus and to file an amendment to a preliminary prospectus if it does not anticipate filing the final prospectus within 90 days of the date of the receipt for the preliminary prospectus or amendment to the preliminary prospectus. Issuers are encouraged to provide Staff with sufficient notice in advance of the lapse date to indicate their intentions with respect to the preliminary prospectus.

Reminder. To avoid withdrawing a preliminary prospectus, an Issuer must

- ***file the final prospectus or an amendment to the preliminary prospectus* within 90 days of the date of receipt of the preliminary prospectus, and**
- ***file the final prospectus within 180 days of the date of the receipt of the preliminary prospectus.***

[9] For more information and guidance, Reporting Issuers and advisors, including those filing a base shelf or non-offering prospectus, should review CSA Staff Notice 41-307 *(Revised) Concerns regarding an issuer's financial condition and the sufficiency of proceeds from a prospectus offering* as well as section 5.4 of NI 44-102.

VI) Comfort letter requirements

Issuers filing a preliminary prospectus that is accompanied by an unsigned auditor's report must file a comfort letter (Letter) signed by the auditor and addressed to the applicable securities regulatory authorities where the prospectus is being filed under section 9.1(b)(iii) of NI-41-101 or section 4.1(b)(ii) of NI 44-101.

The Letter must be prepared in accordance with the relevant standards in the Handbook of the Chartered Professional Accountants of Canada, specifically, paragraph A38 of CICA Handbook 7150 *Auditor's Consent to the Use of a Report of the Auditor Included in an Offering Document*. The Letter provides comfort on the financial statements and informs the regulatory authorities that the audit has been substantially completed, except for the following matters:

- consideration of events between the dates of the preliminary and final prospectuses;
- review of comments issued by securities regulators;
- authorization of the financial statements by those charged with governance;
- reading of the final prospectus.

We remind Issuers and their advisors that the auditor comfort letter must be **signed**, **dated** and must **not include other qualifications** outside of the four qualifications noted above. For example, including a qualification that the audit procedures related to revenue are still outstanding would not be acceptable and the preliminary receipt (or the acceptance of the confidential pre-file) will not be issued until a revised letter is submitted. This may unnecessarily delay the review process.

VII) President's lists

A president's list is a list of potential investors in a securities offering that is provided by management of an Issuer to the underwriters. Where an Issuer proposes a president's list, the underwriting agreement may provide that the underwriters will receive a reduced commission (or no commission) on the securities sold to the investors on the president's list since the underwriters did not market the securities to them.

Subsection 130(1)(b) of the Act provides that each underwriter of securities that is required to sign a prospectus certificate is liable for misrepresentations in that prospectus. Staff are of the view that this liability extends to purchasers on a president's list. As such, where an Issuer identifies purchasers who will purchase securities in a prospectus offering, Staff may request that the prospectus contain a statement clearly indicating that purchasers who acquire securities from the Issuer have the same rights and remedies for rescission and/or damages against the Issuer and the underwriters, as the case may be, as purchasers who acquired securities through the underwriters.

VIII) Flow-through units

Staff are aware of a prospectus offering structure used by certain mining exploration companies where

- two types of flow-through units (FT Units and Premium FT Units) are offered at different prices (each for one common share and one-half of a common share purchase warrant at same exercise price per warrant share), and
- one type of flow-through unit (Premium FT Units) may be transferred from the initial purchasers to charities and then resold (Redistributed Units).

Reporting Issuers using this prospectus offering structure should include language in the prospectus which discloses that

- the tax benefits associated with the Premium FT Units are only available to the initial purchasers, and
- purchasers who acquire the Redistributed Units, either through a charitable organization or through arrangements made by the underwriters, will be afforded the same withdrawal rights, rescission rights and rights to damages against the Reporting Issuer or the underwriters, as the case may be, pursuant to applicable Securities Law as the initial purchasers of the Premium FT Units sold directly by the Reporting Issuer.

IX) Cessation of Canadian Dollar Offered Rate

We expect Reporting Issuers with outstanding securities that reference the Canadian Dollar Offered Rate (CDOR) to monitor developments in this area and consider whether appropriate fallback mechanisms are included in the relevant trust indenture, or other contractual document, for any relevant securities.

If a Reporting Issuer files a prospectus to qualify securities that will or may reference CDOR, we may raise comments, including why the Reporting Issuer still wants the ability to use CDOR as a reference rate given the announcement by Refinitiv Benchmark Services (UK) Limited (RBSL) regarding its cessation and the transition roadmap published by the Canadian Alternative Reference Rate Working Group (CARR). If a Reporting Issuer has a legitimate business rationale for issuing securities referencing CDOR, we expect the Reporting Issuer will

- monitor developments regarding the cessation of CDOR,
- include the provisions recommended by CARR in the relevant trust indenture, or other contractual document, providing a fallback mechanism if CDOR ceases to be available while the securities are outstanding, and

- include disclosure in the prospectus, or the relevant prospectus supplement in the case of a base shelf prospectus, on the fallback mechanism and the risks related to the fallback mechanism and CDOR ceasing to be available while the securities are outstanding.

Please see Part B – Responsive Regulation of this Report for further information on the designation and regulation of financial benchmarks.

X) Underwriting conflicts disclosure requirements

On March 1, 2022, the OSC made, as a rule under the Act, OSC Rule 33-508 Extension to Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements* (the Rule), which came into force on August 18, 2022.

The Rule extends the blanket relief issued on February 18, 2021 by Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements* (Interim Class Order) (the OSC Blanket Order) by 18 months, therefore the OSC Blanket Order is still in effect until February 17, 2024.

The OSC Blanket Order provides an exemption from the underwriting conflicts disclosure requirements in National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) if

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

The OSC issued the OSC Blanket Order following discussions between the Compliance and Registrant Regulation branch, Staff and various institutional investors that had advised Staff that the underwriting conflicts disclosure requirement in NI 33-105 created barriers that prevent institutional investors in Ontario from participating in global offerings on a timely basis.

Staff are continuing to review options for a more permanent solution and may propose an amendment to NI 33-105 at a later date.

XI) Confidential prospectus pre-file review

In March 2020, Staff began accepting confidentially pre-filed prospectuses for review. We did so to provide Issuers with greater flexibility and more certainty in planning prospectus offerings, and to encourage continued capital formation during the pandemic.[10] On January 28, 2021, Staff issued a press release providing best practice guidance for confidential pre-file prospectuses. Since March 2020, we have reviewed 103 prospectuses on a confidential pre-filed basis.

[10] See CSA Staff Notice 43-310 *Confidential Pre-file Review of Prospectuses* (for non-investment fund Issuers).

Tip: We would like to remind Issuers and advisors to carefully consider whether the draft preliminary prospectus is at an appropriate stage for a confidential pre-file review. We may determine that a draft is not at an appropriate stage for Staff review and ask that the submission be withdrawn. This may occur in any of the following circumstances:

- the disclosure in the draft document falls significantly short of the standard required of a preliminary prospectus. The pre-filed prospectus should contain all financial and non-financial disclosure that would be in the actual prospectus filing;
- there is no significant prospect of a transaction occurring within the foreseeable future. A deal timeline should be included in the filed cover letter to assist Staff in understanding when the review should ideally be completed. Staff will normally assume that the Issuer will file a preliminary prospectus shortly after the completion of the review of the pre-filed prospectus;
- the terms and conditions of the offering, and any related transactions, are still in flux.

In addition, the OSC will not review pre-files of:

- non-offering prospectuses, other than non-offering prospectuses pre-filed in connection with cross-border financings or where there is a specific legal or accounting matter requiring Staff input;
- prospectuses that solely qualify the issuance of securities on conversion of convertible securities, such as special warrants.

Review Process

Any prospectus pre-filed confidentially will be subject to a full review, regardless of whether it is a long form, short form or shelf prospectus. Any legal or accounting questions where the Issuer is seeking a pre-filing interpretation or waiver should be highlighted.

The prospectus should be substantially complete. If the Issuer has not substantially settled the terms of offering or any related transactions, we may ask for the submission to be withdrawn. A substantially complete prospectus will also include all required financial statements. Accordingly, the

financial statements included in a draft prospectus must include all the financial statements prescribed for a preliminary prospectus and be audited (or be accompanied by a comfort letter signed by the auditor) or reviewed, as applicable. Also refer to Section VI Comfort letter requirements of this Report.

The purpose of the pre-filing review is to expedite the review of the subsequently publicly filed preliminary prospectus. Accordingly, for existing Reporting Issuers, where it is clear from the Reporting Issuer's proposed timing that financial statements for a subsequent period will be required to be included in the publicly filed preliminary prospectus and those statements will be available shortly after the date of the pre-filing, we may defer our review until those financial statements are made available for our review.

In a slight departure from prior practice, we will generally accept confidential pre-filings for review that do not include all of the financial statements that will be required to be included in the publicly filed preliminary prospectus where:

1. The prospectus is being filed for an initial public offering or other transaction that will result in a new or substantially different Issuer, such as a spin-off transaction or special purpose acquisition corporation qualifying transaction;
2. The confidential pre-filed prospectus includes sufficient current financial history (recent financial statements for enough periods); and
3. The other disclosure in the draft prospectus is substantially complete.

To avoid the review of the confidential pre-filing being delayed, Issuers and their advisors should consult with staff to confirm which financial statements must be included in the prospectus pre-filed confidentially. Issuers and their advisors should be prepared to describe the rationale for commencing the pre-filing at an early stage and include submissions as to why the pre-filing should not lead to unnecessary duplication in the review of the prospectus.

Once the prospectus submission is deemed to be substantially complete, it will be assigned for review by Staff and an "**acknowledgment of receipt**" will be sent to counsel. We will use our best efforts to issue our first comment letter within published service standards for a long form prospectus starting from the date of the acknowledgement of receipt.

Reminder: **The process to submit a prospectus for a confidential pre-file review is outlined in CSA Staff Notice 43-310 *Confidential Pre-File Review of Prospectuses (for non-investment fund issuers)*. The process to submit a pre-file application regarding interpretation of securities legislation to a particular offering or proposed offering or exemptive relief from securities legislation is outlined in NP 11-202.**

Refer to "Our Service Commitments" below for further information.

As the objective of the confidential prospectus pre-file review process is to provide Issuers with greater flexibility and more certainty in planning prospectus offerings and not to provide an open-ended review of a draft prospectus, we will consider a pre-file to be withdrawn and will close the file if Issuers are unresponsive (i.e. have not provided a response to Staff comment letters for an extended period of time). For greater certainty, we will consider the pre-file to be withdrawn if there is no response within 90 days of the date Staff last issued comments. If the pre-file has not been completed within 180 days from the initial pre-filing date, similar to the timing requirements in Item 2.3 of NI 41-101, Staff will close the file and the Issuer will be required to re-submit a new pre-file and pay the associated fees. In both cases, Staff will advise counsel that the pre-file will be closed.

XII) Actuarial consents

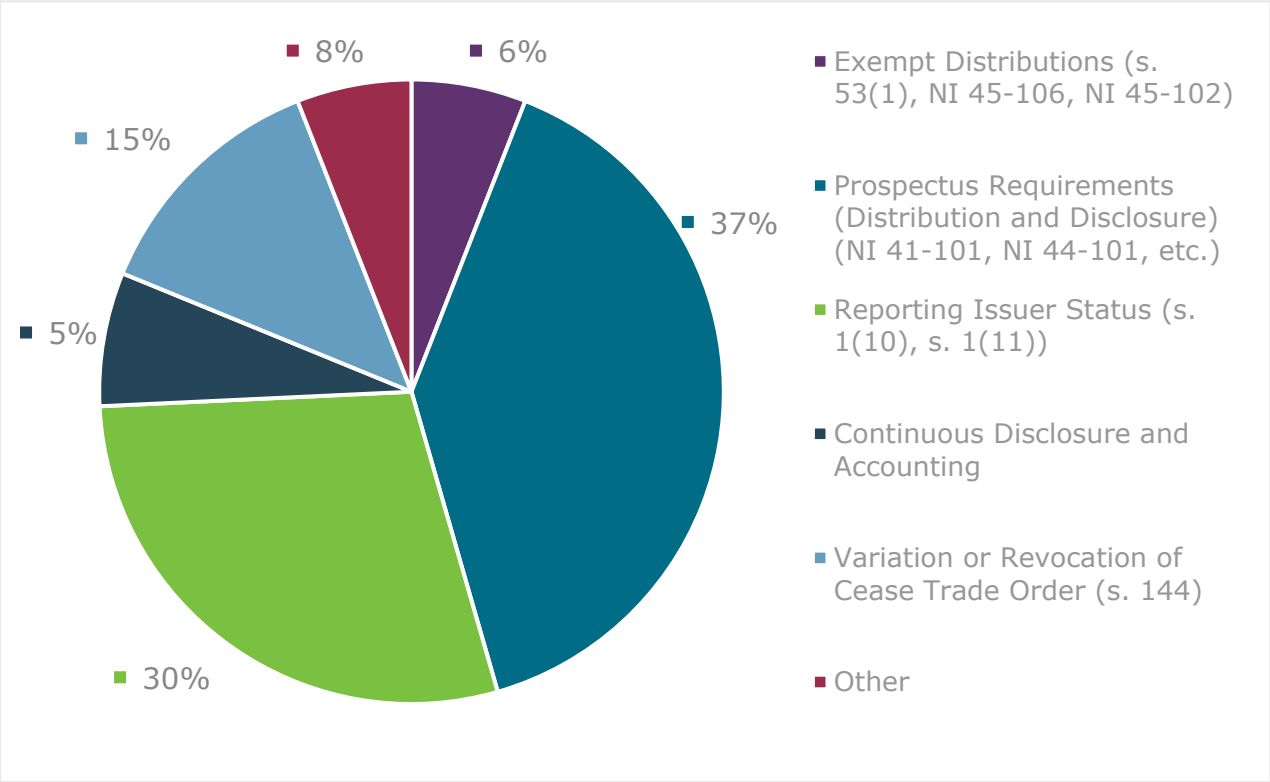
Insurance companies that provide a report of the appointed actuary with their annual financial statements that are included in a long form prospectus, or incorporated by reference into a final short form or base shelf prospectus, are required to file an expert's consent from the appointed actuary with the final prospectus in accordance with paragraph 9.2(a)(viii) of NI 41-101 or paragraph 4.2(a)(vii) of NI 44-101. The final prospectus must also include the disclosure required by Item 28 (Experts) of Form 41-101F1 or Item 15 (Interest of Experts) of Form 44-101F1, as applicable, in respect of the appointed actuary.

3. Exemptive Relief Applications

Staff review and make recommendations to appropriate decision makers on applications for exemptive relief. The review standard for granting relief varies, but it generally requires a decision maker to determine that granting the requested relief would not be prejudicial to the public interest. For further information about the process for exemptive relief applications, please refer to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

In Fiscal 2022, we completed reviews of 285 applications for exemptive relief from various Securities Law requirements, 14% higher than Fiscal 2021.

Exemptive Relief Applications by Type - Fiscal 2022



A) Trends and guidance

We have noted an increase in applications compared with Fiscal 2021, with the majority of applications made in connection with relief from certain prospectus requirements and Reporting Issuer status. These two types of applications for relief have remained the most common. We will continue to monitor the types of applications we receive and the exemptive relief granted to

determine whether we should consider changes to our rules or policies. Key takeaways from our exemptive relief work in Fiscal 2022 are set out below.[11]

I) Management cease trade orders (MCTO)

National Policy 12-203 *Management Cease Trade Orders* (NP 12-203) provides guidance as to when we will consider issuing an MCTO rather than a failure-to-file cease trade order. We previously provided certain guidance in OSC Staff Notice 51-731 *Corporate Finance 2020 Annual Report* regarding the timing of applications and our considerations of what constitutes an active, liquid market for a Reporting Issuer's securities. Reporting Issuers should consider when and how its determination of a failure to comply with a specified requirement will be disclosed. A Reporting Issuer should generally be able to determine that it will not comply with a specified requirement at least two weeks before the due date of the required filings and, as soon as it makes this determination, should issue the default announcement and submit the application as described in NP 12-203. We will generally not exercise our discretion to issue an MCTO unless a default announcement has been made.

4. Insider Reporting

We review compliance of reporting insiders and Reporting Issuers with insider reporting requirements through a risk-based compliance program. We actively and regularly assist Reporting Issuers and advisors by providing guidance on filing matters. The objective of our insider reporting oversight work is twofold:

Compliance

to assess whether Reporting Issuers are complying with insider reporting obligations.

Issuer Education and Outreach

to help Reporting Issuers better understand insider reporting obligations.

[11] Prior OSC orders and exemptive relief decisions can be found on the OSC website or on CanLII at https://canlii.org/en/on/onsec/.

Insider reporting serves a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information about the trading activities of insiders, and, by inference, the insiders' views of the Reporting Issuer's future prospects. Non-compliance affects the integrity, reliability, and effectiveness of the insider reporting regime, which in turn has a negative impact on market efficiency. Where we identify non-compliance, we reach out to Reporting Issuers and request remedial filings. A Reporting Issuer should make remedial filings as soon as it becomes aware of an error to accurately inform investors of its activities, and to avoid any further late filing fees.

Tip: Staff encourage Reporting Issuers to remind their insiders regarding their SEDI filing obligations and to file reports on time to avoid late fees.

Late insider reports (generally, those filed more than five calendar days after the date of the transaction) are subject to late filing fees. Late filing fees are set out in Appendix D of OSC Rule 13-502 *Fees*.

We educate Reporting Issuers through our compliance reviews and we also reach out to new Reporting Issuers directly to inform them of insider reporting obligations. We encourage Reporting Issuers to implement insider trading policies and monitor insider trading to meet best practice standards in NP 51-201.

Reminder: The definition of "reporting insider" can be found in National Instrument 55-104 Insider Reporting Requirements and Exemptions (NI 55-104).

We remind Reporting Issuers and insiders that they should also refer to the definition of "significant shareholder" and the interpretation of "control" in NI 55-104 as well as the interpretation of "beneficial ownership" in the Act when determining who is required to file on SEDI. Understanding these definitions and interpretations will help Reporting Issuers identify and comply with their obligations.

Staff often see problems with reporting the type of ownership (for example, not reporting by type of holding or reporting it incorrectly). For indirect ownership or control or direction holdings, we remind Reporting Issuers and insiders to report the name of the registered holder.

A person is an indirect beneficial owner when the person's securities are held through an Issuer, an affiliated Issuer, a family trust, a third person or other legal entity. If you are an insider and you are the beneficial owner of the securities held in trust, you must report the holdings and transactions of the trust on your insider report. The key information to be included:

- Ownership type: Indirect

- Disclose the name of the trust as the registered holder

If you are an insider and you exercise control or direction over securities held in trust, you must report the holdings and transactions of the trust on your insider report. The key information to be included:

- Ownership type: Control or Direction
- Disclose the name of the trust as the registered holder

Refer to sections 3.2 and 3.3 of Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* for additional information.

How do I submit a SEDI late fee waiver request?

A reporting insider or their agent (as applicable, a "filer") can submit a late fee waiver request in writing to sedilatefees@osc.gov.on.ca.

The filer should include the insider's name, the Reporting Issuer's name and invoice number in the email and provide a detailed explanation of why the late fee should be waived.

Staff will consider late fee waiver requests on a case-by-case basis. However, filers should note that late fee waiver requests will generally not be granted for the following reasons:

- unfamiliarity with the legal obligations of an insider (generally, within 10 calendar days of becoming a reporting insider and five days for any change in holdings);
- an insider's or an agent's misunderstanding of the five day reporting requirement (e.g., reporting within five business days rather than five calendar days);
- delays caused by vacations or business trips;
- miscommunication between the insider and their agent or broker (e.g., failure of a broker to provide the insider with the details of a trade);
- negligence of filing agents.

Reminder to Insiders/Agents: Ensure the contact information is correct on the insider's profile and file any amendments within ten days of any change in name, relationship to a Reporting Issuer, or if the insider has ceased to be a reporting insider of the Reporting Issuer.

5. Our Service Commitments

Staff remind Issuers to consider the following when filing a confidential pre-file prospectus, preliminary prospectus or exemptive relief application:

- see our service commitments on the OSC website for guidance on when we will aim to respond to inquiries and issue comment letters;
- if you send an email or voicemail to Staff outside of our normal business hours from 9 am to 5 pm from Monday to Friday, you may not receive a response until the following business day;
- note that novel pre-file prospectuses, preliminary prospectuses or exemptive relief applications that are complex or raise new policy issues generally take longer to review;
- if you file a preliminary short form prospectus or a preliminary base shelf prospectus for a novel product/structure or after completing a reverse take-over transaction, a restructuring transaction or similar transaction, we may place the file on "long form" timing pursuant to subsection 5.5(3) of NP 11-202;
- when you file a preliminary prospectus, please make sure that any PIFs delivered with the preliminary prospectus have been properly completed (e.g., that the PIF has a response for each question and is signed). Deficient PIFs will give rise to Staff comments in connection with a prospectus filing;
- if an Issuer is currently subject to an OSC enforcement proceeding, any application for a "not a Reporting Issuer" order under subsection 1(10) of the Act may take longer than usual and would not be considered "routine".

Tip: Prior to filing a pre-file prospectus, preliminary prospectus or exemptive relief application check the OSC website at www.osc.ca for precedents, guidance and resources to assist with any questions you may have.

6. Administrative Matters

A) Participation fee form

Under OSC Rule 13-502 *Fees*, if a Reporting Issuer files its annual financial statements before they are due, the participation fee must also be paid on the same date. If the participation fee is not paid at the same time the annual financial statements are filed, late fees will be applied starting from the date that the annual financial statements were filed.

Each Reporting Issuer must select the participation fee form applicable to its Reporting Issuer classification as the forms and related fees are substantively different.

Staff have observed that many new Reporting Issuers are submitting participation fees that are often not required with their first annual financial statements. As a result, Staff are seeing an increase in refund requests. On this point, please refer to section 2.2(4) of OSC Rule 13-502 *Fees* which states:

> "*Despite subsections (1) to (3), a participation fee is not payable by a participant under this section if the participant became a reporting issuer in the period that begins immediately after the time that would otherwise be the end of the previous fiscal year in respect of the participation fee and ends at the time the participation fee would otherwise be required to be paid under section 2.3.*"

For example: ABC Inc. became a Reporting Issuer on January 10, 2022 and has a December 31 year end. ABC Inc. filed its annual financial statements for the period ended December 31, 2021, together with Form 13-502F2 on April 29, 2022, and paid a participation fee of $890. However, a participation fee was not required to be paid because the first participation fee is not due until the filing deadline for the next annual period ended December 31, 2022.

An Issuer that is not yet a Reporting Issuer in Ontario and is adding Ontario as a recipient agency to its previously filed annual filings is not required to submit a participation fee form and pay a participation fee. Participation fees would only be required if, as at the financial year end, the Issuer was a Reporting Issuer in Ontario.

> *Tip:* Pay participating fees at the same time as filing financial statements to avoid incurring late fees *and* select the applicable fee form.

B) Well-known seasoned issuers

On December 6, 2021, the CSA published temporary exemptions from certain base shelf prospectus requirements for qualifying well-known seasoned Issuers (WKSIs). These exemptions will reduce regulatory burden on qualifying large, well-known Reporting Issuers. The CSA has implemented the relief through local blanket orders that are substantively harmonized across the country, which in Ontario is: Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers* (Interim Class Order) (Ontario Instrument 44-501).

Reporting Issuers that meet the eligibility criteria in section 10 of Ontario Instrument 44-501 are exempt from the requirement to file and receive a receipt for a preliminary short form base shelf prospectus. Rather, Reporting Issuers file a final short form base shelf prospectus and receive a final receipt provided that required documentation is in good order.

To date, 22 Reporting Issuers have filed 25 WKSI prospectuses, with Ontario acting as the principal regulator.

XIII) Filing Procedure

A Reporting Issuer files, in place of a preliminary short form base shelf prospectus, a letter that is compliant with section 10 of Ontario Instrument 44-501. Specifically, this letter should be filed under the "Shelf Prospectus (NI 44-102)" filing type, "Preliminary short form prospectus" filing subtype. If the Reporting Issuer is a mining Issuer, any technical reports must also be filed under the "preliminary" subtype.

The Reporting Issuer then files a final short form base shelf prospectus under the "final" subtype together with all other documents typically filed with a final short form base shelf prospectus (for example: confirmation letter regarding final materials, legal consents, auditor consents, non-issuer submission to jurisdiction forms, material contracts).

Filing Type: Shelf Prospectus (NI 44-102)

- Filing Subtype: *Preliminary Short Form Prospectus*

  Documents to be filed:

  - WKSI letter (per section 10 of Ontario Instrument 44-501)
    Use document type: Preliminary short form prospectus
  - Technical report (for mining Issuers)
    Use document type: Technical report (NI 43-101)

- Filing Subtype: *Final Short Form Prospectus*

  Documents to be filed:

  - Final short form base shelf prospectus
  - List of directors and officers with locations of previously filed PIFs, if applicable
  - Any PIFs that have not been previously filed
  - All other documents typically filed with a final short form base shelf prospectus

XIV) WKSI FAQs

1. Are Reporting Issuers required to pay the $3,800 fee?

Yes, through SEDAR. The short form prospectus fee code remains the same (AI4A30).

2. What should be in the WKSI filing letter?

Please refer to requirements in section 10(l) of Ontario Instrument 44-501.

3. What documents should be filed under the preliminary subtype with the WKSI filing letter?

Only the document type "Technical reports (NI 43-101)" must be filed under the preliminary subtype (for mining Issuers). All other documents are to be filed under the final subtype.

4. Is the NP 11-202, section7.2(2) confirmation letter and qualification certificate required?

No. Please refer to section 10(k) of Ontario Instrument 44-501.

5. When do we file the final prospectus?

All documents are filed immediately after the WKSI filing letter preliminary submission.

6. Are PIFs required? If so, when should they be filed?

Yes. Unlike all other prospectuses, the PIFs are required to be filed with the final prospectus.

7. What additional documents are filed with the final prospectus?

Any documents typically filed with a final short form prospectus (see Item 4.2 of NI 44-101 section 7.3(4) of NP 11-202, i.e. confirmation letter, legal consents, auditor consents, non-issuer submission to jurisdiction forms, undertakings, material contracts etc.)

8. What will be the access level of the WKSI letter filed under "Preliminary Short Form Prospectus"?

The WKSI filing letter will be made public after the issuance of the final receipt.

9. What is the OSC's expected timing for issuance of a final receipt?

In the ordinary course, for a final base shelf prospectus filed before noon, and in compliance with the requirements of NI 44-102 and Ontario Instrument 44-501, we expect that the accelerated procedures will permit the receipt to be issued on the same business day. If a final base shelf prospectus is filed after noon, and in compliance with the requirements of NI 44-102 and Ontario Instrument 44-501, we expect that the accelerated procedures will permit the receipt to be issued before noon on the next business day.

C) Common preliminary prospectus filing deficiencies

Prospectus Review Officers in the Branch perform a basic preliminary review on all prospectus filings to ensure that there are no disclosure or fee issues that may cause us not to issue a preliminary receipt.

Staff would like to highlight some of the more common errors when filing a preliminary prospectus that often result in comments and requests for changes.

- *Incorrect or missing red herring language*. For example, missing either the short form and base shelf red herring language on the face page of a base shelf prospectus, or missing or incorrect jurisdictions.
- *Incorrect language of the certificate pages of the prospectus*. For example, long form language used on a short form prospectus, or missing or incorrect jurisdictions.
- *Missing or incorrect Auditor's Comfort letter*. For example, comfort letter does not reference the prospectus and date filed, or missing a statement that audit is substantially completed.
- *Incorrect or missing reference to the national instrument in the qualification certificate*. For example, the reference to Part 2 of NI 44-101 is incorrect or missing, or the certificate is not signed by an executive officer.
- *Missed jurisdictions for documents incorporated by reference*. For example, documents incorporated by reference are not filed in each jurisdiction where securities are being offered under the prospectus.

Tip: Provide a complete list of current directors, officers and promoters in the cover letter. To facilitate our review of PIFs, Issuers are advised to provide the following information in the cover letter accompanying the materials filed with a preliminary prospectus:

- the name of each current director, executive officer and promoter of the Issuer (and, if the promoter is not an individual, each director and executive officer of the promoter);
- for each of the individuals, an indication as to whether a PIF has been delivered with the preliminary prospectus or a PIF or other acceptable authorization document for the individual was previously filed or delivered;
- for each of the individuals for whom the Issuer has not delivered a PIF because a PIF or other acceptable authorization document was previously filed, the SEDAR project number and submission number under which the PIF or other acceptable authorization document was previously filed.

See OSC Staff Notice 41-702, *Prospectus Practice Directive #1 - Personal information forms and other procedural matters regarding preliminary prospectus filings*.

D) Prospectus filings – timing

Reminder: A preliminary prospectus, together with all accompanying materials in acceptable form, should be filed before 12:00 noon on the day that the receipt is required. If materials are filed after 12:00 noon, the receipt will generally be issued before 12:00 noon on the next business day and dated as of that day.

If Issuers anticipate filing a preliminary prospectus within a reasonable period of time after 12:00 noon (or 3:00 p.m. for a bought deal prospectus) and need a receipt issued that day, they should advise the Prospectus Review Officer by email at prospectusreviewofficer@osc.gov.on.ca and explain the reason for not filing before the applicable deadline. We will attempt to accommodate these requests but can provide no assurance that a receipt will be issued on the same day.

Where an Issuer plans to conduct an overnight marketed deal, the Issuer should: (a) advise the Prospectus Review Officer by email no later than the morning of the day on which the receipt is required (but prior to filing the materials), and (b) file all materials in acceptable form before 12:00 noon that day. In such cases, we will make reasonable efforts to issue a receipt for the preliminary prospectus at or just after 4:00 p.m. on the day of the filing.

We sometimes receive requests to issue a receipt for a preliminary prospectus at a specific time of the day. In rare circumstances, Staff may consider this request where the Issuer can demonstrate that there would be a material adverse consequence to the Issuer if a preliminary receipt is not issued at the specific time. The Issuer should make such a request, along with reasons in its cover letter accompanying the filing of the preliminary prospectus. The cover letter should also acknowledge that the Issuer bears the risk of the receipt being issued at a time other than the requested time. Issuers should note that we cannot guarantee that the request will be satisfied and it is possible that the receipt will be issued at a time other than the requested time.

Part B: Responsive Regulation

1. Access Equals Delivery

2. Continuous Disclosure Requirements

3. Listed Issuer Financing Exemption

4. Environmental, Social and Corporate Governance

5. Benchmarks

6. Designated Rating Organizations

7. NI 43-101 Consultation Paper

1. Access Equals Delivery

On April 7, 2022, the CSA published for comment proposed amendments to introduce an access equals delivery (AED) model for prospectuses, generally, annual financial statements, interim financial reports and related MD&A of non-investment fund Reporting Issuers. The proposed amendments contemplate that the delivery requirement for a document under Securities Law will be satisfied when the document is filed on SEDAR and, where applicable, a news release is issued to alert investors that the document is available and that a paper or an electronic copy can be obtained upon request. The proposed AED model does not remove an investor's ability to request documents in paper or electronic form or prevent an Issuer from delivering financial statements and related MD&A based on an investor's standing instructions. The purpose of the proposed amendments is to modernize the way documents are made available to investors and to provide a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than paper delivery. The comment period expired on July 6, 2022. The CSA received 29 comments from various market participants, including Issuers, investors, industry associations and law firms and is currently considering the feedback.

2. Continuous Disclosure Requirements

On May 20, 2021, the CSA proposed changes to the CD requirements for non-investment fund Reporting Issuers to streamline and clarify annual and interim filings. The comment period ended on September 17, 2021 and the CSA received 36 comment letters.

The proposed changes are as follows:

- streamline and clarify certain disclosure requirements in the MD&A and AIF for non-investment fund Reporting Issuers;
- eliminate certain requirements that are redundant or no longer applicable;
- combine the financial statements, MD&A and, where applicable, AIF into one reporting document called the annual disclosure statement for annual reporting purposes, and the interim disclosure statement for interim reporting purposes;
- introduce a small number of new requirements to address gaps in disclosure.

The feedback in respect of the proposed changes to streamline and clarify annual and interim filings was generally supportive. The CSA has considered the feedback received and is in the process of revising the proposed changes to reflect certain of the comments received and to improve or clarify drafting. The revisions are not considered to be material changes. Provided all necessary approvals are obtained, the CSA expects to publish the final amendments in 2023.

The CSA also consulted on a proposed framework for semi-annual reporting on a limited basis. The framework would allow Venture Issuers, that are not SEC issuers, the choice of reporting on a semi-annual rather than a quarterly basis. Alternative disclosure would be required for interim periods where financial statements and MD&A would not be filed. While a rule was not published for comment, the CSA sought public comment on whether rules consistent with the proposed framework could further reduce regulatory burden for these Venture Issuers while still providing investors with adequate information to make informed decisions. The stakeholder feedback in response to the proposed semi-annual reporting framework was mixed. The CSA will consider the feedback received in connection with any future CSA proposal in relation to semi-annual reporting.

3. Listed Issuer Financing Exemption

On September 8, 2022, the CSA published amendments to NI 45-106 to introduce a new prospectus exemption, the listed Issuer financing exemption, that came into force on November 21, 2022. The exemption will allow a Reporting Issuer to distribute freely tradeable securities of a type that trades on a Canadian stock exchange to any class of investor, primarily based on its CD record. The exemption is expected to reduce costs for Reporting Issuers raising capital through the public markets. It will also allow Reporting Issuers greater access to retail investors and provide retail investors with a broader choice of investments.

The exemption will be available to a Reporting Issuer that has been a Reporting Issuer for at least 12 months, is listed on a Canadian stock exchange and has filed all continuous disclosure documents required under Canadian Securities Law. An eligible Reporting Issuer must file a short offering document to supplement and confirm the accuracy of the Reporting Issuer's continuous disclosure record. Under the exemption, a Reporting Issuer could raise up to the greater of $5 million or 10 per cent of the Reporting Issuer's market capitalization, to a maximum of $10 million, annually. More significant transactions that could affect a Reporting Issuer's overall business will continue to require the use of a prospectus or other available prospectus exemption.

4. Environmental, Social and Corporate Governance

On October 18, 2021, the CSA published for comment National Instrument 51-107 *Disclosure of Climate-related Matters* to address the need for more consistent and comparable information to help inform investment decisions. The proposed requirements contemplate disclosure largely consistent with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). The comment period closed on February 16, 2022. We received 131 comment letters in response to this consultation. The CSA is currently considering stakeholder feedback on this consultation. On October 12, 2022, the CSA issued a news release noting that it is actively considering international developments, including the proposals published by the International Sustainability Standards Board

(ISSB) (further discussed below) and proposed rule amendments for climate-related information published by the United States Securities and Exchange Commission, and how they may impact or further inform the proposed climate-related disclosure rule published in October 2021.

The OSC continues to be involved with IOSCO's Sustainable Finance Task Force (STF), established in 2020 to carry out work to improve the consistency, comparability and reliability of sustainability-related disclosures. In March 2022, the ISSB, a newly created organization which will establish one of its two global offices in Montréal, published exposure drafts of a proposed general sustainability standard and climate-related disclosure standard. Staff, along with other OSC representatives, are also involved in the work of the IOSCO STF Technical Review Coordination Group Climate Working Group, which is conducting a deep-dive assessment of the ISSB's exposure drafts.

5. Benchmarks

A) Financial Benchmarks

On July 13, 2021, Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (MI 25-102), which establishes a comprehensive regime for the designation and regulation of financial benchmarks and those that administer them, came into force in Ontario.

In Canada, the OSC and the AMF are the co-lead authorities for CDOR and RBSL. We conduct reviews of designated benchmarks, designated benchmark administrators and benchmark contributors using a risk-based approach.

When we identify a concern, or an area of material non-compliance, we may take various actions depending on the nature of the observation and the perceived or potential harm to the capital markets. This may include, but is not limited to, recommending changes to the designated benchmark administrator's or a benchmark contributor's policies, procedures or information and documents on the firm's website, or requiring training or specified oversight of the firm's staff in areas where we have seen non-compliance with the firm's policies or procedures.

B) Commodity Benchmarks

On April 29, 2021, the CSA published proposed amendments to MI 25-102, which would establish a regime for the designation and regulation of commodity benchmarks and those that administer them. The comment period ended on July 28, 2021 and we received five comment letters. The CSA is in the process of preparing the final version of the amendments.

6. Designated Rating Organizations

In April 2012, the CSA implemented a regulatory oversight regime for credit rating agencies (CRAs) through National Instrument *25-101 Designated Rating Organizations* (NI 25-101) (DROs). The regime

recognizes and responds to the role of CRAs in our credit markets, and the role of CRA-issued ratings, which are referred to in securities rules and policies. Under the regime, the OSC has the authority to designate a CRA as a DRO, to impose terms and conditions on a DRO, and to revoke a designation order, or change its terms and conditions, where the OSC considers it in the public interest to do so.

There are currently five CRAs that have been designated as DROs in Canada under NI 25-101:

1. DBRS Limited
2. Fitch Ratings, Inc. (Fitch)
3. Kroll Bond Rating Agency, LLC (Kroll)
4. Moody's Canada Inc. (Moody's)
5. S&P Global Ratings Canada (S&P)

Kroll has only been designated as a DRO for the purposes of the alternative eligibility criteria in section 2.6 of NI 44-101 and section 2.6 of NI 44-102 for Issuers of asset-backed securities to file a short-form prospectus or shelf prospectus, respectively.

In Canada, the OSC is the principal regulator of these DROs. We conduct reviews of DROs using a risk-based approach. Our reviews focus on credit rating activities of the CRAs in Canada or in respect of Canadian Issuers.

When we identify a concern, or an area of material non-compliance, we may take various actions depending on the nature of the observation and the perceived or potential harm to the marketplace. This may include, but is not limited to, recommending changes to the DRO's policies, procedures or information and documents on the DRO's website, or requiring training or specified oversight of DRO staff in areas where we have seen non-compliance with the DRO's policies or procedures.

Review program for Fiscal 2022

The DRO review program for Fiscal 2022 focused on the following four topics:

- deficiencies identified by DRO compliance monitoring and internal audit functions;
- ESG factors;
- digital assets;
- global transition from interbank offered rates (IBORs) to risk-free rates (RFRs).

These risk-based topics were chosen following consideration of current regulatory issues and the OSC's statement of priorities for that fiscal year. In particular, the DRO review sought to obtain

information on certain topics that were being considered in other work streams of the Branch, to create the potential for "leveraging" knowledge and for regulatory efficiencies.

In terms of findings, we note that:

- most deficiencies reported by the DROs were related to adherence to policies, procedures and methodologies, followed by deficiencies related to management of conflicts of interest. Deficiencies were generally resolved through the DROs' internal processes;
- all the DROs consider ESG factors as part of their credit rating process;
- at the time of our review, the DROs had not rated any Canadian crypto asset Issuers or any Canadian entities that mine crypto assets;
- during the review period, DROs considered how discontinuation of the London Interbank Offered Rate (LIBOR) could impact existing or new ratings of securities or loan agreements that used LIBOR as a reference rate. In particular, the DROs considered how Issuers would transition from LIBOR to an RFR.

Review program for 2022-2023 fiscal year

In our DRO review program for the 2022-2023 fiscal year, we plan to conduct further work regarding deficiencies identified by DRO compliance monitoring and internal audit functions and the use of ESG factors in determining credit ratings.

International cooperation

The OSC is a founding member of the Supervisory Colleges for the three largest global credit ratings agencies (S&P, Moody's and Fitch). The Supervisory Colleges were established by the SEC, ESMA and other securities regulators as a result of an IOSCO recommendation and hold virtual meetings on a quarterly basis. Staff also play a key role in other virtual meetings with securities regulators regarding CRAs. The OSC is also a member of IOSCO Committee 6 on CRAs.

7. NI 43-101 Consultation Paper

On April 14, 2022, the CSA published Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* seeking comments on Canada's standards for disclosing scientific and technical information about mineral projects as the CSA considers ways to update and enhance mining disclosure requirements. The comment period closed on September 13, 2022. We received 74 comment letters in response to this consultation. The CSA is currently considering that feedback.

NI 43-101 was first adopted in 2001 and was last amended in 2011. The CSA continually monitors the mining disclosure requirements in NI 43-101, and has gathered data showing deficiencies in technical report disclosure identified through CD reviews, prospectus reviews, and targeted IORs. These deficiencies include:

- improper self-assessment by report authors of their independence, competence, expertise or relevant experience;
- poor quality of scientific and technical disclosure for early-stage exploration properties related to new stock exchange listings;
- inadequate mineral resource estimation disclosure, including disclosure related to reasonable prospects for eventual economic extraction;
- misuse of preliminary economic assessments;
- inadequate disclosure of all business risks.

The consultation paper is seeking general comments and asking specific questions touching on a wide range of issues, including:

- the application of innovative technologies to the requirement that a technical report author conduct a current personal inspection of a mineral project;
- verification of data from previous property owners;
- the broad, undefined range of precision of a preliminary economic assessment;
- the independence of and qualifications for technical report authors;
- disclosure requirements related to environmental matters;
- disclosure of the risks and uncertainties that arise as a result of the rights of Indigenous Peoples.

Part C: Resources

1. Prior Year Corporate Finance Branch Reports

2. Key Staff Notices

3. Staff Contact Information

1. Prior Year Corporate Finance Branch Reports

Many topics discussed in previous Branch reports remain relevant. These reports continue to be valuable resources for Issuers and their advisors to consult when preparing an Issuer's continuous disclosure or prospectus.

OSC Staff Notice 51-732 *Corporate Finance Branch 2021 Annual Report*

OSC Staff Notice 51-731 *Corporate Finance Branch 2020 Annual Report*

OSC Staff Notice 51-730 *Corporate Finance Branch 2019 Annual Report*

2. Key Staff Notices

New Staff Notices

Topic	Reference
Corporate Governance	• CSA Multilateral Staff Notice 58-314 – *Report on Eighth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions*
Disclosure Obligations	• CSA Multilateral Staff Notice 51-364 – *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021*

Previous Staff Notices

Topic	Reference
Prospectus Practice Directives	• CSA Staff Notice 41-307 *Corporate Finance Prospectus Guidance – Concerns Regarding an Issuer's Financial Condition and the Sufficiency of Proceeds from a Prospectus Offering* • OSC Staff Notice 41-702 – *Prospectus Practice Directive #1 – Personal Information Forms and Other Procedural Matters Regarding Preliminary Prospectus Filings*

	• OSC Staff Notice 41-703 – *Corporate Finance Prospectus Practice Directive #2 – Exemption from Certain Prospectus Requirements to be Evidenced by a Receipt*
Pre-File Reviews	• CSA Staff Notice 43-310 – *Confidential Pre-File Review of Prospectuses (for non-investment fund issuers)* • OSC Staff Notice 43-706 – *Pre-filing Review of Mining Technical Disclosure*
Disclosure Obligations	• OSC Staff Notice 51-711 (Revised) – *Refilings and Corrections of Errors* • OSC Staff Notice 51-723 – *Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices* • CSA Multilateral Staff Notice 51-361 *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2020 and March 31, 2019*
Forward-Looking Information	• OSC Staff Notice 51-721 – *Forward-Looking Information Disclosure* • CSA Staff Notice 51-356 – *Problematic promotional activities by issuers*
Industries	• CSA Staff Notice 51-363 *Observations on Disclosure by Crypto Assets Reporting Issuers* • CSA Staff Notice 55-317 *Automatic Securities Disposition Plans* • CSA Staff Notice 43-307 – *Mining Technical Reports – Preliminary Economic Assessments* • CSA Staff Notice 43-309 – *Review of Website Investor Presentations by Mining Issuers* • CSA Staff Notice 43-311 – *Review of Mineral Resource Estimates in Technical Reports*

	• CSA Staff Notice 51-327 – *Revised Guidance on Oil and Gas Disclosure* • CSA Staff Notice 51-342 – *Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities* • CSA Multilateral Staff Notice 51-349 – *Report on the Review of Investment Entities and Guide for Disclosure Improvements* • CSA Staff Notice 51-352 (Revised) – *Issuers with U.S. Marijuana-Related Activities* • CSA Staff Notice 51-357 – *Staff Review of Reporting Issuers in the Cannabis Industry* • OSC Staff Notice 51-719 – *Emerging Market Issuer Review* • OSC Staff Notice 51-720 – *Issuer Guide for Companies Operating in Emerging Markets* • OSC Staff Notice 51-722 – *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance* • OSC Staff Notice 51-724 – *Report on Staff's Review of REIT Distributions Disclosure*
Insider Reporting and SEDI	• OSC Staff Notice 51-726 – *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers* • CSA Staff Notice 55-316 – *Questions and Answers on Insider Reporting and the System for Electronic Disclosure by Insiders (SEDI)*
Use of the Internet and Cyber Security	• CSA Multilateral Staff Notice 51-347 – *Disclosure of cyber security risks and incidents* • CSA Staff Notice 51-348 – *Staff's Review of Social Media Used by Reporting Issuers*

Corporate Governance	• CSA Multilateral Staff Notice 58-313 – *Report on Seventh Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 58-312 – *Report on Sixth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*
COVID-19	• CSA Staff Notice 51-362 *Staff Review of COVID-19 Disclosures and Guide for Disclosure Improvements* • CSA Staff Notice 51-360 (Updated) – *Frequently Asked Questions Regarding Filing Extension Relief Granted by Way of a Blanket Order in Response to COVID-19*

3. Staff Contact Information

Topic	Staff Contact information	
Administrative Matters including insider reporting and cease trade orders	Eden Williams Manager, Regulatory Administration ewilliams@osc.gov.on.ca 416-593-8338	
Corporate Finance Management Team	Winnie Sanjoto, Director wsanjoto@osc.gov.on.ca 416-593-8119 Marie-France Bourret, Manager mbourret@osc.gov.on.ca 416-593-8083 Erin O'Donovan, Manager eodonovan@osc.gov.on.ca 416-204-8973	Michael Balter, Manager mbalter@osc.gov.on.ca 416-593-3739 Lina Creta, Manager lcreta@osc.gov.on.ca 416-204-8963 David Surat, Acting Manager dsurat@osc.gov.on.ca 416-593-8052
Mining Technical Disclosure	Craig Waldie Senior Geologist cwaldie@osc.gov.on.ca 416-593-8308	James Whyte Senior Geologist jwhyte@osc.gov.on.ca 416-593-2168
Preliminary Prospectus Receipts	Evelina Barsukov Review Officer ebarsukov@osc.gov.on.ca	Dale Victoria Grybauskas Review Officer dgrybauskas@osc.gov.on.ca

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

osc.gov.on.ca

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

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B.1.2 CSA Staff Notice 13-315 (Revised) Securities Regulatory Authority Closed Dates 2023

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Staff Notice 13-315 (Revised)
Securities Regulatory Authority Closed Dates 2023

December 8, 2022

We have a review system for prospectuses (including long form, short form and mutual fund prospectuses), prospectus amendments, pre-filings, and waiver applications. It is described in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (**NP 11-202**).

Under NP 11-202, a filer that receives a receipt from the principal regulator will be deemed to have a receipt in each passport jurisdiction where the prospectus was filed. However, the principal regulator's receipt will only evidence that the Ontario Securities Commission (**OSC**) has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has indicated that it is "clear for final". If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

The following is a list of the closed dates of the securities regulatory authorities for 2023 and January 2024. Bracketed information indicates those jurisdictions that are closed on the particular date. Issuers should note these dates in structuring their affairs.

1. Saturdays and Sundays (all)
2. Monday, January 2 (all)
3. Tuesday, January 3 (QC)
4. Monday, February 20 (BC, AB, SK, MB, ON, NB, PE, NS)
5. Friday, February 24 (YT)
6. Monday, March 20 (NL)
7. Friday, April 7 (all)
8. Monday, April 10 (all except AB, SK, ON, NL)
9. Monday, April 24 (NL)
10. Monday, May 22 (all)
11. Wednesday, June 21 (YT, NT)
12. Friday, June 23 (QC)
13. Monday, June 26 (NL)
14. Friday, June 30 (QC)
15. Monday, July 3 (all except QC)
16. Monday, July 10 (NL, NU)
17. Wednesday, August 2 (NL*)
18. Friday, August 4 (SK)
19. Monday, August 7 (all except YT, QC, NL, PE)
20. Friday, August 18 (PE)
21. Monday, August 21 (YT)

22. Monday, September 4 (all)

23. Monday, October 2**

24. Monday, October 9 (all)

25. Monday, November 13 (all except AB, ON, QC)

26. Thursday, December 21 (NT)

27. Friday, December 22 (NT, NU, QC)

28. Friday, December 22 after 12:00 p.m. (NB, PE, NS), after 1:00 p.m. (YT, BC)

29. Monday, December 25 (all)

30. Tuesday, December 26 (all)

31. Wednesday, December 27 (NT, NU)

32. Thursday, December 28 (NT, NU)

33. Friday, December 29 (NT, NU, QC)

34. Friday, December 29 after 12:00 p.m. (NB), after 1:00 p.m. (BC)

35. Monday, January 1, **2024** (all)

36. Tuesday, January 2, **2024** (QC)

*Weather permitting, otherwise observed on the first following acceptable weather day, such determination made on morning of holiday.

**This is the National Day of Truth and Reconciliation. Please check securities regulatory authorities' websites closer to this date to see if a particular jurisdiction's offices will be closed.

B.1.3 CSA Staff Notice 25-306 Activist Short Selling Update

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 25-306
Activist Short Selling Update

December 8, 2022

Part 1. Introduction

On December 3, 2020, the Canadian Securities Administrators (**CSA** or **we**) published CSA Consultation Paper 25-403 *Activist Short Selling* (**Consultation Paper**) for a 90-day consultation period. The purpose of the Consultation Paper was to facilitate discussion relating to activist short selling and its potential impact on Canadian capital markets. We received 23 comment letters and thank all those who provided comments. A summary of comments and responses is attached at **Appendix A**. Since the Consultation Paper was published, we have also conducted informal discussions and consultations with various regulatory advisory committees and industry groups. We have actively monitored international developments related to short selling, including those directly relevant to activist short selling.

Part 2. Executive Summary

Our consultations and comments received in response to the Consultation Paper show that there continue to be negative views associated with activist short selling and, in general, with short selling. This perception is primarily held by issuers targeted in recent campaigns. Some stakeholders believe that changes to the regulatory requirements should be considered to address perceived problems with short selling, including activist short selling. Some commenters acknowledge there are positive aspects of activist short selling, particularly its contribution to price discovery.

We acknowledge the continued and persistent negative perception of short selling and the concerns some stakeholders have with the existing regulatory regime for short selling. Today, we are also publishing Joint CSA-IIROC Staff Notice 23-329 *Short Selling in Canada* (**Joint CSA-IIROC Staff Notice 23-329**) to seek feedback on general short selling issues and the existing regulatory framework. We encourage market participants and other stakeholders to provide comments on this notice. The feedback we receive will inform any future regulatory initiatives in this area.

At the same time, CSA staff, through its existing committees, continues to monitor and analyze activist short selling initiatives, and short selling in general, to understand whether there are gaps in the regulatory regime that need to be addressed to ensure investor protection and foster fair and efficient capital markets. In particular, we:

- continue to enforce securities legislation provisions relevant to activities of dishonest activist short sellers, including misrepresentation, fraud and market manipulation;
- monitor the number of activist short selling campaigns and review trends and campaign statistics;
- review complaints regarding activist short selling and possible manipulation in the regular course;
- monitor other domestic initiatives including, most importantly, the ongoing failed trades study conducted by the Investment Industry Regulatory Organization of Canada (**IIROC**) to see whether the findings support regulatory initiatives that may impact activist short selling; and
- monitor international short selling initiatives.

Part 3. Recent Developments

Since the publication of the Consultation Paper, there have been several developments that are relevant to short selling and activist short selling. We outlined them below and discussed them in more detail in Joint CSA-IIROC Staff Notice 23-329.

a. IIROC's Failed Trades Study

As highlighted in its public priorities,[1] IIROC conducted a failed trades study which analyzed data provided by the Canadian Depository for Securities (**CDS**) to take an in-depth look at the settlement process and the handling of fails to identify whether any systemic issues exist. IIROC last studied settlement fails in 2007, but this was done using limited data. IIROC updated this study

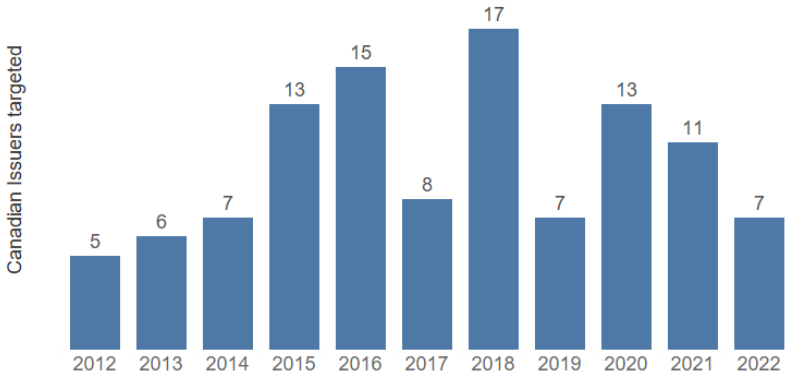
[1] https://www.iiroc.ca/news-and-publications/notices-and-guidance/iiroc-priorities-2021

with recent data covering a five-year period, in part to reassess the results of their previous study and to determine whether there is a connection between failed trades and short selling or other administrative causes. Joint CSA-IIROC Staff Notice 23-329 includes a high-level overview of the findings from this study. IIROC Notice 22-0190, also published today, provides additional detail.

b. Recent Activist Short Selling Activity

Figure 1 below shows the annual number of Canadian issuers that have been targeted by prominent activist short sellers between 2012 and 2021.[2] As of October 7th, 2022, seven Canadian issuers have been the target of activist short seller campaigns since the start of the year. Over the same period, 50 US issuers have also been targeted by activist short sellers.

Figure 1 – Annual Number of Canadian Issuers targeted by Activist Short Sellers (Note: the count for 2022 is as of October 7, 2022)



Contrasting these statistics with the total number of listed issuers in Canada, we observe that annually, less than 1% of all Canadian issuers have been the target of activist short selling campaigns.[3] In comparison, 3% of all U.S issuers and less than 0.5% of Australian issuers have been the target of similar activist short selling campaigns.

Part 4. Themes from the Consultation Paper

a. Commenters

We received 23 comment letters on the Consultation Paper from stakeholders that included:

- Seven issuers;[4]
- Four full-service business law firms;
- Seven industry groups;
- One exchange;
- One asset management company;
- One investment dealer;
- One financial advisory firm; and
- One individual.

We attached the summary of comments and the CSA's responses at Appendix A. We did not receive, through the public comment process or through outreach to retail investor groups, feedback from retail investor representatives.[5] Similarly, we did not receive

2 Data sourced from Activist Insight and issuers identified based on their headquarter location.
3 CSA analysis of activist short seller targets from Activist Insight and annual listed issuer counts from the World Federation of Exchanges for the period 2010 to 2021.
4 The British Columbia Securities Commission is the principal regulator for four of the issuers, with the Alberta Securities Commission, the Ontario Securities Commission and the Manitoba Securities Commission each being principal regulator for the others.
5 We note that, while it was published for comment, the Consultation Paper was also distributed to the OSC's Investor Advisory Panel at their meeting in January 2021, shortly after the publication of the Consultation Paper, but no comments were made.

comments from activist short sellers, although the asset management company that commented indicated that it had, in the past, participated in activist short selling campaigns.

b. Themes from comments received

The Consultation Paper focused on issues identified through CSA staff's research and solicited feedback from stakeholders, supported by evidence, whenever possible, on specific questions. The purpose was to further inform our analysis of the issues and to ensure that the CSA had all the relevant information before determining whether regulatory intervention is required. The topics in the Consultation Paper included:

- the nature and extent of activist short selling activity in Canada;
- the Canadian and international regulatory framework; and
- issues related to enforcement and other potential remedial actions.

Several themes emerged from the comments on the Consultation Paper:

(i) use of social media;

(ii) perception versus evidence;

(iii) the short selling regulatory regime; and

(iv) need for regulatory change.

Each of these themes will be further discussed below.

(i) Use of Social Media

While the Consultation Paper did not specifically focus on the impact of social media or other shared information platforms on capital markets, commenters raised many concerns related to the use of social media.

We acknowledge that social media has created an environment for investors, companies, dealers, advisers and other intermediaries to have access to an unprecedented amount of information and disinformation. The speed at which this information is conveyed and responded to, as well as questions about the accuracy and reliability of the information, are of significant concern. The CSA recognizes that social media can present challenges when used for sharing information with the market[6] and has cautioned investors to consider the source of information and advice when making investments decisions.[7]

These concerns were reiterated by commenters, particularly with respect to the speed of today's communication technologies which can cause damage to an issuer's reputation and valuation before the issuer has an opportunity to respond. Some commenters also focussed on the need for laws to ensure social media platforms preserve evidence for review and identification, particularly where the activist short seller relies on a pseudonym.[8] It should also be noted that commenters who had a negative perception towards activist short sellers did not distinguish the actions of anonymous activists as being more problematic than named ones.

We acknowledge that social media platforms are a significant data source in today's markets. We also note that there are current challenges with accessing data from some platforms and with parsing unstructured social media data to clearly identify activist short sellers from other users that may only be expressing a negative opinion. We see that industry participants are planning to monitor online platforms more closely, including for risk management and investor relation purposes. Off-the-shelf and custom-built surveillance tools are in development that would parse through social media. Issuers are starting to actively monitor social media platforms for comments, including those made by activist short sellers, and may respond to negative statements.[9] IIROC has also indicated that their surveillance alert workflow includes basic social media scans, including in circumstances when there is no relevant news to explain any unusual market activity.[10]

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6 See CSA Staff Notice 51-348 *Staff's Review of Social Media Used by Reporting Issuers* and CSA Staff Notice 51-356 *Problematic promotional activities by issuers*.

7 See Joint CSA - IIROC statement on recent market volatility dated February 1, 2021: "We caution investors to consider the source of information and advice they are relying on to make investment decisions. Online chat rooms are unregulated and may contain information that is inaccurate or inappropriate for some investors. Investors should always check the registration of any person or business trying to sell them an investment or give them investment advice. To do this, investors can visit https://aretheyregistered.ca or IIROC's database of advisors working for IIROC regulated firms."

8 One commenter went as far as recommending that activist short sellers should be strictly restricted in terms of their ability to promote their cause to the public via media/communications outlets (for example, short sellers should not be allowed to go on TV with their story).

9 For example, see *How to deal with rumors on social media* at https://content.irmagazine.com/story/ir-magazine-summer-2021/page/19.

10 IIROC reviews social media indicators such as buzz and sentiment analysis provided by third-party data vendors (Eikon and Bloomberg) but does not have full confidence in the effectiveness of these tools to date. The surveillance team also relies on manual search methods on well known websites such as stockhouse.com, AKN (for mining), StockTwits and Seeking Alpha.

The problematic conduct observed in connection with the use of social media or other online platforms is not unique to activist short selling, but rather it can be seen as part of a broader trend in the market. Issuers, investors and activists (both long and short) increasingly rely on online platforms to promote their views. Unlike issuers and certain shareholders who are subject to specific securities law requirements on the long side, activist short sellers are not subject to any specific regulatory framework. The regulatory requirements applicable to activist short selling are limited to the general provisions applicable to all market participants, including prohibitions against fraud and market manipulation, the dissemination of false and misleading statements, and trading with knowledge of undisclosed material information. We acknowledge that this may create a perception of imbalance from a regulatory framework perspective. We note, however, that the purpose of regulation of public disclosure by issuers is to address the information asymmetry that may exist between an issuer's insiders and the market and to help price securities accurately. Activist short sellers do not generally have access to non-public information.

That said, there are initiatives such as the recent B.C. *Securities Act* amendments and proposed section 94(1) *False or misleading statements, information about reporting issuers* of the proposed *Capital Markets Act* (Ontario) which could help address the risk of dissemination of false and misleading statements and would capture those made through social media and would apply to statements made by activist short sellers. These are discussed in more detail below.

(ii) Perception versus Evidence

In the Consultation Paper, we published the results of CSA staff's research on activist short selling. We did not identify widespread market abuse related to activist short selling through our research and requested that commenters provide new sources of information or data that we could consider in determining whether there is evidence of systemic abusive related to activist short selling activities.

Based on the comments received, we are of the view that we considered all relevant sources of information when conducting our research. However, the comments highlighted that stakeholders such as issuers, law firms and related industry groups continued to see activist short selling in a negative light, with many believing that problematic conduct permeates this type of activity and that additional regulatory measures are necessary. Other market participants, however, noted the beneficial aspects of activist short selling. This latter group recognized that activist short sellers can play an important check and balance on the higher propensity for promotional information that exists in the market and may be the only voice expressing a "sell" recommendation where their research warrants. These stakeholders cited the lack of evidence of problematic activity as a reason against the introduction of regulatory measures and cautioned that new measures could potentially curtail or deter legitimate activity and negatively impact markets.

We agree that, to the extent any regulatory measures are considered, such measures should be tied to evidence of problematic conduct with activist short selling and consideration be given to potential impacts on the activity, including any unintended consequences on market efficiency and the price discovery process. The CSA have access to information regarding activist short selling campaigns. Should we see evidence that regulatory changes are needed, they would be considered.

(iii) The Short Selling Regulatory Regime

Many of the comment letters focussed on the short selling regime in general and raised some concerns that were not specific to the activist short selling issues raised in the Consultation Paper.[11] The views expressed by commenters included:

- concerns with perceived "naked" short selling and the need to impose pre-borrow requirements;
- potential harm caused by short selling in connection with prospectus offerings and private placements;
- a perceived negative impact that resulted from the removal of the tick test[12] in 2012 and a recommendation to consider adopting a regulation similar to the modified uptick rule of the Securities and Exchange Commission (**SEC**);[13] and
- inadequate frequency and disclosure of short selling positions and identities (unlike the European Union or Australia).

[11] Several commenters also provided their views on recommendations from Ontario's Capital Markets Modernization Taskforce (**Taskforce**) report related to short selling, available at https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021, regarding pre-borrow requirements (the recommendation was for IIROC to revise the Universal Market Integrity Rules (**UMIR**) to require an investment dealer to confirm the ability to borrow securities prior to accepting a short sale order); mandatory buy-in (the recommendation that short sellers be subject to a mandatory buy-in for short sales that failed to settle, triggered at settlement date + two days); limits on short selling in connection with prospectus offerings and private placements (the recommendation is for OSC to adopt a rule prohibiting market participants and investors who previously sold short securities from acquiring them under prospectus or private placements).

[12] The tick test referred to a previous requirement in UMIR that a short sale not be made at a price which is less than the last sale price of the security.

[13] SEC Rule 201 generally requires marketplaces to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution or display of a short sale at an impermissible price when a stock has triggered a circuit breaker by experiencing a price decline of at least 10 percent in one day (based on the prior day's closing price). Once the circuit breaker in Rule 201 has been triggered, the price test restriction will apply to short sale orders in that security for the remainder of the day and the following day, unless an exception applies.

We acknowledge the concerns raised. As we noted above, the CSA and IIROC are publishing the Joint CSA-IIROC Staff Notice 23-329 to seek feedback on broader short selling issues and the existing regulatory regime. Any regulatory proposals that may emerge, either from IIROC or from the CSA, would be subject to the regular public comment and approval processes.

(iv) Need for Regulatory Change

The comments on the Consultation Paper provided a range of views on whether regulatory change was necessary. Some advocated for sweeping reforms to short selling regulation (as discussed above), while others were of the view that incremental and targeted changes are more appropriate when supported by evidence. Some commenters were of the view that no change was necessary at all. We found that certain market participants (mainly issuers, related industry associations and some law firms) were more supportive of regulatory change. The suggested changes are described below.

In the Consultation Paper, we asked whether:

- there are market developments that warrant revisiting the regulatory framework;
- there is a connection between failed trades and activist short selling; and
- there are relevant regulatory requirements in other jurisdictions that should be considered.

On the issue of market developments, the influence of social media figured prominently in responses received. We acknowledge the need to monitor the impact of social media on the capital markets.

Many commenters were also of the view that a comprehensive study on failed trades should be conducted but did not indicate that there was a connection between failed trades and problematic activist short selling activity. As we noted in Part 3 a above, IIROC conducted a new study of failed trades and the findings are outlined in the Joint CSA-IIROC Staff Notice 23-329 and in IIROC Notice 22-0190, published today.

We set out below the proposals that were put forward or addressed in the comment letters received on the Consultation Paper related to activist short selling concerns and we also identify some challenges or areas for further consideration.

a. Guidelines

Some commenters, including some who view activist short selling favourably, suggested that guidelines or best practices would benefit the market with respect to what may be considered problematic activity. This is similar to the approach taken by the Australian Securities and Investment Commission (**ASIC**), which published INFO 255 *Activist short selling campaigns in Australia*, an information sheet which, among others, described the existing Australian regulatory framework for short selling and recommended "better practices" for activist short sellers.[14]

With respect to issuing guidance regarding activist short selling, we note that typically guidelines are tied to a national instrument or rule and we do not presently have any rules which govern the conduct of activist short sellers (as noted above, there is no regulatory requirement specifically targeting activist short sellers). Should any regulatory requirements implemented in the future, we would consider what additional guidance is needed to complement such requirements.

b. Reporting and Disclosure Requirements

Comments received on this topic varied. For example:

- some commenters supported regulatory changes requiring that activist short sellers disclose their opening, changes in and closing positions, as well as their identity either to the regulator, the public, or both;[15]
- some noted that requiring additional disclosure should only be done once there has been focus on studying the Canadian liquidity environment, underlying data and the potential impact of new disclosure obligations;
- some cautioned that introducing public disclosure requirements could potentially lead to Reddit-type message board traders inciting short squeezes;
- it was noted that public disclosure and reporting, especially by activist short sellers could also have the unintended consequence of promoting herd behavior to further drive down the target's stock price;[16] and

[14] Available at https://asic.gov.au/regulatory-resources/markets/short-selling/activist-short-selling-campaigns-in-australia/.

[15] This is related to the reference in the Consultation of a group of U.S. academics who petitioned the SEC to impose a "duty to update" a short position when there has been a voluntary disclosure of that short position.

[16] For example, on May 17, 2019, Muddy Waters disclosed a 0.5% short position on Solutions 30 SE as required under European securities regulations. Following this disclosure and prior to the release of any short report, Solutions 30 SE's stock price dropped by 20% on May 21st, 2019. See "Muddy and 5 other HFs shorting Solutions 30," Breakout Point blog, August 2, 2019 and Michelle Celarier, "Shares of Solutions 30, a Muddy Waters Short, Tank After Auditor Raises

- some commenters raised the issue of whether there should be symmetry for reporting obligations between activists on the long and short side.

Regulators in some foreign jurisdictions already impose reporting and disclosure requirements on short sellers with short positions above certain thresholds. International regulatory developments in this area are discussed in Joint CSA-IIROC Staff Notice 23-329. We are monitoring these developments and will consider whether additional disclosure of short selling activities, which may include those of activist short sellers, is needed. As noted above, however, imposing disclosure requirements on activist short sellers would first require defining who the activist short sellers are, creating a regulatory framework over them and determining whether that framework should include reporting of synthetic short positions. The creation of such a framework would likely require a change in securities legislation.

c. Implementation of a Hold Period

Some commenters proposed imposing a brief trading moratorium or minimum holding period on any stock promoter or short seller who opens a large position and disseminates market-moving information, irrespective of the medium.[17] The rationale is that a holding period could provide the market with an opportunity to evaluate the quality and credibility of the information. We are not aware of any securities regulators who have implemented such a measure at this time.

While we agree that the introduction of a hold period may give more time for the market to absorb information disseminated from an activist short seller's report, we note that it could also disincentivize activist short sellers from publishing short reports, resulting in less informationally efficient markets. Moreover, any hold period would need to be implemented equally on both the short and long sides of trades to be fair and would also need to consider synthetically held positions. A hold period could further raise practical challenges, such as identifying the duration of this hold period and imposing them on non-regulated entities.

The impact of such measures would have to be carefully studied and examined to determine whether the potential benefit outweighs the risks this measure introduces.

d. Advance Notice to Issuers

The proposal was for a requirement that the activist short seller provide their report to the issuer in advance of publishing. This would give the issuer an opportunity to review the report, identify factual errors and have the means to provide their own rebuttal before it is released into the public. The proposal recognizes that issuers may face practical impediments, such as the fact that they are constrained by disclosure rules and that there are practical difficulties in responding quickly to sometimes broad allegations in a timely manner to avoid or minimize the negative price impact of a short seller's report.

We acknowledge that issuers may find it difficult to respond on a timely basis to activist short seller campaigns spread through social media or other online platforms. Even if issuers are given advance notice, they may not be able to respond because existing insider trading rules would generally preclude the target from engaging with the activist short seller on an open access basis. Specifically, the targeted issuer would likely find itself constrained in its reply if the reply to the activist short-seller allegations would involve disclosing material facts. The same issue would arise if, for example, an unfavourable report is published in the media, or allegations arise from other parties not connected to short sellers. Further, imposing requirements on activist short sellers who are not market participants or otherwise registered also poses jurisdictional challenges for regulators. There are also challenges with determining an appropriate length for the advance notice to the issuer. The longer the duration, the higher the risk of information leaking into the market and impacting the issuer's stock price before the issuer has an opportunity to respond.

We also recognize the importance of timely dissemination of material undisclosed information to the market by bona fide short selling reports that improves price discovery.

e. Impose Disclosure of Interest Requirement or Standards

This proposal was to require that any person publishing a statement concerning an issuer's public disclosures and either (i) has either a long or short position in the securities of the issuer to which the statement relates, or (ii) is in any arrangement that may result in financial gain to the person as a result of, or in connection with the publication of the statement, adhere to standards of professionalism and objectivity such as those required by the CFA Institute of its members.

We note that activist short selling reports generally include disclosure that the short seller has a position in the securities of the issuer they cover and that they may stand to realize gains due to price changes.[18]

Concerns," Institutional Investor, May 24, 2021.

[17] The Consultation Paper referenced a proposal for a 10-day minimum holding period that was mentioned in a news article. See Mark Cohodes, "Pump-and-dump stock trading needs new rules for the digital age", FT Online, April 26, 2020 at https://www.ft.com/content/01b765c2-854e-11ea-b6e9-a94cffd1d9bf.

[18] For example, see the terms of use for Muddy Waters' research reports and the legal disclaimer for Hindenburg's research reports.

f. Expanded Offence for Misleading Information

Recent B.C. *Securities Act* amendments that came into force introduced an additional prohibition for making misleading statements for those engaged in "promotional activities". Under this prohibition, a person engaged in a promotional activity must not make a statement or provide information that is false or misleading in circumstances where a reasonable investor/person would consider that statement or information important when making an investment decision. [19] Unlike other securities law prohibitions against making a misrepresentation, this prohibition does not require that the statement or the information:

- be "materially" misleading or untrue; or
- be reasonably expected to have a significant effect on the market price or value of a security.

Similarly, in Ontario, section 94(1) *False or misleading statements, information about reporting issuers*, *etc.* of the proposed *Capital Market Act*[20] which, if adopted, would replace the *Securities Act* (Ontario) and the *Commodity Futures Act* (Ontario), would prohibit a person engaged in a promotional activity from making a statement or providing information about a reporting issuer or an issuer whose securities are publicly traded that the person knows or reasonably ought to know is false or misleading and would be considered to be important by a reasonable investor in determining whether to purchase or trade a security of the issuer or related financial instrument. Proposed section 94(2) prohibits attempts to make these statements and proposed section 94(3) allows the OSC to prescribe exceptions from this prohibition. These proposals are intended to implement Recommendation 57 of the Taskforce report[21] to create a prohibition to effectively deter and prosecute misleading or untrue statements about public companies and attempts to make such statements. The comment period for the proposed *Capital Markets Act* ended on February 18, 2022.

An activist short seller's attempt to depress an issuer's stock price by knowingly spreading material misinformation is already prohibited conduct under securities legislation. However, there are views that the thresholds for proving this contravention are too high and a reasonable investor standard may be a good balanced approach to improving public disclosure without adding excessive burden to market participants. A few commenters, however, indicated that the elimination of a market impact assessment and materiality threshold can be expected to have a significant chilling effect on short selling and that any benefit to these changes will outweigh the cost. Concerns were also raised that activist short sellers (and other market participants without access to non-public information on an issuer) should not be held to any standard resembling that of company insiders.

The changes to the BC *Securities Act* with respect to making misleading statements in the course of promotional activities in BC and the proposed section 94 in the Capital Markets Act in Ontario may introduce an additional deterrent to problematic conduct through potential enforcement action. It is too early to conclude whether they will be an effective tool as it relates to activists, or whether they will lead to a potential increase in prosecutable cases against potentially problematic activist short sellers or reduce the number of problematic campaigns against reporting issuers. The CSA will monitor their impact.

g. Civil Liability for Misleading Information

Currently, there is no mechanism under securities law to seek damages against activist short sellers conducting short and distort campaigns. Commenters noted that an issuer targeted by an abusive short selling campaign, as well as the issuer's security holders that are induced to sell their securities on the basis of misinformation, are often forced to wait and see whether the regulator will commence regulatory proceedings. Some foreign jurisdictions provide a private right of action for the making or dissemination of false or misleading information.[22] A private right of action could provide recourse for targets of "short and distort" campaigns while also providing a complementary deterrent to problematic activities associated with activist short selling. One commenter was of the view that a private right of action must be based on a short seller's deliberate and calculated conduct and not mere negligence or a good faith mistake, nor should such a provision become a form of insurance against losses that are actually caused by other forces such as investment risk.

At this point, we have not found evidence of systemic abuse related to activist short selling campaigns that would support regulatory changes such as the introduction of a private right of action against activist short sellers. However, as noted in our Consultation Paper, there are existing common and civil law remedies that could apply to problematic activist short selling campaigns, but those have not typically been used by issuers or favoured by the Courts given the freedom of expression issues they introduce.

19 *Securities Act* (British Columbia), RSBC 1996, c 418, 50 (1). A similar amendment was also proposed by the Taskforce.
20 Available at https://www.ontariocanada.com/registry/view.do?postingId=38527&language=en
21 Ibid. footnote 11.
22 See, for example, *Australia Corporations Act 2001* (Cth), sections 1041E and 1041I.

Part 5. Questions

Please refer your questions to any of the following CSA staff:

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APPENDIX A

Summary of Comments on CSA Consultation Paper 25-403 Activist Short Selling

List of Commenters

	Commenter	Abbreviation
1.	**Anson Advisors Inc.**	Anson
2.	**McMillan LLP**	McMillan
3.	**Global Principles for Sustainable Securities Lending**	GPSSL
4.	**Alternative Investment Management Association**	AIMA
5.	**Save Canadian Mining**	SCM
6.	**Northern Dynasty Minerals Ltd.**	NDM
7.	**NEO Exchange Inc.**	NEO
8.	**Davies Ward Phillips & Vineberg**	DWPV
9.	**Norton Rose Fulbright Canada LLP**	NRF
10.	**Corus Entertainment Inc.**	CEI
11.	**Finning International Inc.**	FII
12.	**NOVAGOLD Resources Inc.**	NRI
13.	**Badger Daylighting Ltd.**	BDI
14.	**Exchange Income Corporation**	EIC
15.	**Standard Uranium**	SU
16.	**Canadian Investor Relations Institute**	CIRI
17.	**Peter Brown**	PB
18.	**Fiore Management & Advisory Corp**	FMAC
19.	**Prospectors & Developers Association of Canada**	PDAC
20.	**Portfolio Management Association of Canada**	PMAC
21.	**Canadian Advocacy Council of CFA Societies Canada**	CAC
22.	**Stikeman Elliott LLP**	SE
23.	**RBC DS**	RBC DS

Summary of Comments

Summary of comments	Responses
General comments	
Activist short selling • While many commenters acknowledged the benefits of short selling to the market, including noting the improvement to liquidity, some held the view that activist campaigns served to negatively impact shareholder value and investor confidence. **Short selling regulatory regime** • There was a range of views on the need for regulatory change by the commenters. Some advocated for sweeping reforms to short selling regulation in general. It was noted that gaps in the current short selling regime must be considered to address short selling issues; others were of the view that incremental changes are more appropriate while others recommended to not make any immediate changes. • There were also views expressed that what is required is further research, consultation and education because there is insufficient evidence of abusive activist short selling campaigns to support changes. • Some commenters raised concerns about the regulatory focus being on activist activity rather than deceptive practices, and were of the view that further regulation of activist short selling activity, or short selling activity more generally, could have negative consequences for market efficiency, including impeding price discovery and curtailing legitimate investing activity.	• We would like to thank all those who submitted comments. • Staff acknowledge the important role that short selling, including activist short selling plays in the market. • We are monitoring international regulatory developments regarding short selling with a view to determine what, if any, may be appropriate for the domestic regulatory framework. • As mentioned in the Staff Notice, we are also publishing Joint CSA-IIROC Notice 23-329 to describe the results of IIROC's failed trades study and possible regulatory next steps.
Question 1: What is your perception about activist short sellers? Please describe the basis of that perception.	
• The majority of commenters were of the view that short sellers play an important role in the financial markets by promoting transparency, contributing to liquidity and price discovery, and thus contributing to market integrity and investor protection; it was noted that it is important to hold issuers accountable and activist short selling encourages investors to scrutinize public company disclosure and activities; other benefits of short selling included: o it can help identify market bubbles; o It can contribute to the discovery of fraud; • Several commenters expressed a negative view towards all activist short sellers. Two of these commenters were the target of an activist short seller campaign that they claim represented the hallmarks of short and distort campaigns (rapid distribution of a purportedly false and misleading research report on multiple social media channels and undisclosed short positions). Concerns regarding activist short selling raised included: o activist short sellers have the ability to issue a short report that could have a material impact on a company without any regulatory oversight, detailed regulatory requirements and recourse; and o issuers and their auditors may be unable to respond to information in activist short selling reports because short	• We acknowledge the negative perception some participants have about activist short selling, which has often been associated with short and distort campaigns, and the concerns raised that issuers encounter challenges responding to activist short selling statements.

Summary of comments	Responses
sellers do not engage with issuers prior to issuing their reports; • A couple of commenters thought that activist short sellers are destructive as they operate for their own profits and make false claims. • A few commenters acknowledged that there may be a negative perception of short selling, including by issuers; one commenter noted that the activities of short selling are often associated with manipulative activities such as "short and distort" strategies, but noted that this perception does not appear to occur on the long side, despite "pump and dump" strategies, with more deference being given to promoters because of their position in promoting, rather than challenging, the issuers.	
Question 2: Can you give examples of conduct in activist short selling Campaigns that you view as problematic?	
• Many comments raised the different regulatory treatment of issuers versus activist short sellers. • Commenters provided the following examples of problematic conduct in activist short selling: o campaigns predicated on the manipulation of information or market activity; o use of media by short sellers given restrictions on issuers on what they can publicly disclose; o use of employees to access confidential business information; o the publication of information about an issuer by a source who knows, ought reasonably to know or fails in exercising any diligence in determining that the information is false, misleading or exaggerated; o publicly posing strategic questions to management during times when management may not be in a position to fully respond to the inquiry; o making statements intended to cast aspersions on an issuer or particular officers or directors that are inherently very difficult to disprove (e.g. governance matters); o failing to meet or speak with the issuer before launching a campaign; • One commenter expressed their view that the fact that an activist short seller could publish their views in the absence of any regulatory process was itself problematic and stands in contrast to the disclosure regime imposed on issuers. Similarly, another commenter thought there was a difference between the regulatory scrutiny that an issuer faces in comparison to the activist short seller. • Commenters also thought that a campaign based on diligence of publicly available information is not problematic, but one commenter noted that it should be accompanied by a disclaimer. • Some commenters were of the view that the types of problematic activity listed in the Consultation Paper are not limited to short positions but rather can be equally harmful when used in a campaign advocating a long perspective.	• With respect to the comments regarding the different regulatory treatment of issuers versus activist short sellers, we note that, while there is regulation of issuers' public disclosure, this is in part to address the information asymmetry that exists between the issuer and the market and to help price securities accurately. These same considerations do not apply to activist short sellers, who are not typically market participants under securities legislation and have no regulatory obligations tied to information and opinions they disseminate. • That said, Staff note that enforcement action (e.g. for making materially misleading statements that have market impact) may be taken against activist short sellers and many of the examples of problematic conduct provided could theoretically fall within the scope of existing offences under securities legislation. Staff note the challenges around enforcement action that many commenters articulated. • Staff agree that some of the types of problematic activity that may be observed in connection with an activist short selling campaign could equally occur in the context of promotional activities as well. Please refer to the response to Question 15, where we discussed the recent amendments to the B.C. *Securities Act* that introduced a new prohibition for making misleading statements for those engaged in promotional activities, and our commitment to monitor the outcomes of these legislative changes.

Summary of comments	Responses
Question 3: Given the focus of the available data is on prominent activist short sellers, what is your view regarding less prominent activist short sellers or pseudonymous activist short sellers targeting Canadian issuers? How can they be identified? Is there any evidence that they are engaging in short and distort Campaigns?	
• Two commenters indicated that short and distort campaigns can originate from any activist short seller. One commenter recommended further research and regulatory oversight into the issue and considered anonymous or pseudonymous short sellers as potentially problematic. • Several commenters suggested that short selling reporting requirements need to be more extensive to identify anonymous or pseudonymous activist short sellers. • One commenter indicated that aggressive and abusive tactics and costly litigation against activist short sellers have resulted in many choosing to hide behind a pseudonym and to ensure their campaigns are focused on the content of their short reports and not a public battle with the target company. • Several commenters expressed a difficulty with identifying less prominent activist short sellers and especially those engaging in short and distort campaigns. One commenter indicated that such an assessment can only be done through time-intensive investigative efforts and cooperation across jurisdictions. • Two commenters suggested reviewing and preserving information posted on social media sites to identify activist short sellers and problematic conduct. • Several commenters suggested that a review of securities lending and failed trades data combined with increased disclosure requirements on short sellers (including their identities) would enable regulators to identify all activist short sellers. • Commenters did not provide additional evidence to support claims that less prominent activist short sellers were engaged in short and distort campaigns.	• Most commenters did not express any strong views regarding less prominent or pseudonymous activist short sellers as being more problematic. They perceived all activist short sellers to be equally capable of short and distort campaigns and recommended further research and monitoring on this issue. • Staff acknowledge the comments of issuers directly affected by an activist short seller campaign. We encourage issuers that have specific evidence of activist short seller misconduct to contact the securities regulator in their jurisdiction. • Staff agree that identifying short sellers, other than the prominent, known short sellers that may be involved in short and distort campaigns will be challenging, especially for anonymous or pseudonymous activist short sellers and would require an enforcement type assessment often spanning multiple jurisdictions and acknowledge the challenges around enforcement action noted by some commenters.
Question 4: What empirical data sources related to Campaigns should we consider?	
• Some commenters suggested reviewing and preserving information posted on social media sites to identify activist short sellers and problematic conduct. • Several commenters suggested that a review of securities lending and failed trades data combined with increased and more frequent disclosure requirements on short sellers (including their identities and associated short positions) would enable regulators to identify activist short sellers. • Some commenters recommended live monitoring of short selling activity and any sudden drop in stock prices or increase in volumes. • Some commenters suggested examining activist short sellers' allegations against an issuer's disclosure record. • One commenter recommended reviewing activist short seller campaigns conducted prior to the target's financing event to assess their potential impact.	• Most of the existing data sources recommended were related to trading related activity such as data on securities lending, failed trades and short position reporting. • With respect to live monitoring of short selling activity, as indicated in our consultation paper, IIROC employs algorithms to monitor for unusual levels of short selling activity and price movements which they combine with external data from social media platforms and chatrooms to identify potentially manipulative activities. IIROC also continually monitors international developments around short selling regulations. • In response to comments that recommended a review of failed trades data, IIROC completed an in-depth study of settlement processes in Canadian equities using five-year data from the CDS. The

Summary of comments	Responses
	results of this study are outlined in Joint CSA-IIROC Staff Notice 23-329 and IIROC Notice 22-0190, published today. • Staff acknowledge that social media platforms are a key data source but note the current challenges with accessing data from some platforms and with parsing unstructured social media data to clearly identify activist short sellers from other users, such as clients, employees or shareholders, that may only be expressing a negative opinion. The social media's effect on trading in capital markets is a current concern. At the same time, we are seeing the emergence of technology tools to process data feeds, including those from social media. The CSA and IIROC continue to monitor the developments in the area.
Question 5: In 2019, there was a large drop in the number of Canadian issuers targeted by prominent activist short sellers compared to the year before. Are there market conditions or other circumstances that in your view could lead to an increase? Please explain	
• Most commenters indicated that over-heated or overvalued sectors/markets tend to attract short selling activity including those by activist short sellers. • One commenter suggested that issuers in bubble-prone sectors (e.g. cannabis and cryptocurrency) with perceived information gaps and heavy stock promotion activity may attract increased activist short selling activity. • Some commenters also pointed to other factors that may lead to an increase in activist short selling activities: o greater focus on pandemic and Environmental, Social, Governance (**ESG**) related disclosures; o growing use of social media combined with increased retail trading; and o when there is increased scrutiny by US regulators causing US activist short sellers to shift their focus on Canadian markets.	• Staff acknowledge that there has been growth in new listings on Canadian exchanges especially in bubble-prone sectors (cannabis and cryptocurrency), which may be targeted by activist short sellers because of perceived information gaps and heavy stock promotion activity. • We also acknowledge comments regarding the additional factors (social media and retail trading, ESG and pandemic disclosure) highlighted by one commenter as potential factors that may lead to an increase in activist short selling activity. • We continue to monitor closely US regulatory developments.
Question 6: Is there any specific evidence that would suggest that Canadian markets are more vulnerable to activist short selling, including potentially problematic activist short selling (e.g., size and type of issuers, industries/sectors represented or other market conditions)? Please provide specific examples of these vulnerabilities, and how they differ from other jurisdictions.	
• Some commenters gave examples of how Canadian markets may be more susceptible to activist short selling. These included: o small size of, and lack of liquidity in the Canadian market makes Canadian issuers easier targets for activist short selling campaigns; o the concentration of commodity and mineral sector issuers in the Canadian capital markets, where valuations are based on complex technical information; o a lack of a pre-borrow and mandatory buy-in requirements;	• Staff acknowledge that there are aspects of the Canadian markets that differentiate them from many foreign markets, such as the high concentration of resource issuers and lower liquidity and that may make them more vulnerable to activist short sellers. Our research, however, as noted in the Consultation Paper, showed that the activist short selling campaigns were focused on

Summary of comments	Responses
○ lack of or inadequate short position reporting requirements; ○ perception of lax regulation; ○ media (especially BNN) provide a platform for activist short sellers; and ○ market participants' increasing awareness of environmental, social and governance issues gives activist short sellers an opportunity to tell a story. • Other commenters disagreed and one commenter noted that there is no evidence of specific vulnerability of Canadian markets to activist short selling. It was noted that: ○ the small size and lack of liquidity makes short selling more difficult; ○ rules governing long stock promotions are less strict in Canada; ○ reverse take-over transactions often result in dissemination of misinformation inflating stock prices; and ○ the lack of activist campaigns allows overpriced and overhyped stocks to subsist at inflated price levels.	larger issuers, which was consistent with findings of U.S. academic studies. • We acknowledge the comments regarding the regulatory regime for short selling in general and refer the commenters to our previous responses indicating ongoing initiatives to review the continued appropriateness of the regulatory regime.
Question 7: Do issuers have practical limitations in terms of their ability to respond to allegations made in a Campaign? If so, what are these limitations, and do you have any recommendations on how to alleviate them?	
• Most commenters who responded to this question were of the view that target issuers are constrained by disclosure rules and the practical difficulties in responding quickly to sometimes broad allegations. For example, reference was made to the cost and time required to conduct independent internal investigations to provide the foundation for a full public response. • A few commenters did not believe that there were restraints on issuers to provide information to refute the contents of a campaign. • Some commenters raised the exacerbating effect of social media in terms of spreading the information in a campaign before an issuer has an opportunity to respond. • A number of commenters also pointed to the threat of potential litigation as a constraint on providing a response.	• On the issue of engagement with the issuer prior to a campaign, we agree that such engagement may help mitigate the risk of potential informational gaps or that misleading information would be made public, however, note that there are possible impediments, as outlined in the Staff Notice.
Question 8: Are issuers reluctant to approach securities regulators when they believe that they are being unfairly targeted by an activist short seller? If so, why? If not, why not?	
• All responses to this question provided some basis for the reluctance an issuer might have in approaching regulators when they believe they are being unfairly targeted by an activist short seller. These included: ○ inviting increased scrutiny by the regulator of the issuer and its public disclosure record; ○ concern about it being seen as a retaliatory tactic by the issuer rather than genuine concern that it was unfairly targeted; ○ challenges in demonstrating market price impact resulting from the campaign; and ○ perceived lack of authority on part of regulators to deal with the issue; • One commenter suggested that whistleblower programs could be leveraged to address some of the concerns.	• The CSA do have authority to investigate problematic activist campaigns and enforce regulatory requirements but acknowledge the potential reluctance to approach regulators for the reasons enumerated in the responses. • Staff note that some Commissions (and IIROC) have whistleblower programs in place that can be used to raise these concerns. On October 1, 2020, the OSC and IIROC published Joint OSC/IIROC Whistleblower Guidance encouraging the public to submit tips on potential abusive

Summary of comments	Responses
	trading in securities of Ontario reporting issuers, including abusive short selling.[23]
Question 9: Is the existing regulatory framework adequate to address the risks associated with problematic activist short selling? Please explain why or why not and provide specific examples of concerns and areas where, in your view, the regulatory framework may not be adequate.	

• Many commenters that replied to this question were of the view that the regulatory framework in Canada as it relates to short selling was inadequate; one commenter was of the view that it does not meet the principles of IOSCO on short selling in general. Comments included:
  ○ naked shorting is too easy due to existing settlement cycle and buy-in requirements;
  ○ lack of enforcement;
  ○ lack of disclosure by short activists;
  ○ reporting, data analytics and oversight of short activity is limited to data from Canadian dealers;
  ○ extra jurisdictional challenges;
  ○ lack of rules that govern short selling campaigns;
  ○ there should be more coordination between SEC and CSA.
• A number of commenters advocated that any potential regulatory solution should address activities on both the long and short side.
• One commenter indicated support for the Task Force recommendations and new rules for disclosure of short positions to regulators, prohibitions of naked shorting and misleading statements.
• A few commenters expressed views towards increasing transparency of share lending arrangements and short positions, in particular, in-line with existing requirements in the EU (i.e. SFTR and net short position reporting requirements).
• Some commenters recommend a regulatory regime that would require activist short sellers to: (i) provide their report to the issuer in advance of publishing, (ii) disclose and update their position in their target; (iii) pre-borrow the security, (iv) hold their position for a minimum of 10-days, and (vi) be liable for inaccurate or misleading information.
• Other commenters were of the view that a comprehensive study on failed trades should be conducted.
• Several commenters recommended the CSA should review the impact that the removal of the tick test has had on the market.
	• As noted in the Consultation Paper, CSA's view is that Canada's regulatory regime governing short sales is generally consistent with the IOSCO four principles for the effective regulation of short selling.[24]
	• We acknowledge the concerns raised and note that they are discussed in more detail in Joint CSA-IIROC Notice 23-329, published today. This notice also solicits comment on a number of areas where the existing regulatory framework for short selling could be enhanced.

Question 10: Have there been market developments or new information since 2012, when UMIR amendments regarding short selling and failed trades were implemented, that would warrant revisiting the existing regulatory framework for short selling? If so, please describe these new developments or information and indicate, providing evidence to support your views: a. whether, in your view, there is a connection between failed trades and activist short selling; b. what changes should be considered and why, and specifically with respect to potentially problematic activist short selling activities; and c. whether there are relevant regulatory requirements in other jurisdictions that should be considered and why.	
• A number of commenters identified the substantial rise of social media as a major market development since 2012 that would warrant revisiting the existing regulatory framework.	• We acknowledge the prominence of social media in disseminating information.

[23] https://www.osc.ca/sites/default/files/2021-02/joint-osc-iiroc-whistleblower-guidance.pdf

[24] Please also see CSA/IIROC Joint Notice 23-312 – *Transparency of Short Selling and Failed Trades* at https://www.osc.ca/sites/default/files/pdfs/irps/csa_20120302_23-312_rfc-trans-short-selling.pdf

Summary of comments	Responses
• Some commenters expressed the potential for problematic short selling activity to be exacerbated by social media and that regulators should consider whether they have the necessary tools to address various types of fraud aimed at investors over social media. • In particular, commenters noted that the increased role of social media in disseminating information has brought in substantially more players, which has made it more difficult for a targeted issuer to respond effectively to allegations made against it. • One commenter recommended developing a disclosure regime that addresses social media and which would be focused on both promoters and activist short sellers in order to level the playing field.	• We agree that the rise of social media has increased the number of sources from which information pertaining to a particular issuer can be widely shared and that, as noted in the comments received, such information can be positive or negative. • As indicated in the answers to Question 3 and 4 above, social media platforms are a key data source, but we note the challenges with accessing data and with parsing unstructured social media data to clearly identify activist short sellers. The CSA and IIROC are continuing to monitor the developments in the area. • We refer to CSA Staff Notice 51-348 *Staff's Review of Social Media Used by Reporting Issuers* (**SN 51-348**),[25] which reported on a review of disclosures made by certain reporting issuers through social media and identified issues in connection therewith. As noted in the SN 51-348, staff will continue to monitor this area in our review program activities but note that activist short sellers are not market participants, and a similar review would not be possible for short sellers. • We also refer to the Joint Statement from the Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada on the Recent Market Volatility issued Feb 1, 2021,[26] which cautioned investors to consider the source of information and advice they are relying on to make investment decisions, noted that online chat rooms are unregulated and may contain information that is inaccurate or inappropriate for some investors and advised investors to always check the registration of any person or business trying to sell them an investment or give them investment advice.
Question 11: Is the existing disclosure regime for short selling activities adequate? Please explain why or why not, indicating: a. what disclosure requirements would address risks associated with potentially problematic activist short selling and how would such requirements improve deterrence; b. what should be the trigger and the timing of any additional disclosure; c. how can additional disclosure be meaningful without negatively impacting market liquidity; and d. do you foresee any issues with imposing a duty to update once there has been a voluntary disclosure of a short position?	
• Some commenters thought that the existing disclosure regime is inadequate. They recommended adding disclosure requirements, such as the short seller's identity as well as the opening, change in and closing positions. • Other commenters believed that, when an activist short seller has publicly disclosed its short position, it may be appropriate to also	• We acknowledge the proposals for additional disclosure and the concerns; and will continue to review whether additional disclosure is needed and whether the costs of compliance with additional requirements are justified by the benefits.

[25] https://www.osc.ca/en/securities-law/instruments-rules-policies/5/51-348
[26] At https://www.osc.ca/en/news-events/news/joint-statement-canadian-securities-administrators-and-investment-industry-regulatory-organization

Summary of comments	Responses
require the short seller to disclose the fact that it has closed its position. • Some commenters thought that additional disclosure by activist short sellers could lead to regulatory scrutiny that is not warranted and could even be detrimental. • Some commenters indicated that it may be difficult to require additional disclosure without first studying the Canadian liquidity environment, underlying data and the potential impact of new disclosure obligations. • Commenters also were of the view that the CSA should assess whether the tools used to regulate short selling activities in other jurisdictions achieved their intended outcomes, and whether they resulted in fewer "short and distort" campaigns. They expect that any regulatory proposal on this matter would consider these points when making any proposal. • One commenter thought that the lack of transparency surrounding the identity and financial stake of activist short sellers is problematic.	• In the course of its work, the CSA will continue to consider and follow developments in other jurisdictions and, in particular, in the U.S. • We note that there are jurisdictional challenges as activist short sellers are not a category of market participant and most of the time they are not Canadian. Similarly, IIROC only has jurisdiction over registrants and therefore will not have jurisdiction over unregistered parties who participate in activist short selling.
Question 12: In your view, do the existing enforcement mechanisms adequately deter problematic activist short selling? If so, why? If not, why not? a. Can deterrence be improved through specific regulation of activist short sellers? If so, how?	
• Comments were mixed. Some commenters thought that current enforcement mechanisms are adequate. • Others indicated that it is hard to tell whether enforcement mechanisms are adequate because so few cases are prosecuted; the lack of prosecutions harm deterrence efforts. • It was also noted that enforcement mechanisms exist, but the legal threshold is too high to capture this activity or makes it too hard to prosecute.	• We acknowledge the commenters who are of the view that enforcement mechanisms are either lacking, or the legal threshold for proving materiality is too high. A significant hurdle to successful enforcement of problematic activist short sellers is the lack of complaints provided to the CSA and the corresponding lack of supporting facts provided by issuers to determine the strength of the claim. • We note that the amendments to the *Securities Act* (British Columbia) including BC's new definition of "promotional activities" and revised section 50 [representations prohibited], which were brought into force in 2020 may speak to this concern. In Ontario, as discussed in the Notice, there are similar requirements included in the proposed Capital Markets Act. It is too early to discuss discernable impacts to enforcement activities, but this will be monitored by the CSA. • We acknowledge the commenters seeking a private right of action for disseminating false or misleading information.
Question 13: Are there additional or different regulatory or remedial provisions that could be considered to improve deterrence of problematic conduct? If so, what are these provisions?	
• Some commenters indicated that the CSA currently has tools to address problematic conduct and new provisions may have chilling effect on legitimate short selling activity. • A few commenters suggested additional requirements, as described below.	• While the focus of the Consultation Paper was on activist short selling activities, we acknowledge the comments raised about the short selling regulatory regime in general.

Summary of comments	Responses
Pre-borrow requirements • A few commenters expressed concerns that there are no pre-borrow requirements and recommended greater regulatory controls to prevent "naked" short selling. • Some of these commenters supported the Taskforce recommendation that IIROC adopt pre-borrow requirements and mandatory buy-in and close-out requirements. • Some, however, noted that there is no evidence that "naked" short selling is a problem. • One of these commenters thought that instituting pre-borrowing requirements similar to the US may introduce an additional regulatory burden, and that focusing on buy-ins may be a better approach. • One commenter indicated that there is no connection between the number of failed trades and activist short selling, however, IIROC's rules regarding short selling should be more stringent **Short selling in connection with prospectus offerings and private placements / Taskforce Recommendation 26** • A few commenters provided their views on a recent proposal by the Ontario Modernization Taskforce that short selling in connection with prospectus offerings and private placements should be prohibited. • These commenters were concerned about the potentially harmful impact of this activity on issuers and investors and supported the taskforce's proposal to adopt a rule prohibiting market participants and investors who previously sold short securities form acquiring them under prospectus or private placements. • One commenter expressed an alternative view and indicated that there are legitimate reasons why such transactions would occur, and they are not necessarily an indication of market manipulation. **Other recommendations** • Three commenters recommended that regulators reinstate the uptick rule; one commenter suggested that there is data to help inform whether there is value in reinstating this rule. • Some commenters suggested that CSA could consider statutory civil liability for misleading or untrue statement. • Some commenters indicated that a minimum holding period should be applicable to a short seller. Other commenters indicated that they do not support a proposal for a 10-day holding period because "it would tacitly amount to a ban on all activist short selling." • Other commenters noted that activists should be required to adhere to the same standards of professionalism and objectivity as required by the CFA Institute of its members. • Other commenters noted that any person publishing a statement concerning the veracity of an issuer's public disclosures should disclose that person's position. • Some commenters also noted that a regulatory review should be undertaken on naked short selling, failed trades, and the impact of removal of the tick test.	• We note that the CSA and IIROC continue to monitor the regulatory regime applicable to short selling and refer the commenters Joint CSA-IIROC Staff Notice 23-329, also published today, which provides additional discussion of these broader issues. • To the extent that there is data available to support adopting an uptick or modified uptick rule in Canada, we would encourage that this be shared with the CSA and IIROC. • On the issue of the applying the CFA Institute standards, staff note that this raises the issue of defining which group who would fall within the definition of activist short sellers and what type of framework would apply to impose standards and govern activist short sellers.

Summary of comments	Responses
Question 14: Can you provide examples of specific activist short selling conduct that in your view is problematic but may not fall within the scope of existing securities offences such as market manipulation and misrepresentation/misleading statements? In your view, how should this problematic conduct be addressed by regulators?	

• Examples provided by commenters of problematic conduct that may not fall within the scope of existing offences include:
  ○ using false or misleading information or inflammatory rhetoric that negatively impacts market price but may not have a material impact;
  ○ making statements with anonymity or intentionally obfuscating the identity of the person/company releasing the statements;
  ○ casting non-specific or open-ended accusations against an issuer or management that are difficult to defend against or disprove;
  ○ making statements with manipulative intent, such as when a contingent or closing order is already placed in market when the information is disseminated; and
  ○ targeting an issuer when the issuer cannot respond such as during a quiet period or when the statement is related to a pending material change announcement such as an M&A transaction that cannot be publicly disclosed.
• One commenter noted that existing securities regulation or offences could be modified to explicitly capture the above activities without the need for new regulation or offences that could stifle and deter short selling activity generally.
• Two commenters noted that the lack of registration or formal oversight by a professional body of activist short sellers created potential jurisdictional issues to addressing problematic conduct that did not fall within the scope of existing securities offences.
	• Staff acknowledge that there may be problematic conduct or tactics employed during a campaign which does not fall within existing securities offences. This conduct may not, however, necessarily rise to the threshold of requiring an outright prohibition under securities legislation. Staff acknowledge that the use of such tactics has the potential to impair confidence in the capital markets.
	• We also acknowledge that demonstrating market impact of statements is a requirement for market manipulation and misleading statement offences in most CSA jurisdictions.
	• With respect to the lack or registration, as noted above, this raises the issue of defining which group who would fall within the definition of activist short sellers and what type of framework would apply to impose standards and govern activist short sellers.

Question 15: Is it important that a statement have actual market impact to trigger enforcement action by securities regulators? a. Should another standard be used? For example, in your view is the “reasonable investor” standard a preferable approach (e.g., would a reasonable investor consider that statement important when making an investment decision)? If so, why? What are the potential implications of such a change?	
• Numerous comments indicated that an elimination of market impact assessment and materiality threshold can be expected to have a significant chilling effect on short selling. Some commenters suggested that any benefit to these changes will be outweighed by the costs and that actual market impact should be a crucial element to establish. • Several comments indicated a reasonable investor standard may be a good balanced approach to improving public disclosure without adding excessive burden to market participants.	• We thank the commenters for sharing their views.

B.1.4 Joint CSA and IIROC – Staff Notice 23-329 Short Selling in Canada

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Joint CSA and IIROC Staff Notice 23-329
Short Selling in Canada

December 8, 2022

Background and Introduction

The Canadian Securities Administrators (**CSA**) and the Investment Industry Regulatory Organization of Canada (**IIROC** and, together with the CSA, **we**) are publishing Joint Canadian Securities Administrators and Investment Industry Regulatory Organization of Canada Staff Notice 23-329 *Short Selling in Canada* (**Notice**) to provide an overview of the existing regulatory landscape surrounding short selling, give an update on current related initiatives and request public feedback on areas for regulatory consideration.

We believe that it is important and timely to review our regulatory framework to ensure it is current and appropriate given the way markets continue to evolve. This Notice reflects our commitment to do so, especially in light of public feedback we received with respect to short selling and international developments, described later in the Notice.

The CSA are also publishing today a summary of comments and responses to the CSA Consultation Paper 25-403 *Activist Short Selling* (**Activist Short Selling Consultation Paper**).[1] The Activist Short Selling Consultation Paper was published on December 3, 2020. Its purpose was to facilitate the discussion of concerns relating to activist short selling and its potential impact on capital markets. Some of the comments received in response to the Activist Short Selling Consultation Paper addressed topics broader than activist short selling activities and related to short selling and short selling regulation in general. Similar issues have also been raised by other stakeholders. These comments are summarized in the summary and responses to the Activist Short Selling Consultation Paper and published today in CSA Staff Notice 25-306 *Activist Short Selling Update* (**Staff Notice 25-306**). We discuss the broader comments related to short selling in this Notice.

While this Notice does not directly cover the Canadian trade settlement regime, we also discuss, at a high level, failed trades and related initiatives, to provide additional context to the extent that they may relate to short selling.

The Notice is organized as follows:

- Part 1 provides background on short selling and failed trades and includes an overview of existing regulatory requirements relating to short selling; and
- Part 2 includes a discussion of comments and concerns raised by stakeholders that are relevant to short selling and failed trades and sets out specific questions for public feedback.

Part 1. Background on short selling, failed trades, and the regulatory framework

A. Definition of Short Selling

IIROC's Universal Market Integrity Rules (**UMIR**) define a "short sale"[2] as a sale of a security, other than a derivative instrument, which the seller does not own either directly or through an agent or trustee.[3] It involves selling securities at the current market price either with the expectation of being able to cover the short position by purchasing later at a lower price, thus making a profit, or to lock in a profit arising from a difference in price between the securities sold short and a related security. Short selling is a legitimate trading practice that helps market participants manage risk, contributes to market liquidity and promotes price discovery.

Short selling carries certain risks. For example, a short seller may incur potentially unlimited costs to close the short position if the price of the particular security rises.

1 At https://www.osc.ca/en/securities-law/instruments-rules-policies/2/25-403/csa-consultation-paper-25-403-activist-short-selling.
2 Section 1.1 of UMIR; see also Policy 1.1 – *Definitions*, Part 3 – *Definition of "Short Sale"* of UMIR at https://www.iiroc.ca/rules-and-enforcement/umir-rules/11-definitions.
3 The term "short sale" is used in securities legislation but not defined. See e.g., *Securities Act*, R.S.O. 1990 as am. S.48, *Securities Act* (Québec), CQLR, c. V-1.1, section 194 and s. 54 of the Nova Scotia *Securities Act*, which requires declaration of a short position and describes what is a "short position".

B. Definition of Failed Trades

The term "failed trade" is not defined in securities legislation. However, a failed trade is generally understood to occur when a seller (whether short or long) fails to deliver securities or the buyer fails to pay the funds when delivery/payment is due, currently on the second business day after the trade date, unless a later settlement date is agreed to by all parties at the time of the trade. Failed trades may also occur when there are issues with instructions of the buyer and the seller regarding settlement (for example, when there are different instructions from the buyer and the seller, or one party of the trade has not provided instructions or provided them too late). In the context of this Notice, “failed trades”, “settlement fails or failures” and “fail to deliver”, all mean failure to deliver securities on the settlement date.

UMIR Rule 1.1 defines “failed trade.”[4] It includes a short sale by an account that has failed to make available the securities for settlement or has failed to make arrangements with a Participant or Access Person (as defined in UMIR)[5] to borrow the securities in time to deliver on the settlement date.

C. Overview of the current short selling regulatory framework

Short selling is subject to a well-developed framework comprising Canadian securities legislation and IIROC requirements and is mostly overseen by IIROC. This framework includes a detailed reporting regime that provides IIROC with timely information which IIROC uses to monitor and supervise potentially inappropriate short selling practices.

i. Canadian securities legislation requirements

Canadian securities legislation requires a person who places an order for the sale of a security with a registered dealer to declare to the dealer at the time of placing the order if they do not own the security.[6]

Securities legislation[7] and National Instrument 23-101 *Trading Rules*[8] (**NI 23-101**) prohibit activities that are manipulative and/or deceptive, which could occur in connection with short selling.

ii. IIROC requirements

IIROC has several requirements relevant to short selling applicable to Participants[9] or Access Persons[10] including:

- a requirement to mark all orders representing a short sale as either “short” or “short-marking exempt”;[11]
- a requirement to report “Extended Failed Trades” to IIROC;[12]
- a requirement that, if an Extended Failed Trade report is filed with IIROC, further short sales generally cannot be made by that Participant, acting as principal or agent, or by an Access Person without having made prior arrangements to borrow the securities necessary for settlement; [13]
- ability for IIROC to designate a security as a “Pre-Borrow Security”;[14] and

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4 Section 1.1 of UMIR at https://www.iiroc.ca/rules-and-enforcement/umir-rules/11-definitions.
5 Section 1.1 of UMIR at https://www.iiroc.ca/rules-and-enforcement/umir-rules/11-definitions.
6 Note for instance section 194 of the *Securities Act* (Québec), which provides that no person may sell a security short without previously notifying the dealer responsible for carrying out the transaction. See also, *Securities Act* (Ontario), section 48; NS Act s. 54.
7 See e.g., *Securities Act* (Ontario), RSO 1990, c S.5, ss 126.1 and 126.2; *Securities Act* (Québec), CQLR, V-1.1, ss 195.2, 197, 199.1 and 200; *Securities Act* (Alberta), RSA 2000, c S-4, ss 93 and 221.1; *Securities Act* (British Columbia), RSBC 1996, c 418, ss 57 and 168.1; *Securities Act* (Manitoba), CCSM, c S50, ss 76 and 136(1); *The Securities Act* (Saskatchewan), 1988 c S-42.2, ss 55.1, 55.11, 55.13(1); NS Act ss. 132A and 132B; and *Derivatives Act* (Québec), CQLR, I-14.01, ss 150, 151, 152 and 156.
8 See section 3.1 NI 23-101.
9 A Participant is defined in the UMIR to include a dealer that is a member of an exchange, a user of a quotation or trade reporting system or a subscriber of an alternative trading system (**ATS**).
10 An Access Person is defined in the UMIR as a person other than a Participant that is a subscriber or user of a marketplace.
11 See UMIR, *Part 3 - Short Selling, Prohibition on the Entry of Orders*, at https://www.iiroc.ca/rules-and-enforcement/umir-rules/32-prohibition-entry-orders. A short-marking exempt order includes an order for a security from an arbitrage account, an account of a market maker for that security, or other specified accounts that buy and sell securities and that has at the end of any trading day no more than a nominal long or short position in any security. UMIR, *Part 1 – Definitions and Interpretation*, at https://www.iiroc.ca/rules-and-enforcement/umir-rules/11-definitions.
12 A trade that did not settle and was not rectified within 10 trading days from the original settlement must be reported to IIROC. See: UMIR, *Part 7 Trading in a Marketplace - Extended Failed Trades*, https://www.iiroc.ca/rules-and-enforcement/umir-rules/710-extended-failed-trades.
13 UMIR, *Part 6 – Order Entry and Exposure – Entry of Orders on Marketplace,* at https://www.iiroc.ca/rules-and-enforcement/umir-rules/61-entry-orders-marketplace.
14 "Pre-Borrow Security" means a security that has been designated by a Market Regulator to be a security in respect of which an order, that on execution would be a short sale, may not be entered on a marketplace unless the Participant or Access Person has made arrangements to borrow the securities that would be necessary to settle the trade prior to the entry of the order. UMIR, *Part 1 – Definitions and Interpretation* and UMIR, Policy 1.1, *Definition of Pre-Borrow Security* at https://www.iiroc.ca/rules-and-enforcement/umir-rules/11-definitions. See also, , UMIR, *Part 6 – Order Entry and Exposure – Entry of Orders on Marketplace* at https://www.iiroc.ca/rules-and-enforcement/umir-rules/61-entry-orders-marketplace.

- ability for IIROC to designate a security as a "Short Sale Ineligible Security".[15]

UMIR also requires Participants and Access Persons to calculate and report to IIROC the aggregate short positions of each individual account twice a month.[16] IIROC consolidates and publishes a Consolidated Short Position Report showing the aggregate short positions on all listed securities as of the current reporting date and the net change in short positions from the previous reporting date, on a per security basis, on its website.[17] IIROC also aggregates trades marked "short sale" from all marketplaces it monitors, consolidates that information, and publishes a semi-monthly report showing the total industry short sales for each security over the reporting period.[18]

Like securities legislation, UMIR also prohibits activities that are manipulative and/or deceptive. In the context of short selling, these include entering an order for the sale of a security without, at the time of entering the order, having a reasonable expectation of settling any trade that would result from the execution of the order on the settlement date. As such, short selling without having a reasonable expectation to settle the resulting trades on settlement date, generally two days after trade date, is not permitted under UMIR. [19]

On August 17, 2022, IIROC issued guidance confirming the existing obligation of a Participant to have a reasonable expectation to settle a resulting trade on the settlement date, rather than having the expectation to settle the trade on some future date, such as the date securities owned by the seller that are subject to resale restriction become freely tradeable.[20]

IIROC also monitors for potentially abusive trading activity. In the context of short selling activity, IIROC uses algorithms to monitor for unusual levels of short selling coupled with significant price movements and reviews alerts to determine the cause of the price movement and whether there is an indication of abusive trading activities. IIROC may also review social media or chatrooms as well as Extended Failed Trades reports for indications of settlement issues.

IIROC has additional alerts that detect changes in the historical pattern of short selling for a particular security. These alerts allow IIROC to determine if short selling is becoming concentrated within a particular dealer or client. If unusual levels of short selling are detected, IIROC can:

- intervene to vary or cancel any trade deemed "unreasonable";
- impose a halt on the trading of a particular security across all marketplaces;
- contact the listed issuer regarding unusual market activity;
- investigate activity that may not be compliant with UMIR; and
- refer matters to IIROC enforcement for further review and potential discipline.

If appropriate, IIROC may also refer the matter to the enforcement branch of the appropriate CSA jurisdiction for additional investigation and action.

As noted above, IIROC requires Participants to mark all orders representing a short sale as either "short" or "short-marking exempt". This is part of a broader requirement in UMIR that Participants use the correct identifier or designation on an order sent to a marketplace regulated by IIROC.[21] Where there is a missing or erroneous marker or identifier on the order and that order has been executed at least in part, the Participant is required to file a report to the Regulatory Marker Correction System.[22] IIROC reviews its Participants' use of order markers during compliance reviews.

IIROC recently completed a study of failed trades. The study was based on five years (April 1, 2015 – March 31, 2020) of settlement data from the CDS Clearing and Depository Services Inc. (**CDS**) related to continuous net settlement (**CNS**),[23] outstanding

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15 "Short Sale Ineligible Security" is defined as a security or a class of securities that has been designated by a market regulator to be a security in respect of which an order on execution that would be a short sale may not be entered on a marketplace for a particular trading day or trading days. UMIR, *Part 1 – Definitions and Interpretation*, at https://www.iiroc.ca/rules-and-enforcement/umir-rules/11-definitions; see also Rule 3.2 – *Prohibition on the Entry of Orders* at https://www.iiroc.ca/rules-and-enforcement/umir-rules/32-prohibition-entry-orders.

16 UMIR, *Part 10 – Compliance*, *Report of Short Positions*, https://www.iiroc.ca/rules-and-enforcement/umir-rules/1010-report-short-positions.

17 Consolidated Short Position Report is published twice monthly and based on the short position information submitted to IIROC by Participant and applicable Access Persons.

18 The Short Sale Trading Statistics Summary Report prepared by IIROC shows the aggregate proportion of short selling in the total trading activity of a particular security, based on data for trades marked "short sale" supplied to IIROC by each marketplace monitored by IIROC. The report is produced twice monthly: (i) for the period from the first to the 15th of each month, and (ii) for the 16th to the end of each month.

19 See: UMIR, *Part 2 – Abusive Trading, Manipulative and Deceptive Activities,* at Part 2 (g) – (h), at https://www.iiroc.ca/rules-and-enforcement/umir-rules/22-manipulative-and-deceptive-activities.

20 See: IIROC Notice 22-0130 – *Guidance on Participant Obligations to have Reasonable Expectations to Settle any Trade Resulting from the Entry of a Short Sale Order.*

21 https://www.iiroc.ca/rules-and-enforcement/umir-rules/62-designation-and-identifiers

22 https://www.iiroc.ca/news-and-publications/notices-and-guidance/marker-corrections-and-use-regulatory-marker-correction-system

23 Canadian equity marketplaces send a daily report of all transactions directly to CDS. Most of these transactions will be designated to settle through CNS, through a process of novation (where a settlement transaction between two dealers is replaced by two transactions, one between each of the dealers and CDS) and netting.

positions, buy-ins and trade-for-trade (**TFT**)[24] settlement transactions. IIROC Notice 22-0190 includes the results of IIROC's study and additional discussion of the CNS and TFT processes. In essence, the study identified several considerations:

- potential issues with settlement were not consistent across all listed securities and a "one size fits all" approach may not be appropriate;
- reasons for fails varied amongst dealers and several dealers with similar business models were identified as having disproportionate fails relative to the amount of their trading;
- correlations between short sales and settlement issues in securities listed on exchanges that list junior securities[25] were more significant than on other exchanges;
- securities listed on exchanges that list junior securities experience more overall settlement issues compared to securities listed on other exchanges, especially in the sectors of mining, healthcare, and energy; and
- higher correlation was observed between outstanding failed trades that were intended to settle through the CNS method of settlement and reported short positions than between failed trades that remained outstanding 10 days from settlement date and short positions for trades that were intended to settle through TFT processes.

At **Appendix A**, we have included a detailed history of IIROC's short selling requirements, a summary of studies that have been conducted over time to assess their continuing adequacy and the rationale supporting why such requirements continue to be included or have been removed.

Part 2. Discussion

A. Overview of comments regarding short selling

It is widely acknowledged that short selling plays an important role in the financial markets by promoting transparency and contributing to liquidity and price discovery, and thus contributing to market integrity and investor protection. Short selling can also be a legitimate investment management strategy used for mitigating portfolio risk by hedging short positions against long positions, so that losses are mitigated regardless of the direction of the market.

Short sellers, particularly activist short sellers who publicly announce that they have a short position in a security, may provide new information about issuers that can assist in ensuring the price of their securities is more reflective of their underlying value. For example, short sellers identify securities they think could be overvalued. Often, after disclosure by activist short sellers, a correction occurs in the market price of these securities. As we described in the Activist Short Selling Consultation Paper, sometimes issuers pursue certain actions in response to short selling campaigns which may include a change in management or hiring a new auditor or private investigator.

However, short selling is not without controversy and some stakeholders hold negative perceptions about short selling or certain aspects of short selling activities. A common theme of concerns expressed is that issuers perceive the Canadian regulatory regime as lax compared to other jurisdictions, especially the U.S., which makes it easier to conduct an activist campaign that unfairly targets Canadian issuers.

As we indicated in the past, and explain in further detail in Appendix A, we believe that Canada's regulatory regime governing short sales is generally consistent with the four principles for the effective regulation of short selling published by the International Organization of Securities Commissions (**IOSCO**) in 2009.[26] Further, as we concluded in Staff Notice 25-306, we have not received evidence of specific issues arising from activist short selling campaigns that would justify a regulatory response. That said, we acknowledge the comments surrounding short selling in general, some of which have been raised more recently. We discuss the key themes below and invite further feedback from the public.

i. Tick test[27]

The "tick test" was a restriction on the price at which certain types of trades can occur. In the case of short sales subject to the tick test, the sale could not occur at a lower price than the previous trade, subject to limited exceptions.

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[24] Some IIROC dealers that are CDS participants can provide settlement instructions directly to CDS. In the TFT mode, settlement occurs directly between two CDS participants.

[25] Exchanges that list junior securities are the TSXV, the Canadian Securities Exchange (**CSE**) and NEO Exchange (**NEO**).

[26] See: *Regulation of Short Selling – Final Report,* available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD292.pdf. The first principle: short selling should be subject to appropriate controls to reduce or minimise the potential risks that could affect the orderly and efficient functioning and stability of financial markets; the second principle: short selling should be subject to a reporting regime that provides timely information to the market or to market authorities; the third principle: short selling should be subject to an effective compliance and enforcement regime; and the fourth principle: short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.

[27] The tick test referred to a previous requirement in UMIR that a short sale not be made at a price which is less than the last sale price of the security.

As explained in more detail in Appendix A, IIROC amended UMIR in March 2012 to repeal the tick test. This was supported by empirical evidence from short sales and failed trade studies in the Canadian market. These studies did not find a relationship between rapid price declines and unusual short selling activity and did not support adopting an alternative uptick rule similar to Rule 201 of the U.S. Securities and Exchange Commission (**SEC**).[28]

Concerns have been expressed regarding a perceived negative impact that resulted from the repeal of the tick test. Several commenters that provided responses to the Activist Short Selling Consultation Paper recommended that the CSA review the impact that the removal of the tick test has had on the market.

IIROC monitors the proportion of short selling relative to total sales, and the frequency of short sales that are executed on a downtick. Some results of this monitoring are included as Appendix C. These results show that:

- the frequency of short sales executed on downticks when compared to short sales executed on other ticks is relatively low,
- the rates of shorts sales executed on a downtick are lower on exchanges that list junior securities than on other exchanges, and
- on all exchanges, the frequency of trades executed on a downtick is lower on sales from a short position than a long position.

ii. Short selling and pre-borrow requirements

Concerns have been raised that market participants may engage in short selling where they enter short sale orders without an intention to settle the resulting trades on settlement date, purely as a means to drive down the price of an issuer's securities. The short seller fails to deliver the shares on the settlement date and anticipates settling the trade when the securities can be bought at a later date in the open market at a price that is profitable to the seller.

As noted above, there are existing requirements in Canadian securities legislation and UMIR that prohibit manipulative and deceptive activities. UMIR specifies that entering an order to sell a security without having a reasonable expectation of settling the resulting trade on settlement date is considered a false or misleading appearance of trading activity and thus a manipulative and deceptive activity.[29]

As noted earlier, IIROC published guidance on August 17, 2022 clarifying that Participants, before entering a short sale order, must have a reasonable expectation that they have or will have sufficient securities to allow the Participant to settle any resulting trade on the settlement date for that trade.[30] In this notice, IIROC provides examples where a Participant would not be able to demonstrate a reasonable expectation that sufficient shares would be available on settlement date and the entry of the order would be prohibited.

In addition, as described above, IIROC has certain "pre-borrow" requirements that apply, including the restriction on Participants or Access Persons from making further short sales where an Extended Failed Trade report that relates to a sale of a security failing to settle was filed with IIROC. Specifically, further short sales generally cannot be made by that Participant (acting as principal or as agent) or by an Access Person without prior arrangements to borrow the securities necessary for settlement.[31] Participants and Access Persons must also make prior arrangements to borrow any security designated by IIROC as a "Pre-Borrow Security" before entering an order to sell short on a marketplace.[32]

Despite these requirements, views were expressed in response to the Activist Short Selling Consultation Paper that the current requirements in Canada are not stringent enough, especially when compared with those in the U.S. Some stakeholders noted that in the U.S, Regulation SHO requires a broker-dealer to not accept a short sale order in an equity security unless it has (i) borrowed the security or entered into a bona-fide arrangement to borrow the security; or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) documented compliance with this requirement.[33]

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28 Rule 201 generally requires marketplaces to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution or display of a short sale at an impermissible price when a stock has triggered a circuit breaker by experiencing a price decline of at least 10 percent in one day (based on the prior day's closing price). Once the circuit breaker in Rule 201 has been triggered, the price test restriction will apply to short sale orders in that security for the remainder of the day and the following day, unless an exception applies.

29 Part 2 – *False or Misleading Appearance of Trading Activity or Artificial Price* of UMIR Policy 2.2 *Manipulative and Deceptive Activities*.

30 See: IIROC Notice 22-0130 – *Guidance on Participant Obligations to have Reasonable Expectations to Settle any Trade Resulting from the Entry of a Short Sale Order*.

31 See: UMIR, Part 6 – *Order Entry and Exposure – Entry of Orders on Marketplace,* Rules 6.1(4) and 6.1(6).

32 "Pre-Borrow Security" means a security that has been designated by a Market Regulator to be a security in respect of which an order, that on execution would be a short sale, may not be entered on a marketplace unless the Participant or Access Person has made arrangements to borrow the securities that would be necessary to settle the trade prior to the entry of the order. UMIR, Policy 1.1, *Definition of Pre-Borrow Security*, 1.1; See also Part 6 – *Order Entry and Exposure – Entry of Orders on Marketplace*, Rule 6.1(5).

33 SEC Rule 242.203(b)(1) under Regulation SHO – *Regulation of Short Sales*, at Regulations M, SHO, ATS, AC, NMS, and SBSR and Customer Margin Requirements for Security Futures.

In Ontario, the Ontario Capital Markets Modernization Taskforce (**CMM Taskforce**) recommended that IIROC revise UMIR to require a Participant to confirm the ability to borrow securities prior to accepting a short sale order from another person or entering an order for its own account.[34]

We ask whether the market has changed to support the introduction of such requirements at this time. In particular, we have the following questions:

Questions:

1. Should the existing regulatory regime around pre-borrowing in certain circumstances be strengthened? What requirements would be appropriate? Specifically, should there be "pre-borrow" requirements similar to those in the U.S., as described above? Please provide supporting rationale and data.

2. What would be the costs and benefits of implementing such requirements?

iii. IIROC's Extended Failed Trades requirements

We have discussed above IIROC's requirements for Participants and Access Persons to report Extended Failed Trades. IIROC also has an anti-avoidance provision to prohibit Participants from entering into a transaction or series of transactions in an attempt to "re-age" the default in order to avoid filing an Extended Failed Trade Report, which would be a violation of the requirement in UMIR 2.1 to trade openly and fairly.[35]

The failed trade is not reportable until ten trading days following the settlement date. This was to allow for administrative delays that may impact settlement and to better identify those transactions of greater concern.

Some concerns have been raised by stakeholders about the ten-trading day threshold. The concern is that this timeline is too long for an unsettled trade to be reported and should be shortened.

Questions:

3. Does the current definition of a "failed trade", as described in Part 1, above, appropriately describe a failed trade?

4. Should a timeline shorter than ten days following the expected settlement date be considered? What would be an appropriate timeline? Please provide rationale and supporting data.

iv. Transparency of short selling positions

We described above how IIROC publicly discloses short positions by publishing the Consolidated Short Position Report twice monthly. In contrast to other jurisdictions (such as the European Union and Australia), there are no regulatory or public reporting requirements or obligations to disclose information on the short position of an individual account. Even so, it is not uncommon for an activist short seller to voluntarily disclose that they are short a particular security when they commence a campaign.

As described in Appendix A, IIROC has conducted extensive consultations on transparency measures that would provide timely information to the market. The Short Sale Trading Statistics Summary Report[36] was introduced in 2013, and in 2016, following additional consultation, IIROC also started publishing the Consolidated Short Position Report[37], also described in Appendix A. IIROC also publishes the Short Sale Trading Corrections Report[38] twice a month. This report aggregates trade marker corrections affecting short sale traded volume submitted through the Regulatory Marker Correction System.

Comments provided in response to the Activist Short Selling Consultation Paper supporting additional transparency are summarized in Staff Notice 25-306 published today and include recommendations to require the reporting of the identity of short sellers and short positions to the regulator, the public or both. Other comments cautioned that additional transparency could have unintended consequences, such as promoting group behaviour that would drive down a target issuer's stock price.

We are reviewing international initiatives to enhance reporting and disclosure requirements, such as those described in Appendix B of this Notice.

34 At https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf .
35 Subsection 2.1(1)(a) of UMIR 2.1 *Specific Unacceptable Activities*.
36 https://www.iiroc.ca/sections/markets/reports-statistics-and-other-information/short-sale-trading-statistics-and-reports
37 https://www.iiroc.ca/sections/markets/reports-statistics-and-other-information/short-sale-trading-statistics-and-reports
38 https://www.iiroc.ca/sections/markets/reports-statistics-and-other-information/short-sale-trading-statistics-and-reports

Questions:

5. Should additional public transparency requirements of short selling activities or short positions be considered? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.

6. Should additional reporting requirements regarding short selling activities be considered by the securities regulatory authorities? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.

7. As noted above, IIROC's study of failed trades showed that correlations between short sales and settlement issues in junior securities were more significant, and that junior securities experience more settlement issues compared to other securities. Should specific reporting, transparency or other requirements be considered for junior issuers? Please provide additional relevant details to support your response.

v. Buy-in and close-out requirements

In Canada, eligible debt and equity securities are cleared and deposited through CDSX, the clearing and settlement system of the CDS. CDSX has a Continuous Net Settlement Service (**CNS**), which is designed to clear and settle primarily equity trades transacted on a Canadian marketplace.

Within CNS, a "buy-in" process enables a buyer in a transaction to accelerate the settlement of outstanding, unsettled CNS positions from its seller(s) which are identified in CDS procedures as "to-receive". Outstanding to-receive CNS positions are those quantities of shares which have failed to settle on the "value date" (the date on which the parties to a trade have agreed that it is to be settled). The buy-in process is initiated when a buyer (i.e. receiver) chooses to enter an "intent to buy-in" outstanding to-receive positions in CDSX against an outstanding quantity of shares owed to them. The participant owing the specified security is provided with a 48-hour notice that they may be held liable to deliver on some or all of their portion of the buy-in security.

The CMM Taskforce, in its Final Report,[39] noted that, in contrast with the U.S.[40] and the European Union[41], there are no mandatory close-out or buy-in provisions in Canada. The CMM Taskforce recommended that, should a short sale fail to settle, the short seller be subject to a mandatory buy-in. To allow for fails due to administrative issues, the buy-in requirement would be triggered at settlement date +2 days. The CMM Taskforce recommended that the obligation to execute the buy-in rest with the investment dealer and that exemptions be considered for additional activities that may cause a legitimate settlement delay.

Question

8. Would mandatory close-out or buy-in requirements similar to those in the U.S. and the European Union be beneficial for the Canadian capital markets? Please provide rationale and data substantiating the costs and benefits of such requirements on market participants.

Conclusion

As we noted in the past, we are of the view that Canada's regulatory regime governing short sales is generally consistent with the four IOSCO principles for the effective regulation of short selling. However, we are aware of the comments raised by various stakeholders, including the expression of a number of concerns. In this Notice, we seek input on the items discussed above. In addition to answers to the questions set out above, we also seek general comment on other aspects of short selling where stakeholders believe there is room for regulatory initiatives.

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39 Ibid 34.

40 In the U.S., Rule 204 *Close-out requirement* of Regulation SHO, at https://www.ecfr.gov/current/title-17/part-242/subject-group-ECFR1607681c7b4f78d, requires brokers and dealers that are participants of a registered clearing agency to take action to close out fail to deliver positions. The broker-dealer is required to purchase or borrow securities of like kind and quantity by no later than T+3 and, for bona-fide market making activities, by T+5.

41 This referred to the requirement in Article 15 *Buy-in procedures* of the EU Short Selling Regulation, at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:en:PDF, that a central counterparty in a Member State that provides clearing services for shares ensure that, among others, where a natural or legal person who sells shares is not able to deliver the shares for settlement within four business days after the day on which settlement is due, procedures be automatically triggered for the buy-in of the shares to ensure delivery for settlement. It should be noted that this requirement was removed from the regulation in March 2022 until November 2, 2025. See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1930 . On November 10, 2022, the European Parliament published a draft report, at https://www.europarl.europa.eu/doceo/document/ECON-PR-736678_EN.pdf in which it is proposing to dispense with mandatory buy-ins.

Part 3. Comments

Please submit your comments in writing, on or before March 8, 2023. Please send your comments in writing to the following addresses:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd floor, Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Part 4. Questions

Please refer your questions to any of the following CSA and IIROC staff:

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APPENDIX A

HISTORY OF SHORT SELLING REGULATION IN CANADA

There has been a steady evolution of short selling regulation in Canada. Beginning in 2002, Market Regulation Services Inc. (**RS**), a predecessor organization to IIROC, imposed UMIR requirements on Participants[42] to:

- prohibit the short selling of a security on a marketplace unless the price is at or above the last sale price (tick test or tick rule);
- designate orders and trades as short sales on a marketplace; and
- file short position reports.[43]

These requirements reflected short selling rules already in place on exchanges that retained RS to act as regulation services provider.

In the following years, IIROC expanded on these requirements and, among other things[44], provided specific exemptions[45] from the tick test, consistent with IOSCO's Principles of Short Sale Regulation.[46]

A. Review of Regulatory Regime on Short Selling and Failed Trades in Canada

To ensure the overall effectiveness of regulation of equity trading in Canada, IIROC took the following steps which culminated in the 2008 amendments to UMIR:

i. Strategic Review of the Short Selling Regime in UMIR

IIROC launched a strategic review that included looking at the short selling regime in UMIR[47] by:

- conducting a series of roundtable discussions across Canada[48], where respondents:
  - favoured a prohibition of market manipulation, as opposed to price restrictions on short sales; and
  - indicated little support for importing the U.S. pre-borrowing requirements;
- reviewing the academic literature on short selling, which indicated the tick rule was of limited use in arresting market declines and may have a negative impact on price discovery, thus limiting any beneficial impact they may have in preventing market manipulation; and
- reviewing the regulation of short selling and failed trades in other jurisdictions, including the U.S., U.K. and Japan.

ii. Working Group on Short Selling and Failed Trade Issues

RS and the Investment Dealers Association of Canada (**IDA**), both IIROC's precursors, the CSA and staff from CDS, TSX and the Bourse de Montréal, looked at short selling further and formed a working group on Short Selling and Failed Trade Issues (**Working**

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42 Participant is defined in section 1.1 of the UMIR to include a dealer registered in accordance with securities legislation of any jurisdiction and who is: (i) a member of an Exchange; (ii) a user of a QTRS; or (iii) a subscriber of an ATS.

43 See Appendix B – Text of the Universal Market Integrity Rules of the Recognition Order of Market Regulation Services Inc., effective February 14, 2002.

44 For example, IIROC clarified what is considered:
- a short sale and when a person would be considered to own a security (See MIN 2004-020 *Sales of Restricted Securities* (August 13, 2004), MIN 2004-023 *Provisions Respecting Short Sales* (August 27, 2004), MIN 2005-028 *Sale of Securities Subject to Transfer Restrictions Only in the United States* (July 29, 2005), MIN 2006-002 "*When Issued" Trading* (January 30, 2006), MIN 2006-010 *Short Sale Designations and Restrictions* (April 7, 2006)
- a short position and reminded Participants and Access Persons how to file short position reports (See MIN 2003-011 *Short Position Reports* (May 27, 2003) and MIN 2007-022 *Short Position Calculation and Reporting* (October 29, 2007).

45 See the exemption for Basis Orders in 2005 (MIN 2005-010 *Provisions Respecting a "Basis Order"* (April 8, 2005), Closing Price Orders in 2007 (MIN 2007-002 *Provisions Respecting Competitive Marketplaces* (February 26, 2007), where the sale is undertaken in accordance with the requirement to move the market to execute a trade at a price lower than the prevailing market (MIN 2008-008 *Provisions Respecting "Off-Marketplace" Trades* (May 16, 2008), for persons with "Marketplace Trading Obligations" (IIROC Notice 11-0251 *Provisions Respecting Market Maker, Odd Lot and Other Marketplace Trading Obligations* (August 26, 2011)).

46 In June 2009, IOSCO published a report on the Regulation of Short Selling, which sets out four principles for the effective regulation of short selling. The UMIR exemptions from price restrictions on short sales for market making and arbitrage activities complied with IOSCO's fourth principle which provided that short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development. (IIROC Notice 11-0075 *Provisions Respecting Regulation of Short Sales and Failed Trades* at p17).

47 See MIN 2004-026 *Strategic Review of the Universal Market Integrity Rules* (October 4, 2004), MIN 2007-017 Request for Comments – *Provisions Respecting Short Sales and Failed Trades* (September 7, 2007) and IIROC Notice 08-0143 Notice of Approval – *Provisions Respecting Short Sales and Failed Trades* (October 15, 2008).

48 RS established a series of roundtable discussions in Montreal, Toronto, Calgary and Vancouver with representatives from buy-side and sell-side firms, marketplaces and law firms (see MIN 2004-026).

Group).[49] This Working Group monitored regulatory developments in the U.S. including the 2004 SEC SHO Pilot Project[50] which evaluated the effectiveness and necessity of price restrictions (tick test) in short selling. The Working Group also looked at data on failed trades from November 2004 to February 2005 and found the market value of fails in the issues on the "fail list"[51] using the U.S. criteria would account for approximately 12.2% of the market value of all failed trades.[52]

As a result of this work, IIROC questioned whether the benefits of a US-style "fail list" for Canadian markets in 2007 would be commensurate with the costs due to:

- the link between short sales and failed trades in the U.S. was not present in Canada given the presence of uniform short sale restrictions across all Canadian equity marketplaces;
- generally lower rates of trade failure in Canada than the U.S.; and
- the fact that failed trades in securities on the fail list accounted for a limited percentage of the value in failed trades.

iii. 2007 Failed Trade Study[53]

To get data on the prevalence of failed trades, including on the contribution of short sales in the occurrence of failed trades, IIROC conducted a statistical study of failed trades on Canadian marketplaces and published its findings in April 2007 (**2007 Failed Trade Study**). The 2007 Failed Trade Study results showed that a short sale had a lower probability of failing than trades generally and that the principal reason for trade failures was administrative error. At the time, IIROC concluded that the concepts of short sale regulation and failed trade regulation were distinct and that the measures adopted to address failed trades should be broad enough to encourage timely settlement of trades in all circumstances. As a result, IIROC recommended looking further into:

- eliminating the requirement to file short position reports, or replacing them with summary periodic information on short sales conducted on marketplaces;
- introducing a "failed trade report" that would be filed when an account fails to deliver securities sold by the account within a specified period following settlement date; and
- introducing provisions for a regulation services provider to approve post-trade cancellations and variations.

iv. 2008 Trends Study[54]

As part of IIROC's ongoing commitment to monitor trading activity on equity marketplaces in Canada to ensure that its rules for market integrity are informed by relevant and timely data, IIROC completed a study of trends in trading activity, short selling and failed trades (**2008 Trends Study**) and published its report in February 2009. The 2008 Trends Study indicated, among other findings, that:

- short sales tended to have a lower volume but higher value than sales from a long position (indicating a concentration of short sale activity in more senior and liquid securities on each of the marketplaces);
- other than the increase in short sales of inter-listed securities, there had been no significant change in the pattern of short selling in comparison with the trading of securities generally; and
- the number of failed trades as a percentage of the overall number of trades had generally declined over the review period.

Findings from the 2008 Trends Study did not support the need in Canada to follow actions on short selling taken at the time by the SEC, including the Regulation SHO proposal.[55]

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49 MIN 2007-017 – Request for Comments – *Provisions Respecting Short Sales and Failed Trades* (September 7, 2007) at page 11 and IIROC Notice 08-0143 – Notice of Approval – *Provisions Respecting Short Sales and Failed Trades* (October 15, 2008).

50 See SEC Release No. 34-50104, July 28, 2004 and *Economic Analysis of the Short Sale Price Restrictions Under the Regulation SHO Pilot* (Securities and Exchange Commission, Office of Economic Analysis, February 6, 2007).
The SHO Study concluded that the removal of price restrictions on the securities included in the Pilot Project had an effect on the mechanics of short selling, order routing decisions, displayed depth and intraday volatility, but on balance has not had a deleterious impact on market quality or liquidity (see also MIN 2007-017 starting on p8).

51 The Working Group developed a "fail list" using thresholds from Regulation SHO (of average fail positions over a five-day period of 10,000 shares or more that constitute 0.5% or more of the issued and outstanding shares of the issuer). The application of these criteria would have resulted in an average of 30 issuers on the "fails list" in February 2005. (MIN 2007-017 at p12).

52 MIN 2007-017 – Request for Comments – *Provisions Respecting Short Sales and Failed Trades* (September 7, 2007) and IIROC Notice 08-0143 – Notice of Approval – *Provisions Respecting Short Sales and Failed Trades* (October 15, 2008).

53 *Statistical Study of Failed Trades on Canadian Marketplaces* (Market Regulation Services Inc., April 2007).

54 IIROC Notice 09-0037 *Recent Trends in Trading Activity, Short Sales and Failed Trades* (February 4, 2009).

55 See for example, the T+3 close-out requirement introduced by the SEC in 2008 (SEC Release No. 34-58572 (September 17, 2008)).

B. 2008 UMIR Amendments

Results from the body of work described above led to IIROC's decision to amend UMIR with respect to short selling and failed trades in 2008 (**2008 UMIR Amendments**), which included:

i. Additional restrictions in short selling

IIROC amended UMIR to provide for the ability to prohibit short selling in particular securities or class of securities in real-time (**Short Sale Ineligible Security**[56]) and respond to developments in trading where rates of failed trades had become excessive.[57]

IIROC also clarified requirements that must be met for a seller to be considered the owner of securities at the time of a sale, including that if a seller has not taken all necessary steps to become legally entitled to the security, the seller would be considered to be making a short sale and the order must be identified accordingly.[58]

ii. Enhanced monitoring of Failed Trades

IIROC required Participants and Access Persons to report "failed trades" where the failure was not resolved within ten trading days following the original settlement date of the trade (**EFTR**).[59] IIROC also implemented a new web-based reporting system for EFTRs to identify "problem" fails so that IIROC would be able to assess the reasons for the failure and monitor the steps taken to resolve the problem.[60] IIROC also included an anti-avoidance provision to prohibit Participants and Access Persons from entering into a transaction or series of transactions in an attempt to "re-age" the default in order to avoid filing an EFTR, which would be a violation of the requirement to trade openly and fairly in UMIR 2.1.

iii. Enhanced monitoring of Cancelled or Varied Trades

IIROC prohibited the cancellation or variation[61] of a trade unless the variation or cancellation was made by IIROC or with notice to IIROC (**TVCR**).[62] TVCR reports allowed IIROC to review these changes and ensure that the variation or cancellation is for a bona fide reason and not part of a manipulative or deceptive manner of trading.[63]

IIROC continued to monitor short selling and failed trades and enhanced its surveillance regime to see if further regulatory action would be required. The following measures adopted by IIROC and further studies ultimately led to further amendments in UMIR in 2012:

iv. New Surveillance Alerts

IIROC introduced additional alerts that detected changes in the historic pattern of short selling for a particular security. These alerts allowed IIROC to determine if short selling was becoming concentrated within particular dealers or clients.[64] If unusual levels of short selling were detected, IIROC would also have the ability to:

- intervene to vary or cancel the prices of any trade deemed "unreasonable";
- impose a halt on the trading of a particular security across all marketplaces.[65]

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56 IIROC Notice 08-0143 *Provisions Respecting Short Sales and Failed Trades* (October 15, 2008).

57 For example, IIROC may become aware of systemic failures to settle trades in a particular security or class of securities through its monitoring of failed trade reports, issuances of "buy-in" notices by CDS, increasing proportion of short selling on the marketplace, or unusual price or volume movements, etc. (see IIROC Notice 08-0143 *Provisions Respecting Short Sales and Failed Trades* (October 15, 2008) at p11).

58 For example, with respect to the exercise of options, rights or warrants – all necessary steps include: made any payment required; submitted to the appropriate person any required forms or notices; and submitted, if applicable, to the appropriate person any certificates for securities to be converted, exchanged or exercised. (IIROC Notice 08-0143 at p12-13).

59 IIROC implemented EFTR requirements for all trades executed on a marketplace and settle through:
- the continuous net settlement facilities (CNS) on June 1, 2011 (IIROC Notice 11-0161 *Reminder Regarding the Reporting of Extended Failed Trades* (May 19, 2011)) and
- the trade-for-trade ("TFT") facility of CDS on April 15, 2013 (IIROC Notice 13-0014 *Implementation Date for Reporting "Trade-for-Trade" Extended Failed Trades* (January 14, 2013).

60 IIROC Notice 11-0075 – Request for Comments – *Provisions Respecting Regulation of Short Sales and Failed Trades* (February 25, 2011) at p7 and IIROC Notice 12-0078 – Notice of Approval – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012).

61 Variation with respect to price or volume of the trade, or the settlement date for the trade (see UMIR 7.11).

62 IIROC implemented TVCR requirements on June 1, 2011 (see IIROC Notice 11-0079 *Implementation Date for the Reporting of Trade Variations and Cancellations* (February 25, 2011).

63 IIROC Notice 11-0075 – Request for Comments – *Provisions Respecting Regulation of Short Sales and Failed Trades* (February 25, 2011) at p26 and IIROC Notice 12-0078 – Notice of Approval – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012).

64 IIROC Notice 08-0143 *Provisions Respecting Short Sales and Failed Trades* (October 15, 2008), IIROC Notice 11-0075 – Request for Comments – *Provisions Respecting Regulation of Short Sales and Failed Trades* (February 25, 2011) and IIROC Notice 12-0078 – Notice of Approval – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012).

65 IIROC Notice 11-0075– Request for Comments – *Provisions Respecting Regulation of Short Sales and Failed Trades* (February 25, 2011) at p7 and IIROC Notice 12-0078 – Notice of Approval – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012).

C. Studies Conducted Subsequent to 2008 UMIR Amendments

i. Short Prohibition Study[66]

IIROC continued to monitor against regulatory arbitrage opportunities by undertaking a study (**Short Prohibition Study**) to evaluate the impact of the CSA orders[67] (**Orders**), which prohibited short sales of certain financial issuers listed on the TSX that were also listed on an exchange in the U.S. (**Restricted Financials**). These temporary orders were issued by CSA jurisdictions as a precautionary measure to prevent regulatory arbitrage with respect to short selling of inter-listed financial sector issuers because of initiatives taken by the Securities and Exchange Commission to prohibit short selling of financial sector issuers.

The Short Prohibition Study compared rates of trade failure of Restricted Financials to those of other issuers in the financial sector that were only listed on the TSX (**Non-Restricted Financials**). The analysis covered the periods before, during, and after the Orders were in effect[68]. IIROC published its findings in February 2009 which indicated the issuance of the Orders:

- did not appear to have had any appreciable effect on the price of securities of either the Restricted Financials or Non-Restricted Financials (both of which performed better than the benchmark index of market performance);
- appeared to have had a significant impact on market quality for the trading of the Restricted Financials by:
  - reducing liquidity available in the Restricted Financials; and
  - increasing the "spread" for Restricted Financials as measured by the difference between the closing bid and ask prices.

ii. 2011 TSXV Study[69]

To see if short selling activity was the cause or a contributing factor to significant price declines, IIROC conducted and published a multi-year study (**2011 TSXV Study**) on the relationship between price movement and short sale activity on the TSXV during May 1, 2007 to April 30, 2010, when trading on the TSXV was subject to price restrictions on short sales[70]. IIROC found that the prices and rates of short selling activity tended to move in tandem and that, in periods of most significant price decline, "shorts" were in the market buying securities to cover their positions thereby providing price support.[71] The data from the 2011 TSXV Study also suggested that:[72]

- the steep price decline evidenced between July 2008 and December 2008 was neither caused by nor exacerbated by short selling activity; and
- the tick test was not an effective tool to restrict significant and rapid systemic price declines.

iii. 2011 Trends Study[73]

IIROC also updated its 2008 Trends Study by publishing a multi-year study on trends in trading activity, short sales and failed trades for the period May 1, 2007 to April 30, 2010 (**2011 Trends Study**). The 2011 Trends Study found that the rates of short sales were relatively constant throughout the period and that rates of trade failure generally declined. Based on the 2011 Trends Study and IIROC's previous empirical studies, IIROC found that the Canadian market did not experience problems with short selling, particularly naked short sales and failed trades that may have been evident in other jurisdictions.

iv. Short Sale Circuit Breaker Study[74]

To determine whether IIROC should consider similar short sale circuit breaker requirements as the SEC at the time, IIROC monitored and reviewed short selling activity on Canadian marketplaces from February 28 to April 29, 2011 in inter-listed securities where a short sale circuit breaker had been triggered in the U.S. Based on IIROC's empirical studies, IIROC did not find a relationship between rapid price declines and unusual short selling activity, and did not find there was evidence of a systemic migration of short selling activity of inter-listed securities to Canadian markets when short sale circuit breakers were in effect in

66 IIROC Notice 09-0038 – *Impact of the Prohibition on the Short Sale of Inter-listed Financial Sector Issuers* (February 4, 2009).
67 IIROC Notice 08-0098 *Reminder Respecting Obligations in the Conduct of Short Sales* (September 22, 2008) and IIROC Notice 08-0101 *Restated Reminder Respecting Obligations in the Conduct of Short Sales* (September 23, 2008). While IIROC Notices 08-0098 and 08-0101 referred to the orders issued by the OSC, other CSA jurisdictions, such as the AMF, ASC and BCSC also issued similar orders on the same terms as the OSC.
68 The OSC orders were in effect from September 22, 2008 to October 8, 2008.
69 IIROC, *Price Movement and Short Sale Activity – The Case of the TSX Venture Exchange* (February 2011).
70 During May 1, 2007 and April 30, 2010, no short sale of a particular security could be made at a price less than the last sale price of that security (tick test).
71 IIROC Notice 12-0078 – Notice of Approval – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012) at p12.
72 IIROC, *Price Movement and Short Sale Activity – The Case of the TSX Venture Exchange* (February 2011).
73 IIROC Notice 11-0078 *Trends in Trading Activity, Short Sales and Failed Trades* (February 25, 2011).
74 IIROC, *Review of Trading on Canadian Equity Marketplaces of Inter-listed Securities Subject to the US Short Sale Circuit Breaker* (February 2012).

the U.S. IIROC concluded that Canada did not need to adopt the same short sale circuit breaker system and alternative uptick rules similar to the SEC's Rule 201.[75]

D. 2012 UMIR Amendments

Supported by the empirical evidence from the above studies on short sales and failed trades in the Canadian market, IIROC amended UMIR in March 2012 to repeal the tick test (**2012 UMIR Amendments**).[76] This amendment paralleled the SEC's repeal of price restrictions on short sales that became effective on July 7, 2007, following a multi-year "pilot project" which concluded that price restrictions had no effect on market prices.[77] Before the 2012 UMIR Amendments, IIROC had to provide an exemption from the price restrictions on short sales with respect to securities that were inter-listed on an exchange in the U.S.[78]

Based on IIROC's studies, IIROC believed there were better mechanisms than the tick test to detect and address abusive short selling,[79] and implemented the following new initiatives on short selling and failed trades as part of the 2012 UMIR Amendments:

i. Pre-Borrow Requirements in certain circumstances

While short selling with no reasonable expectation to settle on settlement date was already prohibited as a type of manipulative and deceptive activity under UMIR 2.2[80], IIROC introduced the following limited pre-borrow requirements in March 2012 that would apply even if there was a reasonable expectation to settle:[81] Participants or Access Persons must make arrangements to borrow the securities necessary for settlement before entering an order for a short sale on a marketplace for a security which has been designated by IIROC as a "Pre-Borrow Security", or where a Participant has filed an EFTR at any time in the past with respect to:

- a client or non-client account:
    - the Participant must not sell short any listed securities on a marketplace on behalf of that client or non-client unless:
    - the Participant has made arrangements to borrow the securities in order to settle the resulting trade, or
    - the Participant is satisfied, after a reasonable inquiry, that the reason for the prior failed trade was not due to any intentional or negligent act of the client or non-client.
- a principal account: the Participant must not sell short that particular security on a marketplace unless:
    - the Participant has made arrangements to borrow the securities in order to settle the resulting trade, or
    - the Participant obtained IIROC's consent to enter the short sale on a marketplace.

ii. New Short-Marking Exempt Marker

IIROC also took additional steps to enhance its monitoring of short selling by introducing a new short-marking exempt marker[82], which by identifying trading that is directionally neutral and has a horizon of a day or less, increased IIROC's ability to monitor selling that takes a directional position.

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75 Under Rule 201 of Regulation SHO, if the price of a security declines at least 10% from the closing price on the primary listing market on the previous trading day, a circuit breaker would be triggered and any short sale executed during the balance of that trading day and the next trading day would have to be entered at a price which was at least one trading increment above the current national best bid.

76 IIROC Notice 12-0078 – Notice of Approval – Provisions Respecting Regulation of Short Sales and Failed Trades (March 2, 2012).

77 IIROC Notice 11-0075– Request for Comments – *Provisions Respecting Regulation of Short Sales and Failed Trades* (February 25, 2011) and IIROC Notice 12-0078 – Notice of Approval – Provisions Respecting Regulation of Short Sales and Failed Trades (March 2, 2012).

78 MIN 2007-014 - Guidance – *Exemption of Certain Inter-listed Securities from Price Restrictions on Short Sales* (July 6, 2007).

79 IIROC Notice 12-0078 – Notice of Approval – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012) at p5.

80 Once a Participant or Access Person becomes aware of difficulties in obtaining particular securities to settle a short sale, the Participant would no longer have a "reasonable expectation" of being able to settle a resulting trade and therefore would not be able to enter further short sale orders. Participants or Access Persons who do not have the ability to borrow that security may be precluded from entering short sales. (Ibid. at p10).

81 Ibid.

82 Ibid.

a. Short Sale Transparency Consultations

While the CSA and IIROC believed that the regulatory framework following the 2012 UMIR Amendments governing short selling and failed trades in Canada was generally consistent with IOSCO principles, on March 2, 2012, the CSA and IIROC issued a consultation paper on approaches to transparency of short sales and short positions.[83] The purpose of this consultation paper was to:

- explain the approach taken by a working group of CSA and IIROC staff to issues regarding the regulation of short sales and failed trades;
- provide a background on CSA and IIROC regulation of short sales and failed trades in Canada;
- provide an overview of recent international developments regarding the regulation of short sales and failed trades; and
- solicit feedback on whether further measures are needed or desirable to: (i) enhance the regulatory reporting and transparency of short sales, or (ii) introduce some transparency of failed trades in Canadian markets.

There was no clear consensus among the commenters who responded to the consultation paper that specific improvements were needed; the majority of respondents believed that the current requirements in UMIR, including the 2012 UMIR Amendments, were adequate. The working group concluded that additional measures were not needed or desirable at that time but monitoring of domestic and international developments should continue.[84]

b. Ongoing Review and Surveillance

As part of IIROC's overall strategy on the regulation of short selling and failed trades, IIROC believes in providing greater transparency regarding short selling in a way that would provide timely information to the market. As a result, IIROC began publishing the Short Sale Trading Summary Report in 2013 on its website on a semi-monthly basis.[85] This report sets out the proportion of short sales in the total trading activity of each listed security across all equity marketplaces for each period.[86] While no one data source can provide a "complete" picture of short sale activity or positions, these semi-monthly trading summaries provided timely information in a cost efficient manner and supplemented the information available through the semi-monthly short position reports.[87]

To further understand and explore issues affecting small-cap issuers, IIROC hosted roundtables in 2014[88] and 2016[89]. In order to facilitate discussions at the 2014 roundtable, IIROC reviewed trading data during January 1, 2012 to March 31, 2014 and found that:

- in the period since the repeal of the tick test, the proportion of short sales executed on a downtick increased to 6.58% of short sales, however the vast majority of short sales were still executed on an uptick or zero tick;
- notwithstanding the repeal of the tick test, a short sale is approximately half as likely to execute on a downtick as other sales. Equally interesting was the fact that a short sale is more likely to execute on an uptick than other sales.

As part of the response to the discussions at the 2016 roundtable, IIROC:

- began publishing the Consolidated Short Position Report[90] on its website on a semi-monthly basis to further increase transparency regarding short sales and
- refreshed the 2007 Failed Trade Study and published the 2022 Failed Trading Study to update the information on short selling activity and failed trades in Canada.

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83 Request for Comment – CSA-IIROC Joint Notice 23-312 *Transparency of Short Selling and Failed Trades*, March 2, 2012, (2012) 35 OSCB 2099.

84 CSA/IIROC Joint Notice 23-315 – *Summary of Comments on CSA/IIROC Joint Notice 23-312 — Request for Comments — Transparency of Short Selling and Failed Trades*, February 28, 2013, (2013) 36 OSCB 1978.

85 IIROC Notice 13-0020 *Issuance of Initial Short Sale Trading Summary* (January 21, 2013).

86 Short Sale Trading Statistics Summary Reports can be found on the IIROC website at https://www.iiroc.ca/sections/markets/reports-statistics-and-other-information/short-sale-trading-statistics-and-reports

87 IIROC Notice 11-0075 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Regulation of Short Sales and Failed Trades* (February 25, 2011) at p16 and IIROC Notice 12-0078 – Notice of Approval – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012).

88 IIROC Notice 14-0117 *Selected Background Information for the IIROC Venture Market Roundtable* (May 6, 2014).

89 IIROC Notice 16-0240 *Summary of Roundtable Discussions on Market Structure Issues Affecting Small-Cap Issuers* (October 20, 2016).

90 IIROC Notice 18-0062 *Short Position Calculation and Reporting* (March 22, 2018). Consolidated Short Position Reports can be found on the IIROC website at https://www.iiroc.ca/sections/markets/reports-statistics-and-other-information/short-sale-trading-statistics-and-reports

APPENDIX B

INTERNATIONAL REGULATORY INITIATIVES REGARDING DISCLOSURE AND REPORTING OF SHORT SELLING POSITIONS

In Europe, existing disclosure requirements are under review. Specifically, the European Securities and Market Authority (**ESMA**) published a Consultation Paper – *Review of certain aspects of the Short Selling Regulation*[91] in which, among other things, they seek comment on the existing framework for transparency and publication of net short positions. ESMA published its final report to the European Commission on March 22, 2022. This final report proposed amendments to improve ESMA's operation, focused on clarifying the procedures for the issuance of short and long-term bans, ESMA's intervention powers and proposes to enhance its rules against uncovered short sales by introducing record keeping requirements and harmonization of sanctions. It also includes a review of the framework for transparency and the publication of net short position reports.[92]

In the U.S., the Financial Industry Regulatory Authority (**FINRA**) published a request for comment on potential enhancements to its short selling program, which would include modifications to its short interest reporting requirements.[93] The public comment period, initially set at August 4, 2021, was extended to September 30, 2021. If implemented, such changes would change the frequency and content of information reported to FINRA and the information that would be made publicly available.

Also in the U.S., on November 18, 2021, the SEC published for a 30-day comment period proposed new Exchange Act Rule 10c-1 (proposed Rule 10c-1), which would increase transparency of securities lending transactions. The proposal is to require lenders of securities to provide the material terms of securities lending transactions to a registered national securities association, such as FINRA. FINRA would make some of the information available to the public.[94] On February 25, 2022, the SEC indicated that it reopened the comment period for this proposed Rule 10c-1. The comment period for this proposal ended on April 1, 2022.

On February 25, 2022, the SEC proposed new Exchange Act Rule 13f-2 (proposed Rule 13f-2)[95] and amendments to Regulation SHO and to the national market system plan governing the consolidated audit trail to increase market transparency regarding short selling. The proposed Rule 13f-2 and Form SHO would require that institutional money managers file on the SEC's EDGAR system, on a monthly basis, certain short sale related data, some of which would be aggregated and made public. The proposed Form SHO would be filed within 14 calendar days after the end of each calendar month for equity securities that exceed certain thresholds. Such information would include the name of the security, end of month gross short position and daily trading activity that affects a manager's reported gross short position for each settlement date during the calendar month reporting period. The SEC would publish certain information for the securities, including the aggregated gross short position across all reporting institutional money managers. The extended comment period for proposed Rule 13f-2 ended on April 26, 2022.

91 Available at ESMA Consultation Paper - Review of certain aspects of the Short Selling Regulation.

92 See: *Review of certain aspects of the Short Selling Regulation – Final Report,* available at https://www.esma.europa.eu/sites/default/files/library/esma70-448-10_final_report_-_short_selling_regulation_review.pdf.

93 See: *Regulatory Notice 21-19 FINRA Requests Comments on Short Interest Position Reporting Enhancements and Other Changes Related to Short Sale Reporting,* available at Regulatory Notice 21-19 | FINRA.org.

94 Fact sheet available at https://www.sec.gov/rules/proposed/2021/34-93613-fact-sheet.pdf.

95 See: *Short Position and Short Activity Reporting by Institutional Investment Managers – Proposed Rule*, available at https://www.sec.gov/rules/proposed/2022/34-94313.pdf.

APPENDIX C

SELECTED RESULTS OF IIROC MONITORING OF SHORT SELLING ON DOWNTICKS

The vertical line indicates when the tick restrictions were removed

Fig 1 – Short Sale Volume Composition by Market Ticks - TSX, All Securities

Fig 1 shows the short sale volume composition by market ticks for TSX listed securities. The percentage of short sales of TSX listed securities executed on a down-tick was about 10% between 2012 - 2022. This was only slightly higher than prior to the repeal of the tick-test.

Fig 2 – Long Sale (excluding SME) Volume Composition by Market Ticks - TSX, All Securities

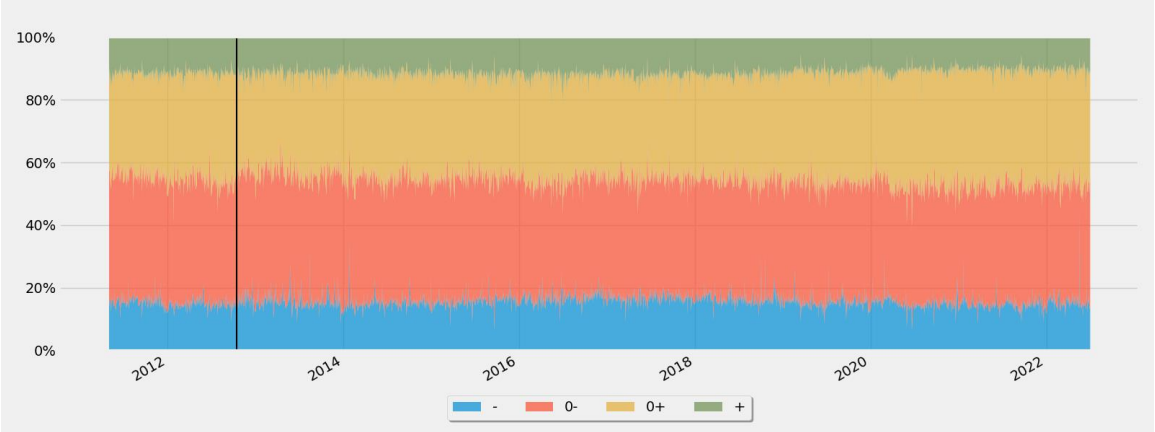


Fig 2 shows the long sale (excluding SME) volume composition by market ticks for TSX listed securities. The percentage of TSX listed securities long sales executed on a down-tick was about 15% between 2012 - 2022.

Fig 3 – Short Sale Volume Composition by Market Ticks - TSXV, All Securities

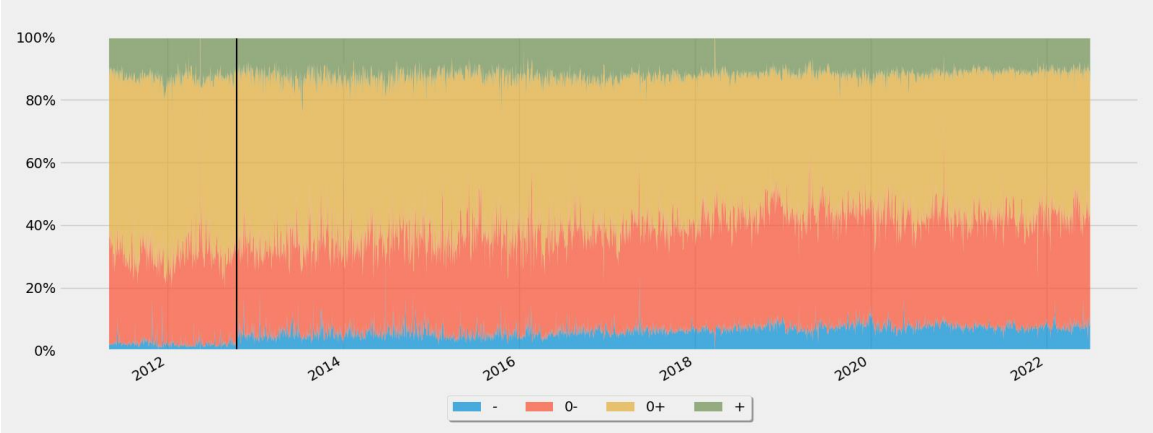


Fig 3 shows the short sale volume composition by market ticks for TSXV listed securities. The percentage of short sales of TSXV listed securities executed on a down-tick was about 8% between 2012 - 2022. This was higher than prior to the repeal of the tick-test.

Fig 4 – Long Sale (excluding SME) Volume Composition by Market Ticks - TSXV, All Securities

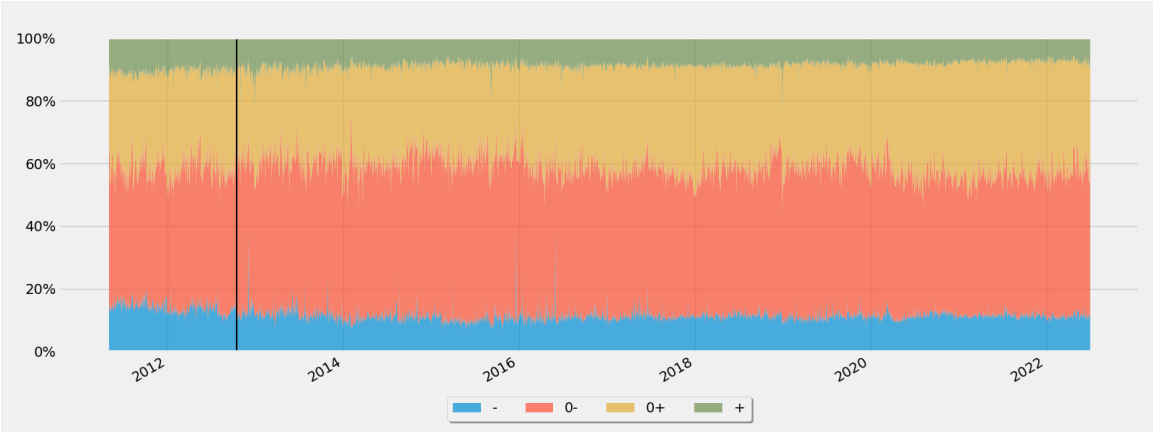


Fig 4 shows the long sale (excluding SME) volume composition by market ticks for TSXV listed securities. The percentage of TSXV listed securities long sales executed on a down-tick was about 12% between 2012 - 2022.

The TSX and TSXV data is provided as a proxy for marketplaces that list junior securities and marketplaces that list senior securities. At the time the tick restriction was moved CSE had limited listings and market activity and NEO had not yet launched. As a result, the data from both CSE and NEO was less informative.

B.1.5 OSC Staff Notice 45-718 – Ontario's Exempt Market

OSC Staff Notice 45-718 – *Ontario's Exempt Market* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

OSC ONTARIO SECURITIES COMMISSION

Ontario's Exempt Market

A review of capital raised in Ontario through prospectus exemptions

OSC Staff Notice 45-718

Fall 2022

Ontario

Contents

Executive Summary

Since 2019, capital raising activity in Ontario's exempt market[1] has continued to grow despite pandemic- related market turbulence. In 2021, the amount of capital raised through prospectus exemptions nearly doubled from pre-pandemic highs to reach a record $175 billion. Much of this increase was driven by significant growth in U.S. and other foreign debt investments. Approximately 98% of the capital raised came from institutional investors. Individual investor activity, which is typically concentrated in Canadian issuers, also increased but at a more moderate pace.

Our findings in this report include:

Issuer and Investor Trends

- In 2021, Canadian and foreign issuers conducting prospectus-exempt offerings raised a total of approximately $171 billion from institutional investors and an additional $4 billion from individual investors.
- As in previous years, Ontario institutional investors primarily invested in debt-related offerings ($113B) of which a large and increasing share was directed at U.S. and other foreign issuers ($78B).
- Investments by individual investors remain concentrated in equity offerings of Canadian issuers (68%).
- Real estate and mortgage-related investments continue to attract an increasing share of individual investor capital, growing from approximately 37% in 2019 to 43% in 2021.

Prospectus Exemptions

- The Start-up Crowdfunding Exemption has been used by 59 issuers that have raised an aggregate $1.5 million from Ontario investors since the initial interim class order came into effect in May 2020.[2]
- About a third of the capital raised though the Start-up Crowdfunding Exemption was by issuers in the professional, scientific, and technical services sector.[3]
- The Accredited Investor Exemption continues to be the most used prospectus exemption by both Ontario individual (90%) and institutional investors (97%).

Ontario Issuers

- Activity by Ontario-based issuers has increased both in terms of the number of issuers accessing the exempt market and the amount of capital raised.
- In 2021, approximately $270 million was raised from Ontario investors through syndicated mortgage issuances, and about 71% of this ($192M) was raised by Ontario issuers.
- Syndicated mortgage investments represented under 1% of individual capital ($25M) and institutional capital ($245M) invested in 2021.[4]

[1] For the purpose of this report, "individual investors" refers to investors who were identified by their full legal name and not a corporate or legal entity name. "Institutional investors" refers to non-individuals such as companies, trusts or managed accounts purchasing on behalf of a beneficiary or group of beneficiaries.

[2] Activity as of December 2021 includes distributions reported under National Instrument 45-110 *Start-Up Crowdfunding Registration and Prospectus Exemptions*, Ontario Instrument 45-505 *Relief in respect of the Distribution of Securities through a Funding Portal Operated by Silver Maple Ventures Inc. (Interim Class Order)*, and Ontario Instrument 45-506 *Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)*. See CSA Notice of Publication of National Instrument 45-110 and OSC Staff Notice 45-505 for more information.

[3] Issuer sector categories were based on their reported NAICS (North American Industry Classification System) code with the exception of mortgage and real estate issuers, which were identified based on additional OSC staff research.

[4] On July 1, 2021, amendments to National Instrument 45-106 *Prospectus Exemptions*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* related to syndicated mortgages came into force.

Background

Purpose

The primary goal of the report is to highlight key annual trends related to exempt market[5] financing activity in Ontario. The report summarizes exempt market activity both in terms of businesses raising capital and the Ontario investors allocating capital to these businesses.

The report discusses the following:

- Market composition and annual trends
- Investor trends
- Ontario issuer trends

Scope and Data

The report relies on information provided in Form 45-106F1 Report of Exempt Distributions ("**F1 Report**") and the accompanying Schedule 1 filed with the OSC. The scope of the report is limited to non-investment fund issuers that raised capital in 2020 and 2021 from Ontario investors under prospectus exemptions that trigger a requirement to file an F1 Report.[6] These include distributions by both Canadian and foreign issuers. Therefore, the information presented in this report does not represent all exempt market or private market financing activity, such as distributions made under the private issuer exemption.

The data in this report was collected at a point in time and may not incorporate the latest filer amendments or late filings. Similarly, this report may include updated historical figures that differ from previously reported numbers as historical data has now incorporated such filings.

For the period analyzed, approximately 1% of F1 Report filings were excluded because they contained data errors, incomplete records or were identified as duplicate filings. In addition, OSC staff relied on various data cleaning methods and conducted additional research to identify market segments that were not explicitly captured in the F1 Report. For example, issuers were categorized into one of three mortgage sub-segments (Mortgage Investment Entities, Mortgage Syndication or Other Mortgage) based on a combination of OSC staff's research, issuer's name, issuer's NAICS sector, type of securities distributed and additional issuer information.

[5] For more information about the exempt market, please see: "The Exempt Market at <http://www.osc.gov.on.ca/en/exempt-market.htm> and "The Exempt Market Explained" at <https://www.getsmarteraboutmoney.ca>.

[6] For more information on which exemptions require the filing of an F1 Report in Ontario, see Part 6: Reporting Requirements of National Instrument 45-106 *Prospectus Exemptions*.

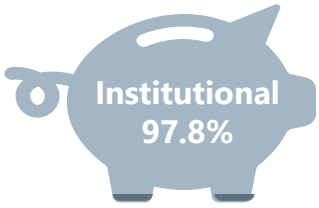
OSC ONTARIO SECURITIES COMMISSION

Market Composition and Annual Trends

Market Composition in 2021

The composition of Ontario's exempt market remains largely unchanged compared to 2019. Institutional investments in foreign, predominantly U.S.-based issuers continue to account for the majority of capital raised. However, for the first time, the number of foreign-based issuers raising capital from Ontario investors was greater than the number of Canadian issuers.

Capital Source



Individual
2.2%

$174.9 billion

Amount invested by Ontario investors through prospectus exemptions

Issuer Capital Raised

~45.6k investors

4 in 5 investors were **individuals**

~5.7k issuers

2 in 5 issuers with **Canada HQ**

Other Key Components

Security Types[7]

Debt

66%
gross proceeds from **institutional investors**

Equity

72%
gross proceeds from **individual investors**

Reporting Issuers

25%
issuers

17%
gross proceeds

54%
of **reporting issuers** were **mining issuers**

Key Sectors

Finance
41%
gross proceeds

Real Estate & Mortgage
22%
gross proceeds

2 in 5 investors participated in a real estate or mortgage-related investment

Accredited Investor (AI) Exemption[8]

97%
gross proceeds

67%
investors

9 in 10 issuers
used the **AI exemption**

[7] Equity includes all classes of common shares, preferred shares, flow-through shares, partnership units, depository receipts and subscription receipts. Debt securities include notes, debentures, bonds, and certificates.

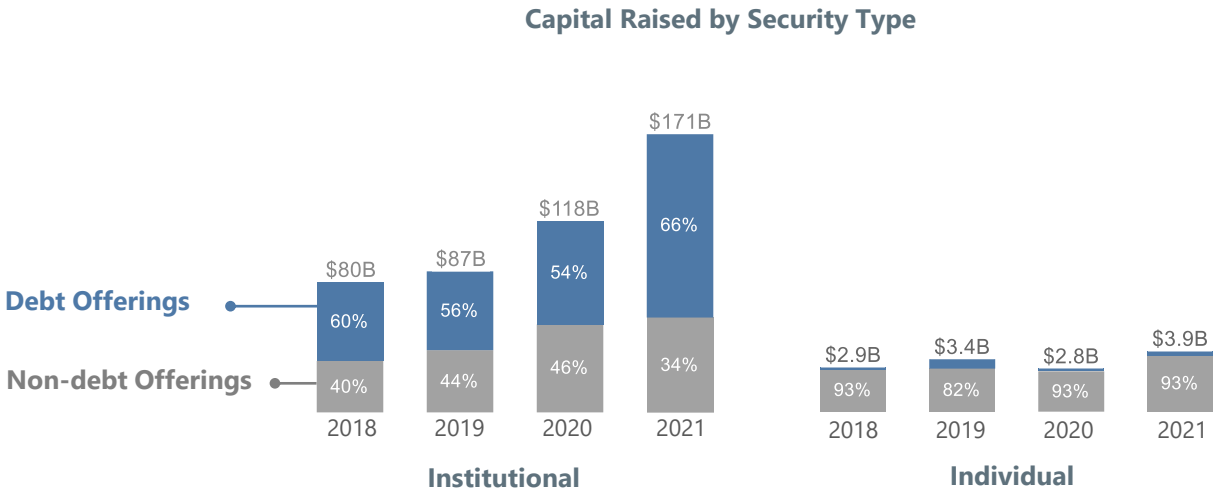
[8] See definition of "accredited investor" in Part 1: Definitions and Interpretation of National Instrument 45-106 *Prospectus Exemptions*.

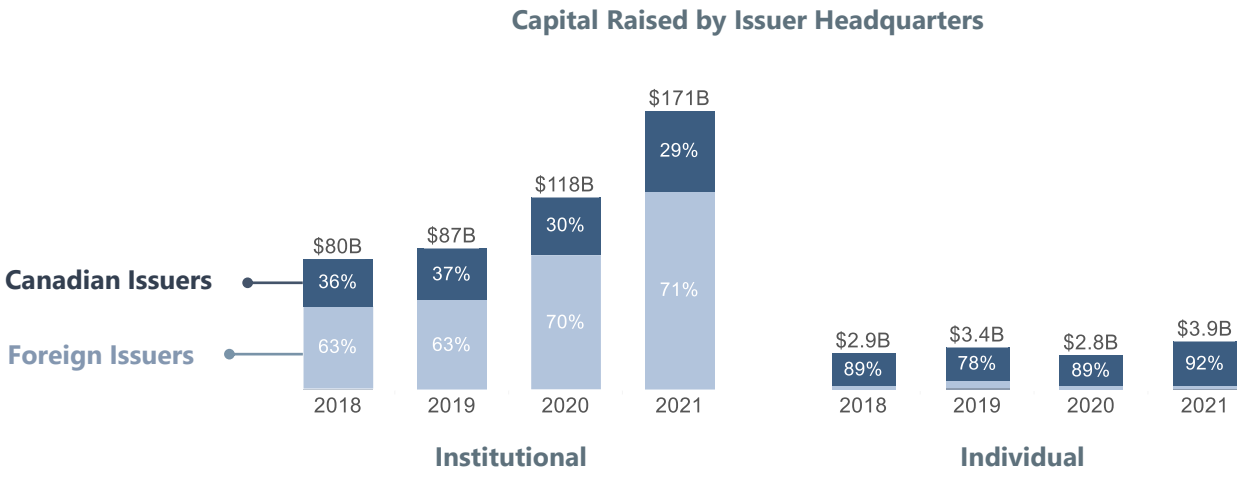
Annual Trends

Ontario's exempt market has grown significantly since 2018 across both institutional and individual investor market segments. There was a small decline in the amount of capital raised from individual investors in 2020 but overall activity, both in terms of the numbers of issuers and investors, has continued to rise.

Capital Raised

Growth in capital raising activity over the years has been concentrated in the institutional investor segment. Since 2018, the amount of capital invested by institutional investors through prospectus-exempt offerings has more than doubled. Much of this increase was through debt-related offerings of U.S.-based and other foreign issuers. In contrast, capital investment by individual investors, which continues to be concentrated in non-debt-related offerings of Canadian issuers, grew at a more moderate pace.

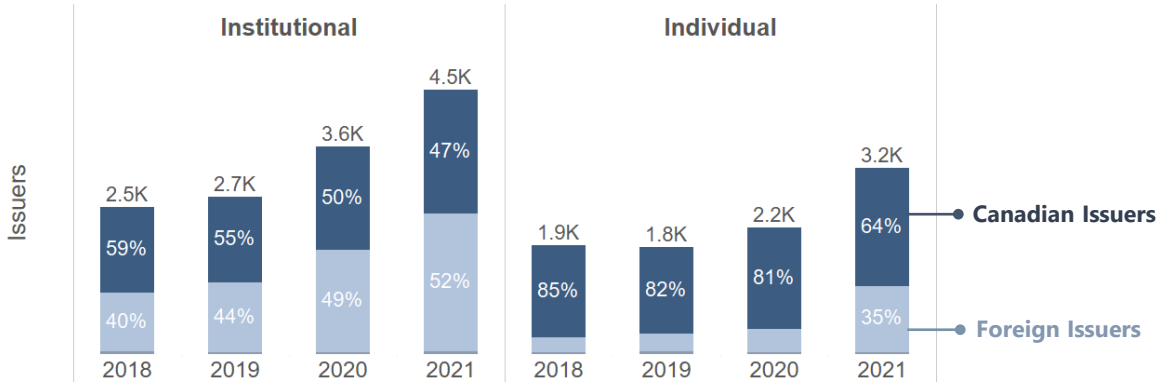




Issuers

The number of Canadian and foreign issuers raising capital from Ontario investors through the exempt market has continued to increase.

In 2021, out of the approximately 4,500 issuers that raised capital from institutional investors, approximately 52% were foreign issuers.[9] Within the individual investor segment, Canadian issuers still outnumbered foreign issuers. Of the 3,200 issuers that raised capital from individual investors in 2021, 64% were Canadian-based issuers. However, in 2021, there was a notable uptick in the number of U.S.-based issuers raising capital from individual investors.

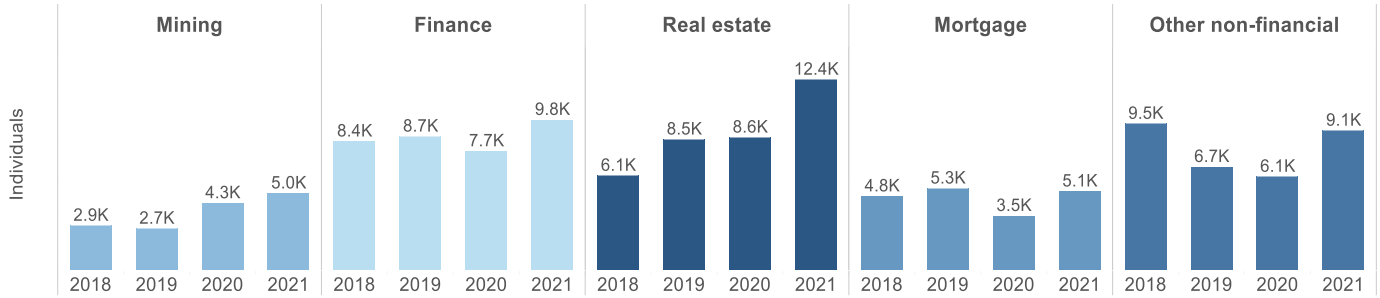


Investors

After a minor decline in 2020, the number of Ontario investors participating in prospectus-exempt distributions rebounded in 2021. There were approximately 36,100 individual investors and 9,400 institutional investors accessing the Ontario exempt market, representing a 26% and 36% increase, respectively, since 2019.

Real estate, finance, mortgage and mining sectors continue to attract the largest share of individual investors. Since 2019, mining and real estate sectors also experienced the largest percentage gain in the number of individual investors.

Individual Investors by Sector[10]



[9] Issuer headquarter (HQ) information is not reported for about 1% of issuers that submitted filings in 2018 to 2021.

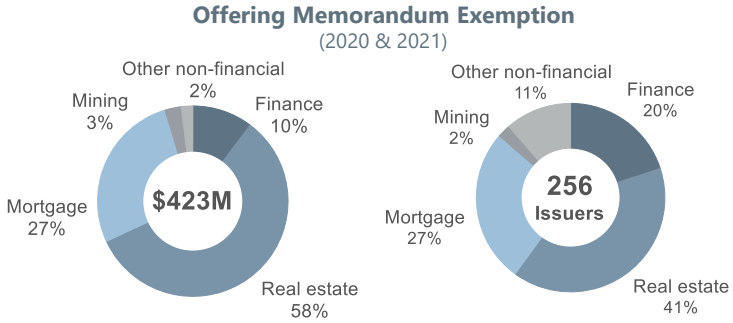
[10] Annual number of investors that invested capital in issuers in each sector. Some investors may have invested in issuers in multiple sectors.

Prospectus Exemptions

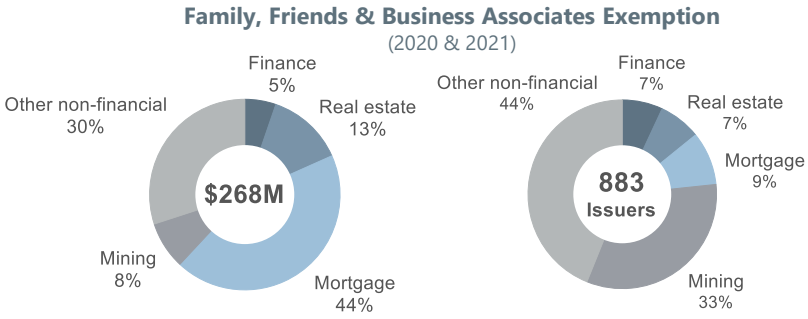
Activity under both the Offering Memorandum (OM) Exemption and Family, Friends and Business Associates (FFBA) Exemption has continued to increase. There has also been some activity under the recently harmonized Start-up Crowdfunding Exemption, which was initially adopted under interim class orders starting in May 2020 before a rule was adopted in September 2021.

		ON Gross Proceeds	Issuers	Investors
Offering Memorandum	2020	$183.3M	154	8.98K
	2021	$239.9M	204	11.44K
Family, Friends & Business Associates	2020	$103.0M	480	2.15K
	2021	$165.0M	561	3.34K
Start-up Crowdfunding	2020	$0.6M	14	0.47K
	2021	$0.9M	45	0.77K

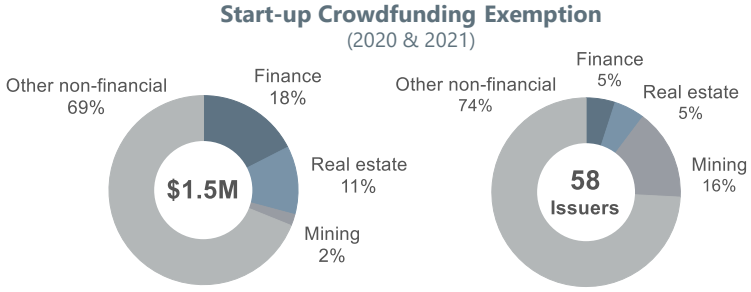
During 2020 and 2021, the OM Exemption continued to be predominantly used by mortgage and real estate issuers.[11]



The greatest proportion of issuers relying on the FFBA Exemption has been non-financial issuers, especially mining issuers.[12] However, mortgage issuers raised more capital under the exemption than issuers in other sectors.



The Start-up Crowdfunding Exemption has been predominantly used by non-financial issuers, mainly issuers in the professional, scientific, and technical sector (32%), and the manufacturing sector (18%).



[11] The number of issuers in the pie charts indicate total distinct issuers from 2020 to 2021.

[12] Non-financial issuers consist of issuers in a NAICS sector other than the finance sector that were not identified as a real estate or mortgage issuer by OSC staff's categorization.

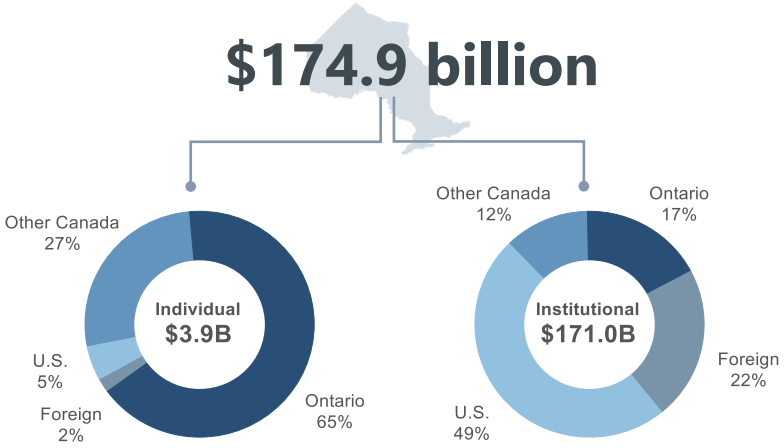
Investor Trends

Investor Trends

Where did investors allocate capital in 2021?

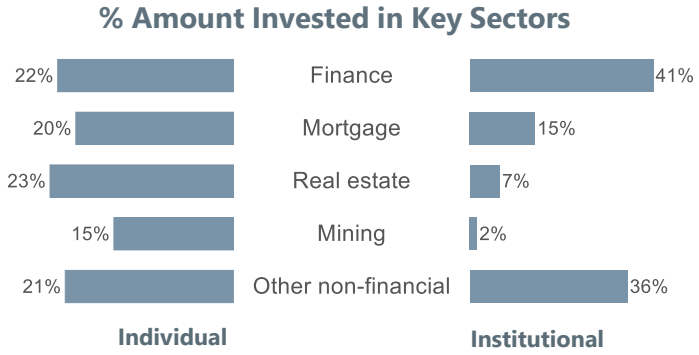
Issuer HQ

Individual investors allocated most of their capital to Ontario-based issuers, whereas institutional investors allocated more capital to foreign-based issuers, predominantly those based in the U.S.



Key Sectors

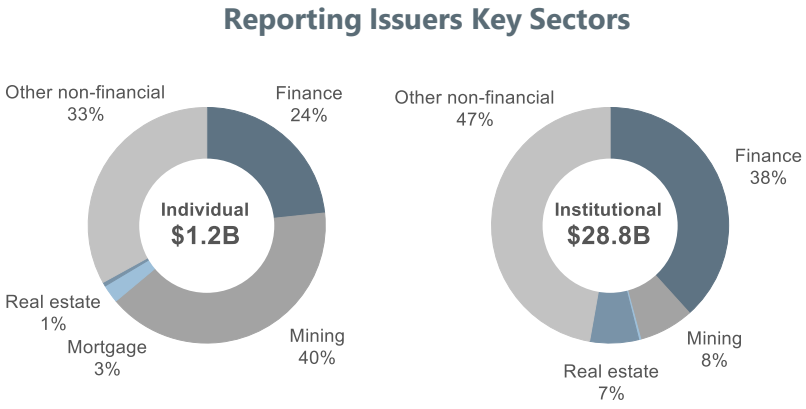
Finance, mortgage and real estate investments accounted for almost two-thirds of the capital invested by individual investors. In contrast, institutional investments were largely concentrated in the finance sector (41%).



Reporting Issuers

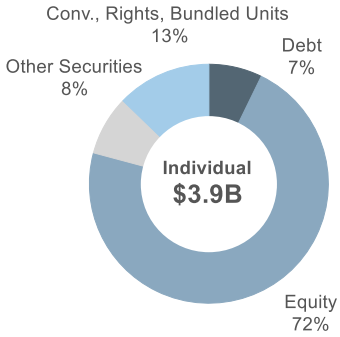
Reporting issuers received 31% of capital invested in the exempt market by individual investors ($1.2B) and 17% of capital invested by institutional investors ($28.8B).

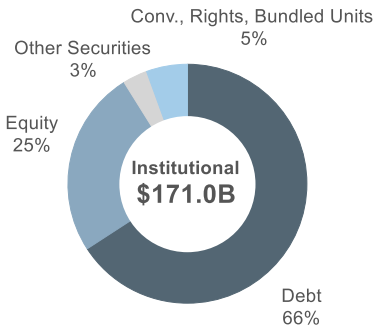
For individual investors, investments in reporting issuers were concentrated in the mining (40%) and finance (24%) sectors.



Security Types[13]

The majority of capital invested by individual investors in 2021 was in equity securities. Institutional investors were more likely to invest in debt securities.





Mortgage and Real Estate Investments

Mortgage and real estate investments have increased for both institutional and individual investors since 2019.

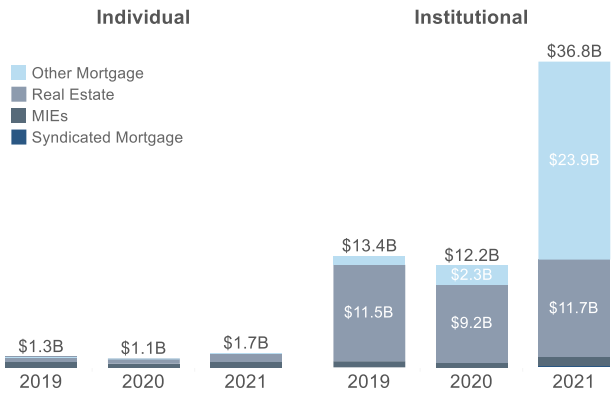
In 2021, a large investment in a U.S. government sponsored mortgage-backed security issuer contributed to the three-fold increase in institutional capital invested in this sector.

Individual investments in mortgage investment entities (MIEs) rebounded in 2021 and there was a notable increase in real estate investments since 2019.

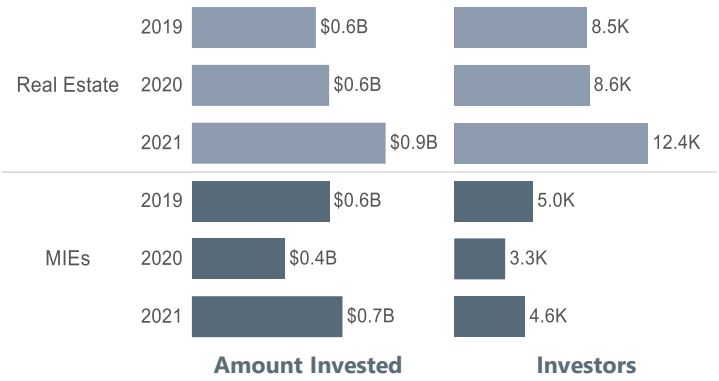
In 2021, approximately $270 million was invested in syndicated mortgages, with $245 million invested by institutional investors and $25 million invested by individual investors.

As in previous years, most of the capital invested in mortgage and real estate issuers by individuals was through offerings of equity securities (97%). In contrast, approximately 80% of the institutional investor capital invested in mortgage and real estate issuers was in debt securities.

Annual Investment in Real Estate and Mortgage Sub-segments[14]



Individual Investments in Real Estate and MIEs



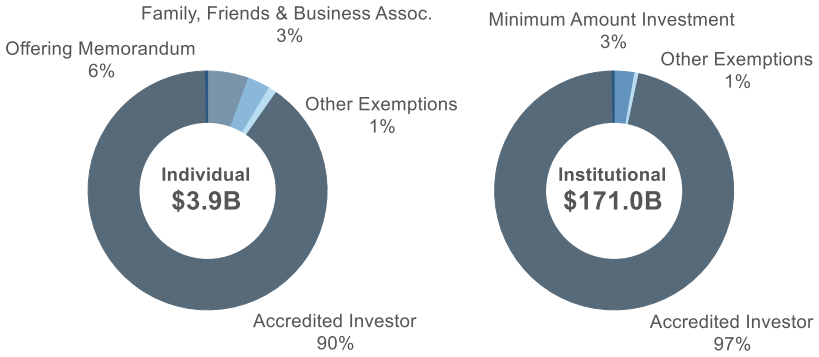
[13] Equity securities include all classes of common shares, preferred shares, flow-through shares, partnership units, depository receipts and subscription receipts. Debt securities include notes, debentures, bonds, and certificates. "Other Securities" include all other security types and for distributions where the security type was not reported.

[14] Issuers categorized under MIEs are predominantly mortgage investment corporations or similarly structured entities; Real Estate includes real estate investment trusts (REITS); Other Mortgage comprises all other mortgage-related investments such as mortgage-backed securities.

Prospectus Exemptions

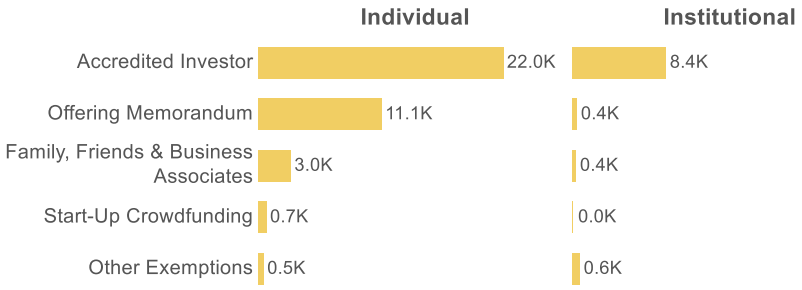
In 2021, the AI Exemption continues to be the most used exemption for individuals (90%) and institutional (97%) investors.

Amount Invested by Prospectus Exemption



After the AI Exemption, the OM Exemption was the second most used prospectus exemption for individual investors in 2021.

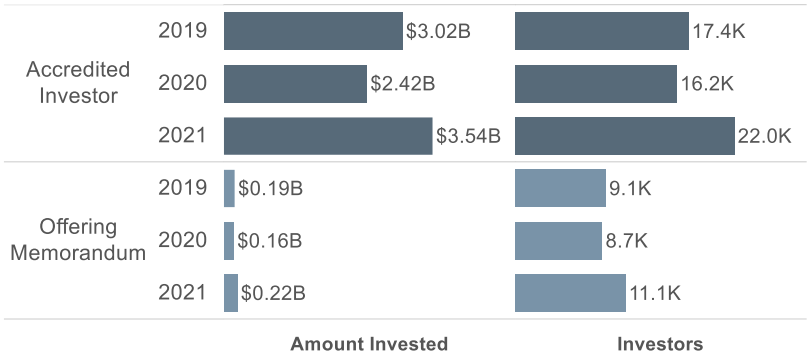
Number of Investors by Prospectus Exemption



Individual Investors

In 2021, individual investor activity under the AI Exemption and OM Exemption surpassed 2019 levels.

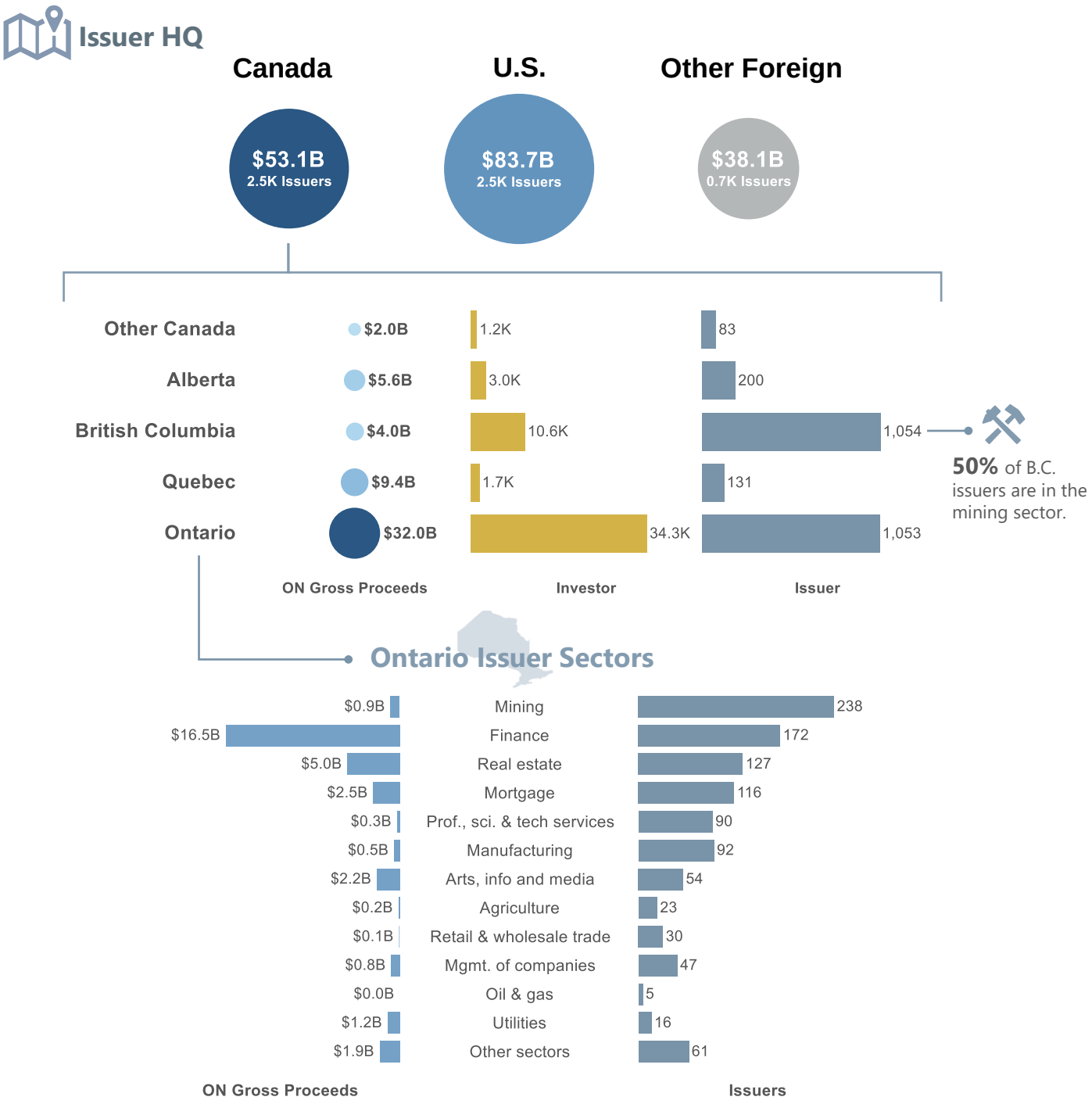
AI and OM Activity by Individual Investors



Ontario Issuer Trends

Ontario Issuers in 2021

Since 2019, the amount of capital raised by Canadian issuers has increased by approximately 56%, whereas the amount raised by U.S. issuers has more than doubled over the same period. Ontario-based issuers still account for over half (approximately 60%) of the capital raised by Canadian issuers. The sector composition of Ontario-based issuers accessing exempt market financings remains generally unchanged between 2019 and 2021.[15]

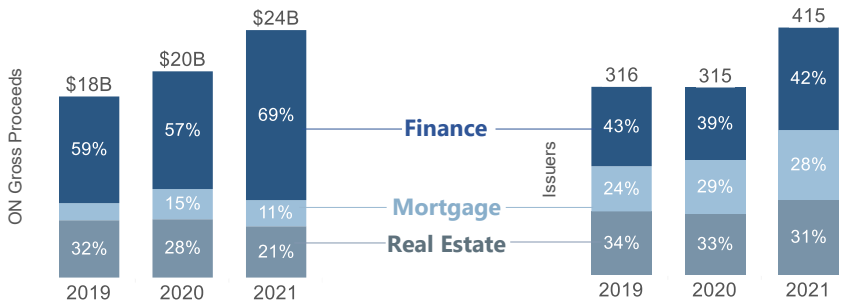


[15] This section focuses on Ontario issuers that raised capital from Ontario investors under prospectus exemptions that trigger a requirement to file an F1 Report.

Key Ontario Sectors – Financial Issuers

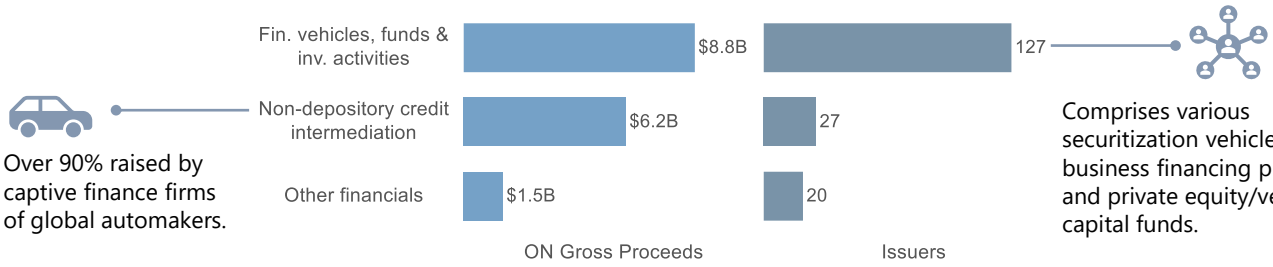
Issuers in the finance sector continue to comprise a large share of the capital raised by Ontario-based issuers.

Ontario Issuer Activity



Finance

2021 Finance Subsector/Industry

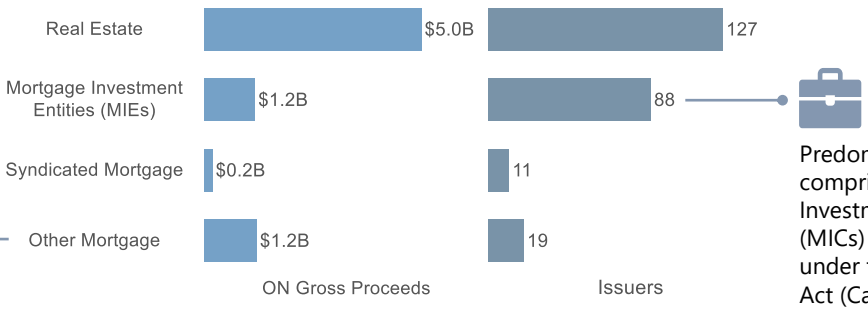


Over 90% raised by captive finance firms of global automakers.

Comprises various securitization vehicles, business financing platforms and private equity/venture capital funds.

Mortgage and Real Estate

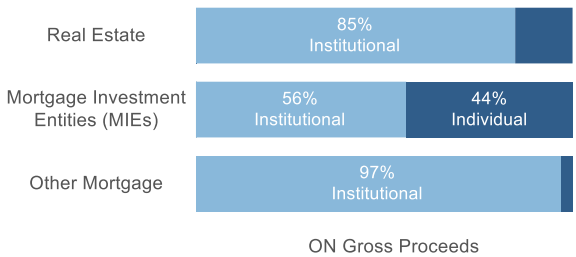
2021 Issuer Composition



Approximately 76% of gross proceeds raised through distributions of residential mortgage-backed securities.

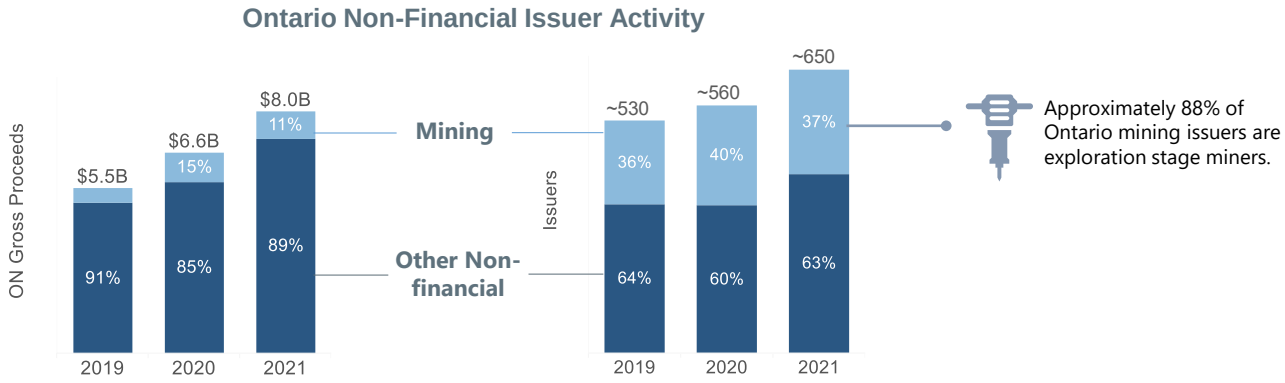
Predominantly comprises Mortgage Investment Companies (MICs) as identified under the Income Tax Act (Canada).

2021 Investor Composition



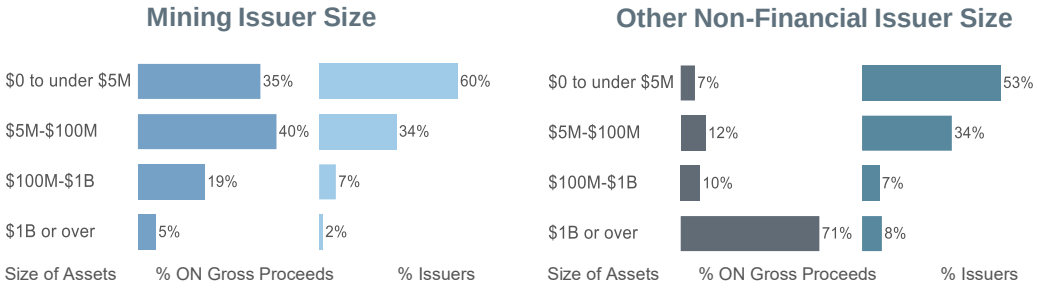
MIEs raised 44% of their capital from individual investors.

Key Ontario Sectors – Non-Financial Issuers



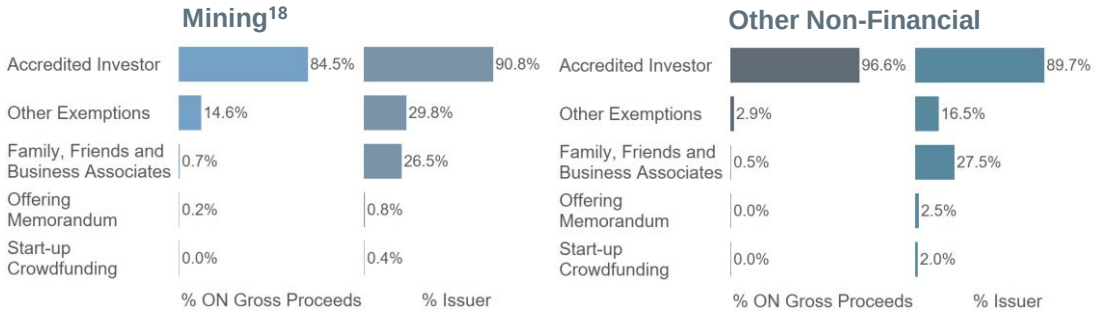
Issuer's Asset Size[16]

Over half of all non-financial issuers had less than $5 million in total assets in 2021.



Prospectus Exemption[17]

Ontario mining and other non-financial issuers predominantly used the AI Exemption to raise capital.



[16] Based on the reported size of issuer's assets from recently available annual financial statements or the size of issuer's assets at the time of distribution end date.

[17] Other Exemptions consists of seven reportable prospectus exemption types, including the *Minimum Amount Investment Exemption*, *Asset Acquisition Exemption*, *Crowdfunding Exemption*, *Petroleum, Natural Gas and Mining Properties Exemption*, *Securities for Debt Exemption*, *Isolated Distribution by Issuer Exemption*, and *Existing Security Holder Exemption*.

[18] The total percentage of issuers by exemption will exceed 100% since some issuers rely on multiple prospectus exemptions to raise capital. For example, 90% (or 9 in 10) non-financial issuers relied on the AI Exemption and 30% (or 3 in 10) non-financial issuers relied on the FFBA Exemption.

Contacts

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B.1.6 Clearford Water Systems Inc. – Notice of Correction

NOTICE OF CORRECTION

Clearford Water Systems Inc., dated October 7, 2022, was published on October 20, 2022, at (2022), 45 OSCB 8975.

At paragraph 12, the correct date is “October 7, 2022”, and reads in full “The effective date of the Corporate Reorganization was October 7, 2022 (the **Effective Date**).”

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B.2
Orders

B.2.1 CME Amsterdam B.V. – s. 144

Headnote

Application to very and restate an order that a Multilateral Trading Facility regulated by the Netherlands Authority for the Financial Markets (Autoriteit Financiële Marketen) is exempt from the requirement to be recognized as an exchange in Ontario and from the requirements of NI 21-101, NI 23-101 and NI 23-103 in their entirety – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144.
National Instrument 21-101 Marketplace Operation, s. 15.1.
National Instrument 23-101 Trading Rules, s. 12.1.
National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces, s. 10.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
CME AMSTERDAM B.V.

ORDER
(Section 144 of the Act)

WHEREAS CME Amsterdam B.V. (the **Applicant**) has filed an application on behalf of the Facilities (as defined below) dated October 20, 2022 (the **Application**) with the Ontario Securities Commission (**Commission**) requesting an order pursuant to section 144 of the Act for the following relief (collectively, the **Requested Relief**):

(a) exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act pursuant to section 147 of the Act; and

(b) exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101 and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103.

AND WHEREAS the Commission granted exemptive relief to the Applicant in an order dated August 25, 2020 (the **Original Order**). On March 11, 2021, the Commission varied the Original Order by replacing Schedule "A" – Terms and Conditions to streamline the terms and conditions of the Original Order and reduce the regulatory burden on the Applicant (the **March 2021 Variation Order**). The Applicant is currently relying on the Original Order, as varied by the March 2021 Variation Order. The Applicant has filed for an order pursuant to section 144 of the Act to revoke the Original Order as of the date hereof;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant (formerly known as NEX Amsterdam B.V.) is a limited liability company organized under the laws of the Netherlands. The ultimate parent company of the Applicant is CME Group Inc. (**CME Group**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market. CME Group acquired NEX Group plc and its group companies, including the Applicant, on November 2, 2018;

2. The Applicant is authorised by the Dutch Minister of Finance as a "market operator" (**Market Operator**) and supervised and regulated by the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) (the **AFM**) with permission to operate the BrokerTec EU Regulated Market platform (the **BrokerTec EU RM**), a regulated market, and the EBS Direct Forwards platform (the **EBS MTF**), a multilateral trading facility (**MTF**);

3. On March 12, 2019, the Dutch Minister of Finance authorised the Applicant to act as the Market Operator of the the BrokerTec EU RM and EBS MTF (each a **Facility** and together, the **Facilities**) in the Netherlands and the AFM has commenced supervision and regulation of the Applicant on an ongoing, active basis;

4. The European Markets in Financial Instruments Directive 2004/39/EC and Directive 2014/65/EU (collectively, **MiFID**) requires that multilateral trading by European Union (**EU**)/European Economic Area (**EEA**) participants takes place on a trading venue (i.e., a "regulated market", a "multilateral trading facility" or an "organized trading facility", as those terms are defined under MiFID);

5. The Applicant operates the Facilities for, among other things, trading fixed income securities, foreign exchange (**FX**) derivatives and other financial instruments. The Facilities are made up of different trading platforms, but the subjects of this order are (1) the BrokerTec EU RM, which trades European repurchase securities collateralized by European government bonds (and repurchase securities collateralized by European and U.S. corporate bonds (collectively **EU Repos**)) and European government bonds (**EGBs**), and (2) the EBS MTF, which trades FX derivatives, FX Swaps and Non-Deliverable Forwards (collectively with EU Repos and EGBs, the **MTF Instruments**). The Applicant may add other types of financial instruments in the future, subject to obtaining the required regulatory approvals;

6. As a Market Operator, the Applicant must comply with the Netherlands Financial Supervision Act (*Wet op het financieel toezicht*, **Wft**), MiFID, the Markets in Financial Instruments Regulation, other applicable regulation in the EEA (such as Regulation (EU) No 596/2014 – Market Abuse Regulation), the rules pertaining to this legislation and the applicable guidance from the AFM and De Nederlandsche Bank (the **Applicable Rules**), which include, among other things, rules on (i) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements) (ii) market conduct (including rules applicable to firms operating a trading venue) and (iii) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest);

7. The AFM requires the Applicant to comply at all times with a set of threshold conditions for authorisation and ongoing requirements, including requirements that the Applicant has sound business and controlled business operations to be authorised and that it has appropriate resources for the activities it carries on. Breach of a threshold condition could lead to enforcement action or the Applicant's authorisation being revoked by the AFM;

8. In addition to complying with detailed AFM rules and guidance governing the organization and conduct of the Applicant's business, the Applicant is required to act in accordance with Section 4:90 of the Wft, which requires the Applicant to act honestly, fairly and professionally and refrain from actions that are detrimental to the integrity of the market. Additionally, pursuant to Section 4:14(2)(a) of the Wft, in conjunction with Article 29a(2) of the Decree on Conduct of Business Supervision (*Besluit Gedragstoezicht Financiële ondernemingen Wft*) and Article 15(5) of the Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council (**MiFID II**), the Applicant must establish adequate risk management policies and procedures and adopt effective arrangements to manage the risks relating to its activities, processes and systems;

9. The Applicant is subject to prudential requirements, including minimum regulatory capital and liquidity requirements, and is capitalized in excess of regulatory requirements;

10. A Market Operator is required under the Applicable Rules to set rules, conduct compliance reviews, monitor Participants' trading activity and take enforcement action against Participants when appropriate. Pursuant to Section 4:26 of the Wft, the Applicant is required to report to the AFM where (a) there is a significant breach of the Applicant's rules; (b) there are disorderly trading conditions or (c) the Applicant identifies conduct that may involve market abuse. Furthermore, the Applicant has established, publishes, maintains and implements transparent and non-discriminatory rules, based on objective criteria, governing access to its facility (as required under Article 18(3) of MiFID II). The Facilities are required under the EU Market Abuse Regulation Article 16(1) to "establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation";

11. The Applicant has instituted procedures and controls to collect information, examine participants' records, supervise trading on the Facilities, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform automated real-time market monitoring and market surveillance and establish an automated trade surveillance system to evaluate participants' compliance with the Applicant's rules and applicable law;

12. The Applicant is required by MiFID to ensure that its fee structure is sufficiently granular to allow users to predict the payable fees on the basis of at least the following elements: (a) chargeable services, including the activity which will trigger the fee, (b) the fee for each service, stating whether the fee is fixed or variable, and (c) rebates, incentives or disincentives. MiFID also requires the Applicant to publish objective criteria for the establishment of its fees and fee structures, together with execution fees, ancillary fees, rebates, incentives and disincentives in one comprehensive and publicly accessible document on its website;

13. A Market Operator must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to LCH S.A. (**LCH**) for clearing EU Repos and EGBs. LCH is exempted from the requirement to be recognized as a clearing agency in Ontario. For the EBS MTF, settlement takes place between the counterparties. Although the EBS MTF's rules require counterparties to settle any deals, the Applicant is not involved in, nor is it responsible for, settlement or clearing and counterparties make their own bilateral arrangements;

14. The Applicant requires that its participants be "eligible counterparties" or "professional clients," each as defined in MiFID. Additionally, each prospective participant must:

    (a) in respect of EBS MTF:

        (i) enter into a valid and effective customer agreement with the Facility;

        (ii) satisfy the Applicant's internal client on-boarding requirements including, but not limited to, "know your client" procedures;

        (iii) agree to adhere, on an on-going basis, to the terms of the Applicant's Facility rulebook (the **EBS MTF Rulebook**), customer agreements, user guides and any guidance or other requirements of the Applicant;

        (iv) have the legal and regulatory capacity to undertake trading in derivatives on a trading venue;

        (v) have adequate organisational procedures and controls to limit erroneous trades and the submission of erroneous orders to the Facility, including, but not limited to, the ability to cancel unexecuted orders;

        (vi) meet the technical specifications and standards required by the Applicant;

        (vii) be an investment firm or credit institution (each as defined by MiFID and Directive 2013/36/EU of the European Parliament and of the Council, respectively) or other person which (A) is of sufficiently good repute, (B) has a sufficient level of trading ability, competence and experience, and (C) has sufficient resources for their role as a participant; and

        (viii) satisfy any additional eligibility criteria set out in any appendix to the EBS MTF Rulebook;

    (b) in respect of BrokerTec EU RM:

        (i) satisfy the Applicant's internal client on-boarding requirements including committing to and remaining in compliance with customer agreements and the Applicant's Facility rulebook (the **BrokerTec EU RM Rulebook**), and be classified by the Applicant as an "eligible counterparty" or "professional client" (each as defined in MiFID), unless otherwise detailed in any relevant appendix to the BrokerTec EU RM Rulebook;

        (ii) be an investment firm or credit institution (each as defined by MiFID and Directive 2013/36/EU of the European Parliament and of the Council, respectively) or other person which (A) is of sufficiently good repute, (B) has a sufficient level of trading ability, competence and experience, and (C) has sufficient resources for their role as a participant;

        (iii) have the legal and regulatory capacity to undertake trading in derivatives on an RM;

        (iv) comply with the Facility's operational parameters annex (the **BrokerTec EU RM Operational Parameters Annex**);

        (v) have adequate arrangements for entering into transactions, order management, clearing (if relevant) and settlement of orders;

        (vi) have adequate organisational procedures and controls to limit erroneous trades and the submission of erroneous orders to the Facility, including, but not limited to, the ability to cancel unexecuted orders;

        (vii) meet the technical specifications and standards required by the Applicant; and

        (viii) satisfy any additional eligibility criteria set out in any appendix to the BrokerTec EU RM Rulebook;

15. Additionally, participants on the Facilities are responsible for all the acts, omissions, conduct and activity of their authorised employees and must ensure that their authorised employees have sufficient training, are properly supervised and have adequate experience, knowledge and competence to participate on the Facilities in accordance with the Applicant's customer agreements and with respect to the BrokerTec EU RM, the BrokerTec EU RM Rulebook and

BrokerTec EU RM Operational Parameters Annex, and with respect to the EBS MTF, the EBS MTF Rulebook and any communications sent by the EBS MTF concerning its operations to participants;

16. All participants that are located in Ontario, including participants with their headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario Participants**) are required to be registered under Ontario securities laws, exempt from the registration requirements or not subject to the registration requirements. An Ontario Participant is also required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis. Additionally, all Ontario Participants will be "permitted clients" as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

17. Because the Facilities set requirements for the conduct of their participants, they are considered by the Commission to be an exchange;

18. Because the Applicant intends to provide Ontario Participants with direct access to trading the MTF Instruments on the Facilities, the Commission will consider the Applicant to be carrying on business as an exchange in Ontario and will be required to be recognized as such pursuant to subsection 21(1) of the Act or exempted from recognition;

19. The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein; and

20. The Applicant satisfies the exemption criteria in Appendix I to Schedule "A";

AND WHEREAS the products traded on the Facilities are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant's activities on an ongoing basis to determine whether it is appropriate for the Requested Relief to continue to be granted subject to the terms and conditions set out in Schedule "A" to this order;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the Applicant satisfies the criteria set out in Appendix I to Schedule "A" and that the granting of the Requested Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, (i) pursuant to section 144 of the Act, the Applicant is exempt from the requirement to be recognized as an exchange under subsection 21(1) of the Act, and (ii) pursuant to sections 15.1 of NI 21-101, 12.1 of NI 23-101 and 10 of NI 23-103, the Applicant is exempt from the requirements in NI 21-101, NI 23-101 and NI 23-103 in order to operate the BrokerTec EU RM and the EBS MTF,

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule "A".

DATED December 1, 2022.

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant will continue to meet the criteria for exemption included in Appendix I to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its authorisation as the Market Operator of one or more multilateral trading facilities or regulated markets (collectively, the **Facilities**) with the Dutch Minister of Finance and will continue to be subject to the supervision and regulatory oversight of the AFM.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as a Market Operator authorised by the Dutch Minister of Finance and supervised and regulated by the AFM.

4. The Applicant will promptly notify the Commission if its authorisation as a Market Operator has been revoked, suspended, or amended by the Dutch Minister of Finance, or the basis on which its authorisation as a Market Operator has been granted has significantly changed.

5. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. The Applicant will not provide direct access to a participant in Ontario, including a participant with its headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario User)**, unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible counterparty" or "professional client", each as defined in MiFID.

7. For each Ontario User provided direct access to the Applicant's Facilities, the Applicant will require, as part of its application documentation or continued access to the Applicant's Facilities, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

8. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Applicant's Facilities.

9. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant if the Ontario User is no longer appropriately registered or exempt from those requirements.

Trading by Ontario Users

10. The Applicant will not provide access to an Ontario User to trading in products other than FX derivatives or debt securities without prior Commission approval.

Submission to Jurisdiction and Agent for Service

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

12. The Applicant will maintain with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation

or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Prompt Reporting

13. The Applicant will notify staff of the Commission promptly of:

(a) any authorisation to carry on business granted by the AFM is revoked or suspended or made subject to terms or conditions on the Applicant's operations;

(b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;

(c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;

(d) the Applicant marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the AFM where it is required to report such non-compliance to the AFM;

(e) any known investigations of, or disciplinary action against, the Applicant by the AFM or any other regulatory authority to which it is subject; and

(f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

Semi-Annual Reporting

14. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Applicant's Facilities as customers of participants (**Other Ontario Participants**);

(b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;

(c) a list of all Ontario Users whom the Applicant has referred to the AFM, or, to the best of the Applicant's knowledge, whom have been disciplined by the AFM with respect to such Ontario Users' activities on the Applicant's Facilities and the aggregate number of all participants referred to the AFM since the previous report by the Applicant;

(d) a list of all active investigations since the last report by the Applicant relating to Ontario Users and the aggregate number of active investigations since the last report relating to all participants undertaken by the Applicant;

(e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant since the last report, together with the reasons for each such denial; and

(f) for each product,

(i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and

(ii) the proportion of worldwide trading volume and value on the Applicant's Facilities conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

Information Sharing

15. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX I

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (**Foreign Regulator**).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

(b) that business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the board of directors (**Board**) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(d) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (**Rules**) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with applicable legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

8.2 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

(a) makes reasonable current and future capacity estimates;

(b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

(c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

(d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 FEES

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

APPENDIX II

DEFINITION OF PROFESSIONAL CLIENTS

This Appendix II provides the definition of an "Eligible Counterparty" as defined in Article 30 of Directive 2014/65/EU (**MiFID**) and a "Professional Client," as defined in Annex II of MiFID "Professional Clients for the Purpose of this Directive".

DEFINITION OF ELIGIBLE COUNTERPARTIES

I. Categorises of Clients who are Considered to be Eligible Counterparties

The following are recognised as eligible counterparties for the purposes of this Article.

1. Investment firms;
2. Credit institutions;
3. Insurance companies;
4. Collective investment schemes authorised under the UCITS Directive and their management companies;
5. Pension funds and their management companies;
6. Other financial institutions authorised or regulated under European Union law or under the national law of a European Economic Area Member State;
7. National governments and their corresponding offices including public bodies that deal with public debt at national level;
8. Central banks, and
9. Supranational organisations.

DEFINITION OF PROFESSIONAL CLIENTS

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered to be professional client, the client must comply with the following criteria:

I. Categories of Clients who are Considered to be Professionals

The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country:

    a. Credit institutions;

    b. Investment firms;

    c. Other authorised or regulated financial institutions;

    d. Insurance companies;

    e. Collective investment schemes and management companies of such schemes;

    f. Pension funds and management companies of such funds;

    g. Commodity and commodity derivatives dealers;

    h. Locals;

    i. Other institutional investors;

2. Large undertakings meeting two of the following size requirements on a company basis:

   a. balance sheet total: EUR 20 000 000

   b. net turnover: EUR 40 000 000

   c. own funds: EUR 2 000 000

3. National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. The investment firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

II. Clients who may be Treated as Professional on Request

II.1. Identification criteria

Clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

Member States may adopt specific criteria for the assessment of the expertise and knowledge of municipalities and local public authorities requesting to be treated as professional clients. Those criteria can be alternative or additional to those listed in the fifth paragraph.

II.2. Procedure

Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,
- the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,
- they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.

However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with investment firms shall be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the investment firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm shall take appropriate action.

B.2.2 BrokerTec Europe Limited – s. 147

Headnote

Section 147 of the Securities Act (Ontario), section 15.1 of NI 21-101, section 12.1 of NI 23-101 and section 10 of NI 23-103 – Application for an order that a multilateral trading facility authorized by the United Kingdom Financial Conduct Authority is exempt from the requirement to be recognized as an exchange in Ontario and from the requirements of NI 21-101, NI 23-101 and NI 23-103 in their entirety – requested order granted.

Applicable Legislative Provisions

Securities Act, RSO 1990 c. S.5, as am., ss. 21, 147.
National Instrument 21-101 Marketplace Operation, s. 15.1.
National Instrument 23-101 Trading Rules, s. 12.1.
National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces, s. 10.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
BROKERTEC EUROPE LIMITED

ORDER
(Section 147 of the Act)

WHEREAS BrokerTec Europe Limited (**Applicant**) has filed an application dated October 20, 2022 (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order for the following relief (collectively, the **Requested Relief**):

(a) exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act pursuant to section 147 of the Act; and

(b) exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101 and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is a private limited company organized under the laws of England & Wales. The ultimate parent company of the Applicant is CME Group Inc. (**CME Group**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market;

2. CME Group provides electronic trading globally in futures, options, cash and over-the-counter markets and also offers clearing and settlement services across asset classes, and is the parent company of the four CME Group Exchanges: Chicago Mercantile Exchange Inc., Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and Commodity Exchange, Inc., and the cash markets businesses of EBS (for FX) and BrokerTec (for fixed income), of which the Applicant forms a part;

3. CME Group acquired NEX Group plc and its group companies, including the Applicant, on November 2, 2018;

4. On December 1, 2001, the U.K. Financial Conduct Authority (the **FCA** or **Foreign Regulator**), a financial regulatory body in the United Kingdom (**U.K.**), authorized the Applicant to act as the operator of the BrokerTec EU MTF, a multilateral trading facility (**MTF**). The Applicant currently has approval from the FCA to offer the following products for trading on the BrokerTec EU MTF: certificates representing certain security; commodity futures; commodity options and options on commodity futures; contracts for differences (excluding a spread bet and, a rolling spot forex contract and a binary bet); debentures; futures (excluding a commodity future and a rolling spot forex contract); government and public securities; options (excluding a commodity option and an option on a commodity future); rights to or interests in investments (contractually based investments); rights to or interests in investments (security); units; and warrants;

5. The Applicant received approval from the FCA on July 15, 2022 to operate the EBS UK MTF, a separate MTF for trading foreign exchange (**FX**) over-the-counter (**OTC**) derivatives and the EBS UK MTF began operations on September 12,

2022 (each of the BrokerTec EU MTF and the EBS UK MTF are hereinafter referred to as a **Facility**, and together as the **Facilities**);

6. The subjects of this order are the Facilities, which trade: (a) for the Brokertec EU MTF: repurchase agreements collateralized by U.K. gilts and U.K. covered bonds (**Gilt Repos**), repurchase agreements collateralized by Australian government bonds (**Australian Repos**), and repurchase agreements collateralized by corporate bonds (**Corporates**); and (b) for the EBS UK MTF: FX non-deliverable forwards (**FX NDFs,** and together with Gilt Repos, Australian Repos and Corporates, the **MTF Instruments**). The Applicant may add other types of financial instruments in the future, subject to obtaining the required regulatory approvals;

7. Each of the Facilities support a central limit order book, known as BrokerTec CLOB and EBS Market. Additionally, the BrokerTec EU MTF supports a request-for-quote trading platform, known as BrokerTec Quote;

8. The Applicant is subject to regulatory supervision by the FCA and is required to comply with the FCA's Handbook (**FCA Rules**), which includes, among other things, rules on (a) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (b) market conduct (including rules applicable to firms operating an MTF), and (c) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest). The FCA requires the Applicant to comply at all times with a set of threshold conditions for authorization, including requirements that the Applicant has sound business and controlled business operations and that it has appropriate resources for the activities it carries on. The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and is capitalized in excess of regulatory requirements. The Applicant is required to maintain an independent compliance function, which is headed by the Applicant's Chief Compliance Officer, an FCA-approved person. The Applicant's Compliance Department is responsible for identifying, assessing, advising, monitoring and reporting on the Applicant's compliance risk (i.e., the risk that the Applicant fails to comply with its obligations under the Financial Services and Markets Act 2000, the retained EU law version of the Markets in Financial Instruments Regulation (600/2014), the rules pertaining to this legislation, the applicable guidance from the FCA and the FCA Rules);

9. An MTF is obliged under the FCA Rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and report to the FCA (a) significant breaches of MTF rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant will also notify the FCA when a participant's access is terminated as a result of a significant rule infringement, and may notify the FCA when a participant is temporarily suspended or subject to condition(s). As required by FCA rules, the Applicant has implemented a trade surveillance program. As part of the program, the Applicant's Compliance Department conducts real-time market monitoring of trading activity on the Facilities to identify disorderly trading and market abuse or anomalies. The trade surveillance program is designed to maintain a fair and orderly market for the Facilities' participants;

10. BrokerTec CLOB and EBS Market are available to participants via CME Group's Globex technology, which can be accessed through a graphical user interface (GUI) or Financial Information eXchange application programming interface (FIX). BrokerTec Quote is available to participants via a technology platform provided by an external vendor, Adaptive Financial Consulting Limited, which can also be accessed via a web delivered GUI or FIX;

11. An MTF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to LCH Limited, which is recognized as a clearing agency in Ontario, to clear Gilt Repos. The Applicant is not involved in, nor is it responsible for, settlement or clearing of Australian Repos, Corporates or FX NDFs and the counterparties to such trades make their own bilateral arrangements;

12. The Applicant requires that its participants be "professional clients" or "eligible counterparties," as defined by the FCA in COBS 3 of the FCA Rules and are investment firms or credit institutions (each as defined in the FCA Rules) or other persons who (a) are of sufficiently good repute, (b) have a sufficient level of trading ability, competence and experience; and (c) have sufficient resources for their role as a participant. Each prospective participant must: have the legal and regulatory capacity to undertake trading in the relevant MTF Instruments on a Facility, satisfy the Applicant as to their adequate arrangements for entering into transactions in the MTF Instruments, order management, clearing (if relevant) and settlement of all orders submitted to the Facilities, have adequate organisational procedures and controls to limit error trades and the submission of erroneous orders to the Facilities, including, but not limited to, the operation of a kill functionality, meet the technical specifications and standards required by the Applicant for participation on the Facilities, including for those participants accessing the Facilities via an API, and satisfy any participant eligibility criteria set out in the Facilities' rulebooks, including any applicable product appendix;

13. Additionally, participants on the Facilities are responsible for all the acts, omissions, conduct and activity of their authorised employees and must ensure that their authorised employees have sufficient training, are properly supervised and have adequate experience, knowledge and competence to participate on the Facilities in accordance with the Applicant's customer agreements and the Applicant's rules;

14. All participants that are located in Ontario, including participants with their headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario Participants**) are required to be registered under Ontario securities laws, exempt from registration or not subject to registration requirements. An Ontario Participant is required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis. Additionally, all Ontario Participants will be "permitted clients" as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

15. Because the Facilities set requirements for the conduct of their participants and surveil the trading activity of their participants, they are considered by the Commission to be exchanges;

16. Because the Applicant has participants that are Ontario Participants, it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;

17. The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above; and

18. The Applicant satisfies the exemption criteria as described in Appendix I to Schedule "A";

AND WHEREAS the products traded on the Facilities are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant's activities on an ongoing basis to determine whether it is appropriate for the Requested Relief to continue to be granted subject to the terms and conditions set out in Schedule "A" to this order;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the Applicant satisfies the criteria set out in Appendix I to Schedule "A" and that the granting of the Requested Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, (i) pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act, and (ii) pursuant to sections 15.1 of NI 21-101, 12.1 of NI 23-101 and 10 of NI 23-103, the Applicant is exempt from the requirements in NI 21-101, NI 23-101 and NI 23-103,

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule "A".

DATED December 1, 2022

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant will continue to meet the criteria for exemption included in Appendix I to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its authorisations as an operator of one or more multilateral trading facilities (**MTFs**) with the U.K. Financial Conduct Authority (**FCA**) in the United Kingdom (**U.K.**) and will continue to be subject to the regulatory oversight of the FCA.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as an operator of an MTF authorised with the FCA.

4. The Applicant will promptly notify the Commission if its authorisation as an operator of an MTF has been revoked, suspended, or amended by the FCA, or the basis on which its authorisation as an operator of an MTF has been granted has significantly changed.

5. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. The Applicant will not provide direct access to a participant in Ontario including a participant with its headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as a "professional client" or an "eligible counterparty", as defined by the FCA in COBS 3 of the FCA's Handbook.

7. For each Ontario User provided direct access to the Applicant's MTFs, the Applicant will require, as part of its application documentation or continued access to the Applicant's MTFs, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

8. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Applicant's MTFs.

9. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant's MTFs if the Ontario User is no longer appropriately registered or exempt from those requirements.

Trading by Ontario Users

10. The Applicant will not provide access to an Ontario User to trading in products other than derivatives or debt securities, each as defined in subsection 1(1) of the Act, without prior Commission approval.

11. With respect to debt securities, the Applicant will only permit Ontario Users to trade a debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as such terms are defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including:

    (a) debt securities issued by the United States (**U.S.**) government (including agencies or instrumentalities thereof);

    (b) debt securities issued by a foreign government;

    (c) debt securities issued by corporate or other non-governmental issuers (U.S. and foreign); and

(d) asset-backed securities (including mortgage backed securities), denominated in either U.S. or foreign currencies.

12. The Applicant will only permit Ontario Users to trade those securities which are permitted to be traded in the U.K. under applicable securities laws and regulations.

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

14. The Applicant will maintain with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Prompt Reporting

15. The Applicant will notify staff of the Commission promptly of:

(a) any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on the Applicant's operations;

(b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;

(c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;

(d) the Applicant marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;

(e) any known investigations of, or disciplinary action against, the Applicant by the FCA or any other regulatory authority to which it is subject; and

(f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

Semi-Annual Reporting

16. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the follow year for the second half), and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Applicant's MTFs as customers of participants (**Other Ontario Participants**);

(b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;

(c) a list of all Ontario Users whom the Applicant has referred to the FCA, or, to the best of the Applicant's knowledge, whom have been disciplined by the FCA with respect to such Ontario Users' activities on the Applicant's MTFs and the aggregate number of all participants referred to the FCA since the previous report by the Applicant;

(d) a list of all active investigations since the last report by the Applicant relating to Ontario Users and the aggregate number of active investigations since the last report relating to all participants undertaken by the Applicant;

(e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant since the last report, together with the reasons for each such denial; and

(f) for each product,

(i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and

(ii) the proportion of worldwide trading volume and value on the Applicant's MTFs conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

Information Sharing

17. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX I

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (**Foreign Regulator**).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

(b) that business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the board of directors (**Board**) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(d) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (**Rules**) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with applicable legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

8.2 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

(a) makes reasonable current and future capacity estimates;

(b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

(c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

(d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 FEES

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

APPENDIX II

DEFINITION OF PROFESSIONAL CLIENTS

This Appendix II provides the definition of an "Eligible Counterparty" and a "Professional Client," as defined by the FCA in COBS 3 of the FCA Rules.

DEFINITION OF ELIGIBLE COUNTERPARTIES

Eligible counterparties are considered to be the most sophisticated investor or capital market participant. Consequently, the client categorisation regime provides a "light-touch" regulatory regime for investment firms that enter into, or bring about, transactions with eligible counterparties in relation to eligible counterparty business.

There are two types of eligible counterparty:

- Per se eligible counterparty.
- Elective eligible counterparty.

Generally, the eligible counterparty regime will only apply where investment firms enters into transactions with an eligible counterparty in the course of carrying out eligible counterparty business. This involves the following activities:

- Executing orders on behalf of customers.
- Dealing on own account.
- Reviewing and transmitting orders.

Eligible counterparty business also includes any ancillary service directly related to the above list, or arranging in relation to business that is not MiFID or equivalent third country firm business.

The following entities can be categorised as eligible counterparties for the purposes of the FCA rules: a properly constituted government of any country, a central bank or other national monetary authority of any country and a recognised investment exchange, regulated market or clearing house.

I. Categorises of Clients who are Considered to be Eligible Counterparties

Firms that are automatically treated as eligible counterparties are referred to as per se eligible counterparties.

The following may be categorised as a per se eligible counterparty (including an entity that is not from the UK that is equivalent to any of the below):

- An investment firm.
- A credit institution.
- An insurance company.
- A CIS authorised under the UK provisions that implemented the UCITS Directive (2009/65/EC), or its management company.
- A pension fund or its management company.
- Another financial institution authorised or regulated under UK legislation. This includes regulated institutions in the securities, banking and insurance sectors.
- A national government or its corresponding office, including a public body that deals with the public debt.
- A central bank.
- A supranational organisation.

II. Clients who may be Treated as Eligible Counterparties on Request

A per se professional client may, in certain circumstances, be opted up to be an elective eligible counterparty.

DEFINITION OF PROFESSIONAL CLIENTS

Professional clients are considered to possess the experience, knowledge and expertise to make their own investment decisions and assess the risks inherent in their decisions. There are two types of professional client:

- Per se professional client.
- Elective professional client.

I. Categorises of Clients who are Considered to be Professionals

MiFID recognises certain persons as having the relevant requirements for a professional client and automatically classifies them as per se professional clients. Each of the following may be categorised as a per se professional client:

- An entity required to be authorised or regulated (either in the UK or a third country) to operate in the financial markets. For example:
- a credit institution;
- an investment firm;
- any other authorised or regulated financial institution;
- an insurance company;
- a collective investment scheme (CIS) or the management company of such a scheme;
- a pension fund or the management company of a pension fund;
- a commodity or commodity derivatives dealer;
- a local authority; and
- any other institutional investor.

To confirm whether an entity is authorised in the UK, firms can check the financial services register on the FCA's website.

In relation to MiFID or equivalent third country business, a large undertaking meeting two of the following size requirements on a company basis:

- balance sheet total of EUR20 million;
- net turnover of EUR40 million; or
- own funds of EUR2 million;

In relation to business that is not MiFID business or equivalent third country business, a large undertaking meeting any of the following conditions:

- a body corporate (including a limited liability partnership) that has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
- an undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests: a balance sheet total of EUR12.5 million, a net turnover of EUR25 million or an average number of employees during the year of 250;
- a partnership or unincorporated association that has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited partnership without deducting loans owing to any of the partners;
- a trustee of a trust (other than an occupational pension scheme, small self-administered scheme (SSAS), personal pension scheme or stakeholder pension scheme) that has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated

by aggregating the value of the case and designated investment forming part of the trust's assets, but before deducting its liabilities; or

- a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years) at least 50 members, and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time).

- A national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the International Monetary Fund (IMF), the European Central Bank (ECB)) or other similar international organisations.

- Another institutional investor whose main activity is to invest in financial instruments (in relation to the firm's MiFID or equivalent third country business) or designated investments (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

A firm must categorise a local public authority or municipality that (in either case) does not manage public debt as a retail client, unless it is permitted to treat such a person as an elective professional client. Consequently, a local public authority or municipality that (in either case) does not manage public debt should not be treated as a per se professional client.

II. Clients who may be Treated as Professional on Request

Retail clients or eligible counterparties can request treatment as professional clients.

A firm may treat a client, other than a local public authority or municipality, as an elective professional client if:

- It undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in the light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (referred to as the "qualitative test"). If the client is an entity, the qualitative test should be performed in relation to the person authorised to carry out transactions on its behalf (COBS 3.5.4R). In practice, a firm is likely to carry out the qualitative test as part of its client on-boarding process.

- In relation to MiFID or equivalent third country business, in the course of carrying out the qualitative test, at least two of the following criteria are satisfied:

    - the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;

    - the size of the client's financial instrument portfolio, defined as including cash deposit and financial instruments, exceeds EUR500,000; and/or

    - the client works or has worked in the financial sector for at least one year in a professional position, that requires knowledge of the transactions or services envisaged.

- This is referred to as the "quantitative test".

- It can be hard for certain firms to meet the quantitative test. For example, a newly established firm may be unable to evidence the frequency at which it has carried out transactions if it has been in business for less than a year, or it may be difficult for a person to provide evidence of a professional position if in the industry concerned, there are not clear qualification requirements.

- In addition to the qualitative and quantitative tests, the following procedure must be followed:

    - the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;

    - the firm must give the client a clear written warning of the protections and the investor compensation rights the client may lose; and

    - the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections

B.2.3 Blockchain Foundry Inc.

Headnote

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

Applicable Legislative Provisions

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

November 29, 2022

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

AND

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

AND

IN THE MATTER OF
BLOCKCHAIN FOUNDRY INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0516

B.2.4 VentureLink Innovation Fund Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for the Filer to cease to be a reporting issuer under applicable securities law – Relief granted.

Applicable Legislative Provisions

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

November 29, 2022

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

AND

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

AND

IN THE MATTER OF
VENTURELINK INNOVATION FUND INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

Application File #: 2022/0528

B.3
Reasons and Decisions

B.3.1 Evolve Funds Group Inc. and the Funds Listed in Schedule A

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act (Ontario) to permit extensions of three prospectus lapse dates by 68 days, 90 days and 111 days, to facilitate consolidation of the funds' prospectuses with the prospectus of other funds under common management – no conditions.

Applicable Legislative Provisions

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

November 16, 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
EVOLVE FUNDS GROUP INC.
(the Filer)

AND

THE FUNDS LISTED IN SCHEDULE A
(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 respective time limits for the renewal of the long form prospectus of BANK (as defined in Schedule A) (dated January 26, 2022) (the **BANK Prospectus**), EBNK (as defined in Schedule A) (dated January 5, 2022) (the **EBNK Prospectus**) and TECE (as defined in Schedule A) (dated February 17, 2022) (the **TECE Prospectus** and, together with the BANK Prospectus and the EBNK Prospectus, the **Prospectuses**) be extended to those time limits that would apply if the lapse dates of the Prospectuses were April 26, 2023 (the **Exemption Sought**).

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 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 laws of Canada. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as (i) a portfolio manager in Ontario, (ii) a commodity trading manager in Ontario and (iii) an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador.

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

4. Each of the Funds is an exchange-traded mutual fund (**ETF**) established under the laws of Ontario, and is a reporting issuer as defined in the securities legislation of each of the Canadian Jurisdictions.

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

6. The Funds currently distribute securities in the Canadian Jurisdictions under the Prospectuses. Securities of each of the Funds trade on the Toronto Stock Exchange.

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse dates of the Prospectuses are January 26, 2023 (for the BANK Prospectus), January 5, 2023 (for the EBNK Prospectus) and February 17, 2023 (for the TECE Prospectus) (each a **Lapse Date** and collectively, the **Lapse Dates**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of the Funds would have to cease on the applicable Lapse Date unless: (i) each Fund files a pro forma prospectus at least 30 days prior to the applicable Lapse Date; (ii) the final prospectus is filed no later than 10 days after the applicable Lapse Date; and (iii) a receipt for the final prospectus is obtained within 20 days of the applicable Lapse Date.

8. The Filer is the investment fund manager of the six April Funds (as defined in Schedule B) that currently distribute their securities to the public under a prospectus that has a lapse date of April 26, 2023 (the **April Prospectus**).

9. The Filer wishes to combine the BANK Prospectus, the EBNK Prospectus and the TECE Prospectus with the April Prospectus in order to reduce renewal and related costs of BANK, EBNK and TECE and the April Funds.

10. Offering BANK, EBNK, TECE and the April Funds under one prospectus would facilitate the distribution of each of BANK, EBNK and TECE in the Canadian Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. As BANK, EBNK, TECE and the April Funds are all managed by the Filer, offering them under one prospectus (as opposed to four) will allow investors to more easily compare their features.

11. It would be unreasonable to incur the costs and expenses associated with preparing four separate renewal prospectuses given how close in proximity the Lapse Dates are to one another.

12. There have been no material changes in the affairs of each Fund since the date of the applicable Prospectus. Accordingly, the Prospectus and current ETF facts document of each Fund represent current information regarding such Fund.

13. Given the disclosure obligations of the Funds, should a material change in the affairs of any of the Funds occur, the Prospectus and current ETF facts document(s) of the applicable Fund(s) will be amended as required under the Legislation.

14. New investors in the Funds will receive the most recently filed ETF facts document(s) of the applicable Fund(s). The Prospectuses will still be available upon request.

15. The Exemption Sought will not affect the accuracy of the information contained in the Prospectuses and will therefore 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 Exemption Sought is granted.

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

Application File #: 2022/0490

Schedule "A"

BANK

Evolve Canadian Banks and Lifecos Enhanced Yield Index Fund ("**BANK**")

EBNK

Evolve European Banks Enhanced Yield ETF ("**EBNK**")

TECE

Evolve Enhanced FANGMA Index ETF ("**TECE**")

Schedule "B"

April Funds

Evolve Global Materials & Mining Enhanced Yield Index ETF
Evolve E-Gaming Index ETF
Evolve Innovation Index Fund
Evolve Active Core Fixed Income Fund
Evolve Cloud Computing Index Fund
Evolve FANGMA Index ETF

(each an "**April Fund**" and, collectively, the "**April Funds**")

B.3.2 GS Investment Strategies Canada Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 13.18(2)(b) and 15.1.

December 1, 2022

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

AND

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

AND

IN THE MATTER OF
GS INVESTMENT STRATEGIES CANADA INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

(a) the British Columbia 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 by the Filer and its Registered Individuals (as defined below) in Quebec

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

Interpretation

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

Representations

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

1. The Filer is a corporation established under the laws of Ontario and has its head office in Vancouver, British Columbia.

2. The Filer is registered in the Jurisdictions in the categories of portfolio manager and investment fund manager. The Filer is also registered as an exempt market dealer in British Columbia and Quebec.

3. The Filer is a wholly-owned subsidiary of GS Group, a public company listed on the New York Stock Exchange. The Filer operates a Canadian investment management business that spans asset classes, industries and geographies. As of March 31, 2022, the Filer oversees more than $6.8 billion in assets under supervision.

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

5. The Filer is the sponsoring firm for registered individuals that interact with clients and that will use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has one Registered Individual.

6. The titles to be used by the Registered Individuals include the words “Vice President” and “Managing Director”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**). The Titles that will be used by the Registered Individuals are consistent with the titles used by other employees of the Filer and its affiliates who conduct business outside of Canada.

7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

8. The Registered Individuals interact only with institutional clients that are, each, a non-individual “permitted client”, as defined in section 1.1 of NI 31-103 (the **Clients**).

9. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

10. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

11. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

12. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

The Decision Makers are satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “permitted clients” as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

“Mark Wang”
Director, CMR
British Columbia Securities Commission

Application File #: 2022/0196

B.3.3 BGO Capital (Canada) Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 2, 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
BGO CAPITAL (CANADA) INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Institutional Clients (as defined below) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a corporation established under the federal laws of Canada. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in British Columbia, Ontario and Québec and as an exempt market dealer and portfolio manager in each of the Jurisdictions.

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

4. The Filer acts as investment fund manager of a Canadian pooled fund that is regulated as an investment fund under applicable securities laws and distributes securities of the BentallGreenOak Funds (as defined below) to investors in Canada. The Filer also provides portfolio management services, ancillary to its core investment fund management and distribution activities.

5. The Filer is part of the BentallGreenOak group of companies (**BentallGreenOak**). BentallGreenOak manages private limited partnerships and similar vehicles that primarily invest in real estate in Canada, the United States, Europe, the UK and Asia (the **BentallGreenOak Funds**). The Filer is majority-owned by subsidiaries of Sun Life Financial Inc.

6. The Filer is the sponsoring firm for registered individuals that interact with clients and will use a corporate officer title either without being appointed to the corporate office of the Filer pursuant to applicable corporate law, or, although appointed to a corporate office, without a defined and substantive corporate responsibility (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately 5 Registered Individuals.

7. The Registered Individuals will use titles that include the words “Vice President”, “Director” and “Managing Director”, and may use additional corporate officer titles in the future (collectively, the **Titles**). The Titles that will be used by the Registered Individuals align with their titles used elsewhere in BentallGreenOak.

8. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

9. The Registered Individuals interact only or primarily with institutional clients that are, each, a non-individual "permitted client" as defined in subsection 1.1 of NI 31-103 (the **Institutional Clients**).

10. To the extent a Registered Individual interacts with clients that are not Institutional Clients (the **Retail Clients**), the Filer has policies, procedures and controls in place to ensure that such Registered Individual will only use a Title when interacting with Institutional Clients, and will not use a Title in any interaction with Retail Clients, including in any communications, such as written and verbal communications, that are directed at, or may be received by, Retail Clients.

11. The Filer will not grant any registered individual that interacts primarily with Retail Clients, nor will such registered individual be permitted by the Filer to use, a corporate officer title other than in compliance with paragraph 13.18(2)(b) of NI 31-103.

12. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

13. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

14. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Institutional Clients.

15. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

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, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients” as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

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

OSC File #: 2021/0698

B.3.4 Horizons ETFS Management (Canada) Inc. and the Funds Listed in Schedule A

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act to extend the lapse dates of prospectuses of ETFs in continuous distribution by 76 days, 83 days and 35 days – Extension of lapse dates granted to facilitate incorporation by reference of audited annual financial information into ETFs' renewal prospectus and avoid costs associated with a review of the ETFs' unaudited interim financial statements, and enable ETFs offered under separate prospectuses to be combined into one prospectus – Extensions of lapse dates will not affect the currency or accuracy of the information contained in the current prospectuses – No conditions to the relief.

Applicable Legislative Provisions

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

December 5, 2022

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

AND

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

AND

IN THE MATTER OF
HORIZONS ETFS MANAGEMENT (CANADA) INC.
(the Filer)

AND

IN THE MATTER OF
THE FUNDS LISTED IN SCHEDULE A
(each a Fund, collectively 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 respective time limits for the renewal of the long form prospectus of the Active ETFs (as defined in Schedule A) dated February 11, 2022 (the **Active Prospectus**), the long form prospectus of the Index ETFs (as defined in Schedule A) dated May 9, 2022 (the **Index Prospectus**) and the long form prospectus of the Thematics Plus ETFs (as defined in Schedule A) dated June 27, 2022 (the **Thematics Plus Prospectus** and, together with the Active Prospectus and the Index Prospectus, the **Prospectuses**) be extended to those time limits that would apply if the lapse dates of the Prospectuses were April 28, 2023 (in the case of the Active Prospectus) and July 31, 2023 (in the case of the Index Prospectus and the Thematics Plus Prospectus) (the **Exemption Sought**).

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 Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of Canada. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as a portfolio manager in Alberta, British Columbia, Ontario and Québec, an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan, a commodity trading manager and a commodity trading adviser in Ontario and an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador.

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

4. Each of the Funds is an exchange-traded mutual fund (**ETF**) established under the laws of Ontario, and is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

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

6. The Funds currently distribute securities in the Jurisdictions under the Prospectuses. Securities of each of the Funds trade on the Toronto Stock Exchange.

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse dates of the Active Prospectus, the Index Prospectus and the Thematics Plus Prospectus are February 11, 2023, May 9, 2023 and June 27, 2023, respectively (each a **Lapse Date**, and collectively, the **Lapse Dates**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of each of the Funds would have to cease on the applicable Lapse Date unless: (i) each of the Funds files a pro forma prospectus at least 30 days prior to the applicable Lapse Date; (ii) the final prospectus is filed no later than 10 days after the applicable Lapse Date; and (iii) a receipt for the final prospectus is obtained within 20 days of the applicable Lapse Date.

8. The fiscal year-end of each of the Active ETFs is December 31 and, pursuant to section 2.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, the annual financial statements and auditor's report are required to be filed on or before the 90th day after each Active ETF's most recently completed financial year, which for each of the Active ETFs will be its financial year-end of December 31, 2022 (the **2022 Fiscal Year-End**).

9. It is expected each Active ETF will receive the written consent of its auditor at the same time that the financial statements and auditor's report for the 2022 Fiscal Year-End are issued, which is expected to occur on or about March 30, 2023.

10. As audited financial statements will not be ready by the Lapse Date of the Active Prospectus, the Active ETFs will be required to incorporate by reference unaudited interim financial information into their renewal prospectus. In accordance with subsection 4.3(1) of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), the Active ETFs' auditor will be required to review each of the Active ETFs' interim financial statements in accordance with the relevant standards set out in the Handbook of the Canadian Institute of Chartered Accountants for a review of financial statements. In doing so, additional costs will be incurred by the Active ETFs and these costs will recur annually. This is not in the best interest of the Active ETFs' investors.

11. In addition, in the absence of audited financial statements, key data such as each Active ETF's updated management expense ratio will not be available at the time of renewal, so the renewal documents will not contain all the updated information that will be available after the audit.

12. Rather than facing this audit challenge each year and placing an unnecessary financial burden on the Active ETFs and indirectly onto the Active ETFs' investors, it would be more efficient and cost effective to extend the Lapse Date of the Active Prospectus to April 28, 2023. This extension will provide the time necessary for the auditor to complete the audit of each of the Active ETFs' financial statements for the 2022 Fiscal Year-End, and file the final prospectus and ETF facts, along with the written consent of the auditor, as required by NI 41-101.

13. The Filer wishes to combine the Index Prospectus with the Thematics Plus Prospectus, as well as extend the Lapse Date of the Thematics Plus Prospectus from June 27, 2023 to July 31, 2023, in order to reduce renewal, service provider, printing and related costs of the Index ETFs and the Thematics Plus ETFs.

14. Offering the Index ETFs and the Thematics Plus ETFs under one prospectus would facilitate the distribution of the Index ETFs in the Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. As the Index ETFs and the Thematics Plus ETFs are all managed by the Filer and have similar features, offering them under one prospectus (as opposed to two) will allow investors to more easily compare their features. In addition, extending the Lapse Date of the Thematics Plus Prospectus to July 31, 2023 will better align the renewal of that

Prospectus with the availability of quarterly portfolio disclosure produced by the Funds' service providers and avoid costs that may be charged by those service providers for any data requests made outside of 60 days after the end of a quarter.

15. It would be unreasonable to incur the costs and expenses associated with preparing two separate renewal prospectuses given how close in proximity the Lapse Dates are to one another.

16. There have been no material changes in the affairs of each Fund since the date of the applicable Prospectus, other than those for which amendments have been filed, as applicable. Accordingly, the Prospectus and current ETF facts document of each Fund represent current information regarding such Fund.

17. Given the disclosure obligations of the Funds, should a material change in the affairs of any of the Funds occur, the Prospectus and current ETF facts document(s) of the applicable Fund(s) will be amended as required under the Legislation.

18. New investors in the Funds will receive the most recently filed ETF facts document(s) of the applicable Fund(s). The Prospectuses will still be available upon request.

19. The Exemption Sought will not affect the accuracy of the information contained in the Prospectus and ETF facts document(s) of each Fund and will therefore 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 Exemption Sought is granted.

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

Application File #: 2022/0487

Schedule "A"

The Active ETFs

Horizons Active Cdn Dividend ETF
Horizons Active Global Dividend ETF
Horizons Active Corporate Bond ETF
Horizons Active Ultra-Short Term US Investment Grade Bond ETF
Horizons Active Preferred Share ETF
Horizons Active Ultra-Short Term Investment Grade Bond ETF
Horizons Active High Yield Bond ETF
Horizons Active Cdn Bond ETF
Horizons Active Hybrid Bond and Preferred Share ETF
Horizons Active Global Fixed Income ETF
Horizons Active Cdn Municipal Bond ETF
Horizons Active Floating Rate Senior Loan ETF
Horizons Emerging Markets Leaders ETF
Horizons Active ESG Corporate Bond ETF
(each, an "**Active ETF**" and collectively, the "**Active ETFs**")

The Index ETFs

Horizons Copper Producers Index ETF
Horizons Canadian Utility Services High Dividend Index ETF
(each, an "**Index ETF**" and collectively, the "**Index ETFs**")

The Thematics Plus ETFs

Horizons US Dollar Currency ETF
Horizons Pipelines & Energy Services Index ETF
Horizons Marijuana Life Sciences Index ETF
Horizons Inovestor Canadian Equity Index ETF
Horizons Robotics and Automation Index ETF
Horizons Big Data & Hardware Index ETF
Global Sustainability Leaders Index ETF
Horizons Industry 4.0 Index ETF
Horizons Global BBIG Technology ETF
Horizons High Interest Savings ETF
Horizons S&P Green Bond Index ETF
Horizons Global Lithium Producers Index ETF
Horizons Global Hydrogen Index ETF
Horizons Global Semiconductor Index ETF
Horizons North American Infrastructure Development Index ETF
Horizons Global Vaccines and Infectious Diseases Index ETF
Horizons GX Telemedicine and Digital Health Index ETF
Horizons GX Cybersecurity Index ETF
Horizons Global Metaverse Index ETF
Horizons Seasonal Rotation ETF
Horizons Global Uranium Index ETF
Horizons Gold Yield ETF
Horizons Canadian Large Cap Equity Covered Call ETF
Horizons Canadian Oil and Gas Equity Covered Call ETF
Horizons Equal Weight Canadian Bank Covered Call ETF
Horizons Gold Producer Equity Covered Call ETF
Horizons US Large Cap Equity Covered Call ETF
Horizons NASDAQ-100 Covered Call ETF
(each, a "**Thematics Plus ETF** " and collectively, the "**Thematics Plus ETFs**")

B.3.5 RBC Global Asset Management Inc. and the Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted from the cash cover requirements in section 2.8(1)(d) of National Instrument 81-102 Investment Funds in connection with certain cross hedging strategies – subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.8(1)(d), 19.1.

November 4 , 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
RBC GLOBAL ASSET MANAGEMENT INC.
(the Filer)
AND
THE EXISTING AND FUTURE MUTUAL FUNDS
THAT ARE NOT ALTERNATIVE MUTUAL FUNDS
FOR WHICH THE FILER OR AN AFFILIATE ACTS, OR WILL ACT,
AS THE INVESTMENT FUND MANAGER
(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**) under section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) exempting a Fund from the cash cover requirements in section 2.8(1)(d) of NI 81-102 (the **Cash Cover Requirements**) in respect of opening and maintaining the long derivatives positions referenced in (a)(ii) and (b)(ii) below when, as part of the Cross Hedging Strategies defined as follows and further described in this decision:

(a) in order to hedge the Fund's exposure to the interest rate of government bonds issued by the sovereign for the currency in which corporate bonds held directly or indirectly by the Fund (the **Corporate Bond Holding**) are denominated, such as USD, AUD, EUR, JPY, GBP or CAD, (each an **Original Currency**) into exposure to the interest rate of government bonds issued by the sovereign of a different selected currency (each a **Selected Currency**), the Fund enters into (i) a short derivatives position in respect of government bonds issued by the sovereign for the Original Currency and (ii) a corresponding long derivatives position in respect of government bonds issued by the sovereign for the Selected Currency (**Government Bond Rate Cross Hedging**); and

(b) in order to hedge the Fund's exposure to an equity index that is linked or correlated to the Fund's direct or indirect investment in a basket of equities (the **Equity Basket**) (the **Original Index**) into exposure to a different selected equity index (the **Selected Index**), the Fund enters into (i) a short derivatives position in respect of the Original Index and (ii) a corresponding long derivatives position in respect of the Selected Index (**Equity Cross-Market Hedging** and, together with Government Bond Rate Cross Hedging, the **Cross Hedging Strategies**)

(The **Requested Relief**). Each of the short and long derivatives positions referenced above in (a)(i) and (b)(i), and in (a)(ii) and (b)(ii), are referred to below as a **Short Derivatives Position** and **Long Derivatives Position** respectively.

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 - *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation formed by amalgamation pursuant to articles of amalgamation dated November 1, 2013 under the federal laws of Canada and its head office is located in Toronto, Ontario.

2. The Filer is an indirect, wholly-owned subsidiary of Royal Bank of Canada.

3. The Filer is registered as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer under the securities legislation of each Jurisdiction, is registered as an investment fund manager in each of British Columbia, Ontario, Québec and Newfoundland and Labrador and is also registered in Ontario as a commodity trading manager.

4. The Filer, or an affiliate, is or will be, the investment fund manager of each Fund. The Filer, or an affiliate, will also be the registered portfolio manager of each Fund.

5. The Filer is not in default of any of its obligations under securities legislation of any Jurisdiction.

The Funds

6. Each Fund is, or will be, a conventional mutual fund or an exchange-traded fund established under the laws of the Province of Ontario or the laws of another Province of Canada or under Canadian federal law.

7. Each Fund is, or will be, subject to NI 81-102, subject to any exemptions that may be granted by the securities regulatory authorities. No Fund will be an alternative mutual fund.

8. The securities of the Funds are, or will be, offered either by a simplified prospectus and annual information form or long-form prospectus, as applicable, filed in all of the Jurisdictions and, accordingly, each Fund is, or will be, a reporting issuer in the Jurisdictions.

9. None of the Funds in existence on the date of this decision is in default of any of their obligations under the securities legislation of any Jurisdiction.

10. The Funds are, or will be, permitted to use specified derivatives to reduce risk by hedging against losses caused by changes in securities prices, foreign currency exposure, interest rates and government bond rates for different currencies, exchange rates and/or other risks. The Funds may also use specified derivatives for non-hedging purposes pursuant to their investment strategies in order to gain exposure to interest rates and government bond rates for different currencies, and to equities or benchmark equity indexes, provided the use of specified derivatives is consistent with the relevant Fund's investment objectives.

11. Any Fund that is not currently permitted to engage in the use of derivatives will only do so in accordance with Section 2.11 of NI 81-102.

12. In all cases where the Funds may use derivatives, hedging of risks is permitted, including for interest rate risks for different currencies, equity investment risks or otherwise.

13. When specified derivatives are used for non-hedging purposes, the Funds are subject to the Cash Cover Requirements, subject to applicable exemptive relief.

Government Bond Rate Cross Hedging

14. Government Bond Rate Cross Hedging will enable a Fund to substitute the Fund's exposure to the government bond rate of the sovereign for the Original Currency with a corresponding exposure to the government bond rate of the sovereign for the Selected Currency. Reference in this decision to the sovereign includes reference to a central bank or central government as the relevant sovereign issuer of government bonds.

15. The need to conduct Government Bond Rate Cross Hedging arises as a result of corporate bonds generally trading based on a spread to government bonds issued by the sovereign for the currency in which the corporate bonds are denominated. For example, individual USD-denominated corporate bonds tend to trade based on a spread to United States Treasury securities having a comparable tenor. Due to this relationship, increases in corporate bond investments denominated in an Original Currency will skew a Fund's rate exposures to provide a potentially undesirable concentration of exposure to the government bond rates of the sovereign for the Original Currency. In many cases, the Fund's manager would prefer to hedge away this concentration and replace this exposure with exposure to the government bond rates of the sovereign for the (different) Selected Currency.

16. Futures contracts or substantially similar OTC derivatives agreements may be entered into by a Fund in connection with corporate bond investments in order to achieve this objective and reverse the skewing of government bond rate exposures arising from corporate bond investments while maintaining a substantially equivalent level of market exposure (including issuer exposure) and sovereign bond exposure.

17. The Requested Relief will permit the Filer to manage currency risk and government bond rate exposure separately from the selection of an appropriate pool of corporate bond investments to best meet the Fund's investment objectives.

18. Accordingly, the Filer seeks the ability for any Fund to enter into Government Bond Rate Cross Hedging without being subject to the Cash Cover Requirements, subject to the conditions of this decision set out below.

Equity Cross-Market Hedging

19. The Filer has identified benefits which can arise if the Filer is permitted to efficiently re-configure its direct or indirect (including through investments in other investment funds) exposure to an Equity Basket by balancing a short position taken in an Original Index identified as linked or correlated to the Equity Basket with a corresponding long position taken in a (different) Selected Index.

20. This management strategy is an important tool if the portfolio manager is satisfied with the relative values of the individual equity positions in the Equity Basket held at a particular time but also wishes to reduce overall exposure to the equity market underlying the Equity Basket due to an expectation that the relevant equity market as a whole is over-priced compared to another equity market.

21. For example, if a Fund holds an Equity Basket of selected investments in particular large-capitalization U.S. corporate equities that are mostly included in the S&P 500 and that the manager considers desirable based on their current prices vs. alternate U.S. corporate equity investments, but the manager considers that U.S. equity markets are generally over-priced compared to Canadian equity investments, then the Requested Relief would permit the manager to continue to hold this Equity Basket but efficiently reduce the Fund's exposure to U.S. equities by at the same time entering into derivatives transactions (which may be futures contract or OTC derivatives transactions) (a) to short the S&P 500 and (b) to take a long position in the S&P/TSX 60 in an equivalent notional amount.

22. In this example, the resulting net investment exposure of the Fund directly corresponds to the original investment in the Equity Basket, but exposure to the relevant underlying U.S. large-cap equity market is replaced by exposure to the relevant Canadian large-cap equity market (including growth, interest rate and inflation expectations). Accordingly, the Requested Relief would permit the portfolio manager to efficiently manage a Fund's exposures to different countries' equity markets separately from the selection of an appropriate pool of individual equity investments (and without requiring significant rebalancings, sales and repurchases of individual portfolio holdings) in order to best meet the Fund's investment objectives.

23. The Requested Relief will permit the Filer to quickly and efficiently rebalance its exposures to different equity markets in a manner which does not increase overall market exposure for the relevant Funds. The Filer believes that this will provide important liquidity, pricing, depth of market and diversification benefits for Fund investors.

24. Accordingly, the Filer seeks the ability for any Fund to enter into Equity Cross-Market Hedging without being subject to the Cash Cover Requirements subject to the conditions of this decision set out below.

Regulatory Framework

25. Section 2.8(1)(d) requires mutual funds (other than alternative mutual funds) to hold cash cover when opening or maintaining a long position in a standardized future or forward contract, in an amount that, together with margin on account for the specified derivative and the market value of the specified derivative, is not less than, on a daily mark-to-market basis, the underlying market exposure of the specified derivative.

26. Section 2.9 of NI 81-102 provides an exception to section 2.8 for the use of specified derivatives by a mutual fund for hedging purposes. However, the Filer submits that the definition of "hedging" in NI 81-102 would not capture the Long Derivatives Position taken as part of the Cross Hedging Strategies.

27. Similarly, while the definition of "cash cover" in NI 81-102 includes as "synthetic cash" a long position in a portfolio of shares and a short position in a standardized future of which the underlying interest consists of a stock index (subject to conditions), the Filer submits that the definition of "synthetic cash" in NI 81-102 would not capture the range of Equity Cross-Market Hedging contemplated by the Filer. In particular, for example, the Filer wishes to have the flexibility (a) to use both futures and over-the-counter (OTC) derivatives for Equity Cross-Market Hedging whereas the definition of "synthetic cash" in NI 81-102 refers only to using standardized futures, and (b) to use Equity Cross-Market Hedging to reconfigure exposures where all or part of the Equity Basket is indirectly held by a Fund by virtue of its investment in another Fund, which is not expressly contemplated the definition of "synthetic cash" in NI 81-102.

28. The purpose of the Cash Cover Requirements in Section 2.8(1)(d) of NI 81-102 is to prohibit a mutual fund from obtaining leveraged exposure to portfolio assets when using certain derivatives other than for hedging purposes (within the definition of "hedging" in NI 81-102). Generally, any exposure to investment positions using derivatives that do not constitute a hedge as contemplated under NI 81-102 triggers an obligation to hold an equivalent amount of cash cover in order to ensure that conventional mutual funds do not improperly use leverage that can increase volatility and positive and negative returns in a manner that is not appropriate for such funds.

29. The Filer considers that Government Bond Rate Cross Hedging and Equity Cross-Market Hedging will not increase leverage in the Funds in the manner that the Cash Cover Requirements are intended to address. Instead, they will replace an ordinary exposure to one underlying benchmark (i.e., exposure to government bond rates in the Original Currency or to an equity market index) with exposure to a comparable substitute benchmark (i.e., exposure to government bond rates in a replacement currency or another equity market index) which the Fund's portfolio manager will determine in the appropriate circumstances is the preferred investment exposure.

Additional Matters

30. The Filer has developed a number of policies and mechanisms to monitor the use of derivatives by the Funds in order to comply with the requirements in NI 81-102 and related exemptive relief.

31. In addition, the Filer has written control policies and procedures that set out the risk management procedures applicable to derivative transactions, including futures contracts, for the Funds. These set out specific procedures for authorization, documentation, reporting and monitoring of each Fund's derivative transactions. Monitoring will be adopted in connection with the Requested Relief (a) to ensure the Fund's corresponding Short Derivatives Position and Long Derivatives Position have matching tenors (or the corresponding long position will be closed out if the short position is no longer in effect) and matching notional amounts and (b) to otherwise ensure compliance with the conditions of this decision.

32. Furthermore, the Filer's review of compliance with such policies and procedures shall be performed by individuals independent of those who trade on behalf of the Funds. These independent personnel employed by the Filer (and any sub-advisor appointed by the Filer, if applicable) routinely review the use of derivatives and compliance with NI 81-102 as part of their ongoing supervision of Funds' investment practices and investment exposures.

33. Permitting individual Funds to enter into derivatives contracts in order to engage in Government Bond Rate Cross Hedging and/or Equity Cross-Market Hedging without the requirement to comply with the Cash Cover Requirements will provide the Funds with better opportunities to efficiently pursue and achieve their investment objectives.

34. The Filer believes that the Requested Relief is in the best interests of the Funds as it allows efficient active management of portfolio assets consistent with their investment objectives, and will permit efficient price-sensitive hedging of underlying government bond rates and benchmark equity market exposures into selected replacement government bond rates and alternate benchmark equity market exposures without introducing increased portfolio leveraging of the type which Section 2.8(1)(d) of NI 81-102 was intended to address.

35. The Filer is seeking the Requested Relief to permit the Funds to engage in strategies that are otherwise permitted under NI 81-102.

Decision

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

The decision of the principal regulator is that the Requested Relief is granted provided that where a Fund relies on the Requested Relief:

(a) the use of Government Bond Rate Cross Hedging and/or Equity Cross-Market Hedging as contemplated by this decision is consistent with the fundamental investment objectives and investment strategies of the applicable Fund;

(b) the opening and maintenance of each Short Derivatives Position meets the definition of "hedging" in NI 81-102 in respect of a corresponding Corporate Bond Holding, in the case of Government Bond Rate Cross Hedging, or in respect of a corresponding Equity Basket, in the case of Equity Cross-Market Hedging;

(c) if all or a portion of a Short Derivatives Position terminates or is closed out, then an equivalent portion of its corresponding Long Derivatives Position must also terminate or be closed out;

(d) subject to condition (e), the Fund will not open or maintain a Long Derivatives Position unless the underlying market exposure to the Fund of all of its Long Derivatives Positions (the **Long Derivatives Exposure**) would not exceed, on a daily mark-to-market basis, the aggregate of the market value of its corresponding:

(e) Short Derivatives Positions;

(f) Corporate Bond Holdings, in the case of Government Bond Rate Cross Hedging, or Equity Baskets, in the case of Equity Cross-Market Hedging; and

(g) Long Derivatives Positions (the **Aggregate Amount**); and

(h) if its Long Derivatives Exposure exceeds at any time the Aggregate Amount referenced in condition (d) above, then the Fund must, as quickly as is commercially reasonable, take all necessary steps to reduce its Long Derivatives Exposure, or allocate additional cash cover or margin on account so that its Long Derivatives Exposure does not exceed the Aggregate Amount and allocated cash cover and margin on account.

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

Application File #: 2021/0016

B.3.6 Advantage Energy Ltd.

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 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).

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, ss. 6.1 and 2.32(4).

Citation: *Re Advantage Energy Ltd.*, 2022 ABASC 163

December 5, 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
ADVANTAGE ENERGY LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator responsible in each of the Jurisdictions (the **Decision Makers)** 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 (the **Exemption Sought**) from the requirements in Section 2.32(4) of National Instrument 62-104 *Take-over Bids and Issuer Bids* (**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 (collectively, 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 given notice that it intends to rely on subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (the **MI 11-102**) in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and

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

Interpretation

Terms defined in 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 head office of the Filer is located in Alberta.

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

3. The authorized share capital of the Filer consists of an unlimited number of Shares, non-voting shares, preferred shares and exchangeable shares. As at November 7, 2022, 181,114,976 Shares were issued and outstanding and there were no non-voting shares, preferred shares or exchangeable shares issued and outstanding.

4. On November 2, 2022, the last full trading day prior to the date of announcement of the Filer's intention to make the Offer, the closing price of the Shares on the TSX was $10.73 per Share. On November 7, 2022, the last full trading day prior to the announcement by the Filer of the price range being offered under the Offer, the closing price of the Shares on the TSX was $11.87 per share.

5. The Filer has made the Offer pursuant to which it has offered to purchase that number of Shares having an aggregate purchase price of up to $100,000,000.

6. The Offer is scheduled to expire at 5:00 pm (Eastern Standard Time) on December 16, 2022 (the **Expiration Date**).

7. Prior to making the Offer, the board of directors of the Filer determined that the Offer was 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 $11.20 and not more than $12.90 per Share (the **Price Range**).

9. The aggregate purchase price of up to $100,000,000 has been determined and was announced by the Filer in a press release issued on November 2, 2022. Both the maximum aggregate purchase price of $100,000,000 and the Price Range were announced by the Filer in a press release issued on November 7, 2022 and are specified in the issuer bid circular (the **Circular**).

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

11. Holders of Shares (collectively, the **Shareholders**) 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**); and

    (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 pursuant to the Offer (the **Purchase Price Tenders**).

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

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

14. The Filer will determine the purchase price payable per Share (the **Purchase Price**), representing a single price per Share within the Price Range, taking into account 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 properly deposited pursuant to Auction Tenders and Purchase Price Tenders having an aggregate purchase price not exceeding $100,000,000.

15. If the aggregate purchase price for Shares validly tendered pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders (the **Tender Amount**) is less than or equal to $100,000,000 and the conditions of the Offer are satisfied, the Filer will purchase at the Purchase Price all Shares so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders.

16. If the aggregate purchase price for Shares validly deposited and not withdrawn pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders would result in an aggregate purchase price in excess of $100,000,000 and the conditions of the Offer are satisfied and/or waived, then a portion of such deposited Shares will be purchased as follows:

    (a) first, the Filer will purchase at the Purchase Price all Shares tendered at or below the Purchase Price by Shareholders who own fewer than 100 Shares (the **Odd Lot Holders**); and/or

    (b) second, the Filer will purchase at the Purchase Price on a *pro rata* basis (according to the number of Shares deposited or deemed to be deposited at a price equal to or less than the Purchase Price) that portion of 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) $100,000,000, less (ii) the aggregate amount paid by the Filer for Shares tendered by Odd Lot Holders.

17. The number of Shares that the Filer will purchase pursuant to the Offer and the aggregate purchase price will vary depending on whether the Tender Amount is equal to or less than $100,000,000. If the Tender Amount is equal to $100,000,000, the Filer will purchase Shares pursuant to the Offer for an aggregate purchase price equal to $100,000,000. If the Tender Amount is less than $100,000,000, the Filer will purchase proportionately fewer Shares in the aggregate, with a proportionately lower aggregate purchase price.

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

19. All Shares tendered to the Offer and not purchased under the Offer (including Shares not purchased because of proration, invalid tender, or Shares deposited pursuant to Auction Tenders at Auction Prices in excess of the Purchase Price), or Shares properly withdrawn before the Expiration Date, will be returned, promptly after the Expiration Date or termination of the Offer or the date of withdrawal of the Shares, without expense to the Shareholder.

20. 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.

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

22. If all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date but the aggregate purchase price for the Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is less than $100,000,000, the Filer may wish to extend the Offer. The Filer will not extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date and the aggregate purchase price for the Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is equal to or greater than $100,000,000.

23. Under the Extension Take-Up Requirement contained in Section 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.

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

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

26. The Filer is relying 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 subsection 3.4(b) of MI 61-101 (the **Liquid Market Exemption**).

27. There was 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 was satisfied. In addition, an opinion was voluntarily sought by the Filer and obtained from RBC Dominion Securities Inc. as of November 7, 2022 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**).

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

29. The Filer has disclosed in the Circular relating to the Offer the following information:

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

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

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

    (d) the manner in which an extension of the Offer will be communicated to Shareholders 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) if known after reasonable enquiry, the name of every person in a relationship with the Filer described in Item 11 of Form 62-104F2 *Issuer Bid Circular* who has accepted or intends to accept the Offer and the number of Shares in respect of which the person has accepted or intends to accept the Offer;

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

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

Decision

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

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

    (c) will issue and file a press release announcing receipt of the Exemption Sought promptly, and in any case, no later than (1) business day following receipt of the Exemption Sought.

“Timothy Robson”
Manager, Legal
Corporate Finance
Alberta Securities Commission

OSC File #: 2022/0506

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
iMining Technologies Inc.	December 1, 2022	
Amilot Capital Inc.	December 2, 2022	
Danavation Technologies Corp	December 2, 2022	
Eden Empire Inc.	December 2, 2022	
XRApplied Technologies Inc	December 2, 2022	
Reef Resources Inc.	December 2, 2022	
HMH China Investments Limited	December 5, 2022	
CoinAnalyst Corp.	December 5, 2022	
Fiore Cannabis Ltd.	December 5, 2022	
Flower One Holdings Inc.	December 5, 2022	
Hapbee Technologies, Inc.	December 5, 2022	
RYU Apparel Inc.	December 5, 2022	

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

Company Name	Date of Order	Date of Lapse
PNG Copper Inc.	November 30, 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	
iMining Technologies Inc.	September 30, 2022	
PNG Copper Inc.	November 30, 2022	

B.5
Rules and Policies

B.5.1 CSA Notice of Amendments to National Instrument 45-106 Prospectus Exemptions and Changes to Companion Policy 45-106CP Prospectus Exemptions Relating to the Offering Memorandum Prospectus Exemption

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions*
and
Changes to Companion Policy 45-106CP *Prospectus Exemptions*
Relating to the Offering Memorandum Prospectus Exemption

December 8, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are making amendments (the **Amendments**) to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

The Amendments are set out in Annex B of this notice. Related changes (the **Changes**) to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) are set out in Annex C.

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on March 8, 2023.

Substance and Purpose

The Amendments set out new disclosure requirements for issuers that are engaged in "real estate activities" (**Real Estate Issuers**) and issuers that are "collective investment vehicles" (**CIV**s), when those issuers are preparing an offering memorandum (**OM**). Both definitions are new in NI 45-106. Many issuers using the OM Exemption (as defined below) are Real Estate Issuers or CIVs. The new requirements are intended to set out a clear disclosure framework for these issuers, giving them greater certainty as to what they must disclose, and giving better information to investors.

In addition, the Amendments include a number of general amendments (the **General Amendments**), which are meant to clarify or streamline parts of NI 45-106 or improve disclosure for investors.

Where the Amendments are to a form for an OM, they are to Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* (**Form 45-106F2**).

Background

The offering memorandum prospectus exemption found in section 2.9 of NI 45-106 (the **OM Exemption**) was originally designed as a small business financing tool to help early stage and small businesses raise capital from a large pool of investors without having to comply with the more costly prospectus regime. It was expected to be used by relatively simple issuers for relatively small amounts of capital, prior to becoming reporting issuers.

In practice, the use of the OM Exemption has evolved differently. To a significant extent, larger and more complex issuers than those originally envisioned are using it. In addition, issuers using the OM Exemption are often engaged in specific activities, for example as Real Estate Issuers, or as CIVs carrying out mortgage lending.

The Amendments were published for comment on September 17, 2020 (the **2020 Proposed Amendments**). For additional background and further detail, please refer to the 2020 Proposed Amendments.

Summary of Written Comments Received by the CSA

In response to the 2020 Proposed Amendments, we received submissions from 13 commenters. We have considered the comments received and thank the commenters for their input. The names of the commenters and a summary of their comments, together with our responses, are contained in Annex A of this notice.

Summary of Changes to the 2020 Proposed Amendments

The Amendments reflect changes to the 2020 Proposed Amendments that are in response to certain of the comments. Key changes to the 2020 Proposed Amendments are summarized below. As these changes are not material, we are not publishing the Amendments for a further comment period.

Six-Month Interim Financial Report

- In all jurisdictions other than Ontario, the requirement for ongoing distributions to amend the OM to include an interim financial report for the issuer's most recently completed six month period has been removed.
- In Ontario, the Ontario Securities Commission continues to be of the view that this requirement is appropriate. However, in response to comments, the Commission has added an exemption to the requirement. The exemption would allow issuers to not amend their OM to include an interim financial report for the issuer's most recently completed six month period if the issuer appends an additional certificate certifying that
    - the OM does not include a misrepresentation when read as of the date of the additional certificate,
    - there has been no material change in relation to the issuer that is not disclosed in the OM, and
    - the OM, when read as of the date of the additional certificate, provides a reasonable purchaser with sufficient information to make an informed investment decision.

Appraisal Requirements

- Due to practical issues noted by commenters regarding paragraph 2.9(19.5)(c) of NI 45-106, which required an appraisal if a Real Estate Issuer were using a material amount of the proceeds of the offering to acquire an interest in real property, we have removed this paragraph. We have determined that this is appropriate, because the more significant investor protection concerns that we have seen are with property acquired from a related party as defined in NI 45-106 (**Related Party**).
- Regarding transactions with a Related Party, we have revised paragraph 2.9(19.5)(a) of NI 45-106 so that it no longer applies to completed acquisitions from a Related Party, and therefore only applies to proposed acquisitions from a Related Party. We note that Real Estate Issuers will still be required to disclose certain details about completed transactions with a Related Party under section 7 of Schedule 1 to Form 45-106F2.

Definitions

- We have made changes to make the definition of CIV more straightforward, and also to ensure that an issuer is not a CIV by virtue of owning securities of subsidiaries.
- We have removed the definition of "net asset value", as we intended "net asset value" to have its generally accepted meaning.

Form 45-106F2

- We have modified the new provision of Item 1 in Form 45-106F2 that requires Form 45-106F2 disclosure for additional issuers in certain circumstances to narrow its scope to avoid unintended results, such as capturing management companies.

Schedule 1 to Form 45-106F2

- We have broadened paragraph 3(1)(a) to allow issuers more options to describe the location of the real property.
- We have added a materiality qualifier to paragraph 3(1)(c), subsection 3(3) and paragraph 8(a).
- Paragraph 3(1)(g) has been revised to narrow its application.

- To make the summarized disclosure permitted by subsection 3(2) a more useful accommodation, we have reduced the property threshold from 20 to 10.

Schedule 2 to Form 45-106F2

- We have added a new provision as paragraph (j) of subsection 3(3) that requires disclosure of accommodations made by an issuer to respond to financial difficulties of the borrower, if the accommodations would be material to a reasonable investor.

Coming into Force

As noted, all of the Amendments are expected to come into force on March 8, 2023 (the **Effective Date**).

However, the amending instrument for the Amendments contains a transition provision that subject to certain conditions, allows an issuer to continue using an OM that was prepared in accordance with the version of Form 45-106F2 that was in-force immediately prior to the Effective Date, until the OM is amended.

As indicated, the transition provision is only an accommodation relating to the pre-Amendments version of Form 45-106F2. There is no transition provision for any of the other Amendments.

Other Matters related to the Amendments

We are revising Multilateral CSA Staff Notice 45-309 *Guidance for Preparing and Filing an Offering Memorandum under National Instrument 45-106 Prospectus and Registration Exemptions* (**SN 45-309**) to make it consistent with the Amendments. We plan to publish revised SN 45-309 in conjunction with the effective date of the Amendments.

Impact on Investors

The Amendments are intended to give investors enhanced disclosure, and where the issuer is a Real Estate Issuer or a CIV, an investor will receive disclosure that is more tailored to the issuer. We anticipate that this enhanced and tailored disclosure will provide investors with better information, enabling them to make more informed investment decisions.

Local Matters

Annex D is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Contents of Annexes

Annex A – Summary of Comments and Responses

Annex B – Amendments to NI 45-106

Annex C – Changes to 45-106CP

Annex D – Local Matters

Questions

Please refer your questions to any of the following:

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ANNEX A

SUMMARY OF COMMENTS AND RESPONSES

	Commenter
1.	Canadian Advocacy Council of CFA Societies Canada
2.	Canadian Association of Alternative Strategies & Assets
3.	Equiton Partners Inc.
4.	FrontFundr Financial Services Inc.
5.	Investment Industry Association of Canada
6.	Norton Rose Fulbright Canada LLP
7.	Larry Wilkins
8.	Private Capital Markets Association of Canada
9.	Skyline Group of Companies
10.	Steve Cohen Law Professional Corporation
11.	Three Point Capital Corp.
12.	Veronica Armstrong Law Corporation
13.	Wanda Morris

Number	Comment	Response
General comments that are supportive of the 2020 Proposed Amendments		
1.	One commenter welcomes the 2020 Proposed Amendments as they relate to Form 45-106F2. The commenter supports the efforts of the CSA to clarify the OM Standard of Disclosure. Similar to the changes in respect of CIVs the commenter views many of these changes as aligning with current best practices.	We thank the commenter for the support and input.
2.	One commenter believes the following. First, providing clear and targeted disclosure requirements for Real Estate Issuers and CIVs is in the public interest. Second, instituting appropriately tailored disclosure requirements for these issuers will benefit investors, registrants and issuers, since doing so will provide greater transparency and increase confidence in the private markets.	We thank the commenter for the support and input.
3.	One commenter often finds that the fees, organizational disclosures, and investment risks and attributes set out in an OM to be complicated, buried within other legal disclosures, and difficult for readers to understand in order to adequately evaluate a given investment opportunity. The commenter believes there are several positive elements in the 2020 Proposed Amendments, and supports the approach where disclosure is standardized across issuers and supplemented with industry specific information in schedules to the greatest extent possible.	We thank the commenter for the support and input.
4.	One commenter believes the 2020 Proposed Amendments will significantly improve the quality of	We thank the commenter for the support and input.

Number	Comment	Response
	information investors receive in OMs, and help them make better informed investment decisions. The commenter also believes that the 2020 Proposed Amendments will make it easier for issuers and their professional advisers to provide the level of disclosure in an OM that CSA members expect from them. The commenter is of the view that the 2020 Proposed Amendments should ultimately reduce costs to issuers, as they will be able to avoid the costs associated with compliance action by regulators.	
5.	One commenter supports the CSA's efforts to improve disclosure for investors and provide issuers with clear disclosure requirements.	We thank the commenter for the support and input.
6.	One commenter supports the purpose of the 2020 Proposed Amendments to create clear and relevant disclosure for issuers that were not originally envisioned to be users of the OM Exemption but who have become significant users of the exemption. Given the fact that the OM does not currently contain disclosure tailored to these types of issuers who are raising significant funds, it is appropriate to amend the disclosure requirements to ensure that purchasers are receiving sufficient information to make an informed investment decision.	We thank the commenter for the support and input.
7.	One commenter is of the view that, although the General Amendments add to the disclosure burden of using the OM Exemption, the additional disclosure will generally be useful to investors.	We thank the commenter for the support and input.
Various comments related to burden associated with the 2020 Proposed Amendments		
8.	One commenter is concerned that the cost of complying with the 2020 Proposed Amendments outweighs the additional protections afforded to OM investors.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.
9.	One commenter observed that the OM Exemption is already a proportionately small part of the prospectus-exempt market. The commenter is of the view that issuers that have the ability to raise capital under other prospectus exemptions, for example the accredited investor exemption found in section 2.3 of NI 45-106, might reduce the amount of capital they raise under the OM Exemption, which could have certain unintended effects, including: • Retail investors could lose investment opportunities. • The issuers choosing to favour other prospectus exemptions may be larger and more mature issuers, increasing the risk profile of the remaining issuers using the OM Exemption. • Not using the OM Exemption would mean that a Form 45-106F2 compliant offering memorandum would not need to be prepared,	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.

Number	Comment	Response
	which could inadvertently reduce the disclosure provided to purchasers under other prospectus exemptions, such as the AI Exemption, because these purchasers are often provided with an OM when the issuer is also raising capital under the OM Exemption.	
10.	One commenter is concerned that the additional disclosure included in the 2020 Proposed Amendments could make investors decide not to read the OM, and create an over-reliance on the dealer.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the length of an OM and investor protection.
11.	One commenter made a number of comments relating to burden. The comments included the following concerns: • Certain of the 2020 Proposed Amendments fail to strike the right balance between cost and investor protection. • Some issuers will stop using the OM Exemption, resulting in fewer opportunities for retail investors. • The OM Exemption is used relatively little, compared to other prospectus exemptions, and this is likely because it is very expensive. The 2020 Proposed Amendments would increase this cost.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.
12.	One commenter is concerned that the additional regulatory burden associated with some of the 2020 Proposed Amendments outweigh the potential benefits. The commenter notes that the cost of preparing an offering memorandum, combined with the cost of commissions, is already high and that the new requirements may make it even more difficult and cost prohibitive for early stage and small businesses to raise capital.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.
13.	One commenter is of the view that the new disclosure requirements approach a disclosure standard that is similar to the “full, plain and true disclosure of all material facts” standard applicable to a prospectus. The commenter is concerned that these new requirements will lead to a decrease in the use of the OM Exemption, and result in inequities between larger issuers who have the resources to comply with the requirements and smaller issuers who do not. Another commenter is concerned that increasing the disclosure in an OM so that it approaches prospectus-level disclosure will increase the cost of the OM.	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection. We are of the view that the OM Standard of Disclosure is not the same as the standard of disclosure for a prospectus.
14.	One commenter asserts the following. The OM Exemption is already the most expensive of the prospectus exemptions generally available to early stage and small businesses. Combined with the investment limits imposed by most jurisdictions, this results in under-utilization of the OM Exemption. The burden associated with the 2020 Proposed	We acknowledge these concerns. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about the cost of carrying out a financing under the OM Exemption and investor protection.

Number	Comment	Response
	Amendments increases the likelihood that some issuers will cease using the OM Exemption altogether.	
NI 45-106 section 1.1: definition of "collective investment vehicle"		
15.	One commenter observed that the 2020 Proposed Amendments define CIV as an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities. The commenter noted that this definition is broad and would capture subsidiaries and affiliates of the issuer. For example, an issuer that acquires 100% of a number of operating companies would be captured under the definition of CIV. In the commenter's view, such an issuer should disclose its subsidiaries as part of itself, rather than as an external portfolio held by the issuer. In addition, such subsidiaries would be captured in the issuer's financial statements. Therefore, the commenter proposes that the definition of "collective investment vehicle" exclude subsidiaries and affiliates of the issuer. The commenter believes that defining net asset value (**NAV**) in the context of CIVs in the same manner as an investment fund under National Instrument 81-106 *Investment Fund Continuous Disclosure* illustrates the point above. The commenter notes that issuers that are not investment funds do not generally disclose the value of their subsidiaries using NAV concepts. Rather, information about the performance of subsidiaries is set out in the issuer's financial statements. Assigning a NAV to operating subsidiaries would appear to be an unintended and undesirable result.	We have changed the definition of CIV to exclude the securities of subsidiaries controlled by the issuer. Affiliation is defined in NI 45-106 as issuers that are parent or subsidiary to each other, or issuers that are controlled by the same person. Because the concept of subsidiaries of the OM issuer has already been dealt with as noted above, and because being controlled by the same person or company would not in our view cause a problem with the definition of CIV, we have not excluded affiliates from the definition of CIV.
16.	One commenter believes that the definition is very broad and would capture all types of pooling vehicles, including those that fall within the definition of "investment fund". The commenter notes that the regulators have recognized this, but refer specifically to mortgage, loan, and receivables portfolios. The commenter suggests that if regulators are concerned with these specific types of vehicles, they should limit the definition to those.	The definition of "collective investment vehicle" is intentionally broad. We believe that Schedule 2 is appropriate disclosure for investment funds, in the jurisdictions where they are permitted use the OM Exemption. We have also highlighted issuers that invest in portfolios of loans, mortgages and in certain circumstances, receivables, as being issuers that are CIVs. In addition, it is possible that there could be issuers with portfolios of other investments for which Schedule 2 is appropriate, and for that reason, we kept the definition broad.
NI 45-106 section 1.1: definition of "material change"		
17.	One commenter requested guidance as to what constitutes a material change for an issuer distributing securities under the OM Exemption. The commenter provided examples of issuers determining that certain events are not material changes.	The term "material change" is defined in local securities acts. We have added certain guidance on this topic in paragraph 3.8(3)(b) of the 45-106CP. CSA member jurisdictions carry out review and compliance programs with respect to OMs, which can, among other things, assess the appropriateness of issuers' determinations regarding material changes.

Number	Comment	Response
NI 45-106 section 1.1: definition of "material contract"		
18.	One commenter is concerned that the definition is very broad, particularly as it includes contracts of an issuer's subsidiaries. The commenter asks whether the test meant to be objective, and whether regulators would accept an issuer's view that a contract is not material.	"Material contract" is used in Form 45-106F2, but is not defined. For issuers' ease of use, a definition has been included in the Amendments. It was taken, unchanged, from NI 51-102. We interpret the definition as being an objective test.
NI 45-106 section 1.1: definition of "real estate activities"		
19.	One commenter believes that a definition should be provided for the term "primarily".	We acknowledge the comment. We interpret "primarily" to have its generally understood meaning.
20.	One commenter believes that the exclusions to the definition listed for the province of Québec, namely "(i) an investment contract that includes a real right of ownership in an immovable and a rental management agreement; or (ii) a securities of an issuer that owns an immovable giving the holder a right of exclusive use of a residential unit and a space in such immovable", are ambiguous and open to interpretation. The commenter suggests clarification.	The carve-out with respect to Québec has been finalized to exclude activities relating to the forms of investments subject to *Regulation Respecting Real Estate Prospectus and Registration Exemptions* (Québec).
NI 45-106 section 1.1: definition of "qualified appraiser"		
21.	One commenter questioned if "qualified appraiser" is defined.	The definition of "qualified appraiser" was published as part of amendments that were announced by CSA notice dated August 6, 2020 (the **August 6, 2020 Notice)**. Those amendments are now effective.
NI 45-106 section 1.1: definition of "related party"		
22.	One commenter is of the understanding that the definition of "related party" is new, and suggests that it be conformed with the definition of a related party under IAS 24 Related Party Disclosures.	The definition of Related Party is not new. It has been moved from A. 6. of the instructions to Form 45-106F2 to section 1.1 of NI 45-106, for ease of reference. It has undergone minor revisions. Substantive changes to the definition are outside the scope of the project.
Comments on the OM Standard of Disclosure		
23.	Regarding NI 45-106 subsection 2.9(13.2) of the 2020 Proposed Amendments, which would require an OM to be amended if there is a material change between when its certificate is signed and when the issuer accepts an agreement to purchase the security, one commenter believes that this requirement should be triggered for a material change as to the issuer, or as to the securities being offered through the OM.	We note that significant changes to the terms of the securities being offered would likely require an amendment to the OM, in view of the OM Standard of Disclosure.
24.	Regarding NI 45-106 subsection 2.9(13.3) of the 2020 Proposed Amendments, which requires that an OM provide a reasonable purchaser with sufficient information to make an informed investment decision, one commenter questioned why this requirement was added.	This is a move of a requirement, rather than a new requirement. This requirement was previously in instruction A. 3. to Form 45-106F2. It has been slightly revised to make it clear that the test is objective.
The appraisal requirement: support		
25.	One commenter is generally supportive of the appraisal requirement.	We thank the commenter for the support and input.

Number	Comment	Response
26.	One commenter is supportive of an appraisal being required in the scenarios outlined in the 2020 Proposed Amendments.	We thank the commenter for the support and input.
The appraisal requirement: appraisal must be performed by an appropriately qualified appraiser		
27.	One commenter urges the CSA to ensure that the required appraisal be performed by an appropriately qualified appraiser. One commenter recommends that the definition effective March 1, 2021 of "qualified appraiser" be used for these provisions.	The appraisal must be performed by a "qualified appraiser". The definitions of "qualified appraiser" and the related term "professional association" were published in the August 6, 2020 Notice. The amendments from that notice are effective now. In brief, a qualified appraiser is an individual that regularly performs appraisals for compensation, is a member in good standing of a professional association that meets certain criteria and holds an appropriate designation, certification or license.
The appraisal requirement: burden		
28.	In one commenter's view, the addition of an appraisal requirement for Real Estate Issuers is a significant burden that is not justified by the benefits for investors. In addition, the commenter believes it could cause Real Estate Issuers to cease relying on the OM Exemption.	The Amendments reflect significant changes to the appraisal requirement to address certain of the concerns raised by commenters. Regarding transactions with related parties, we have revised paragraph 2.9(19.5)(a) so that it no longer applies to completed acquisitions from related parties and therefore only applies to proposed acquisitions from related parties. In addition, for greater certainty, we have added that to a reasonable person, the likelihood of the issuer completing the acquisition must be high. However, with respect to completed transactions, we note that section 7 of Schedule 1 of Form 45-106F2 requires a history of any transactions for which a Related Party was buyer or seller for each interest in real property held by the issuer. We have also added certain guidance related to proposed acquisitions from a Related Party. The guidance includes that such an acquisition could be a material change requiring that the OM be amended. We have also reminded issuers carrying out ongoing distributions under an OM that it is possible to trigger the appraisal requirement as to acquisitions from a Related Party after the OM's certificate is signed. Please see the 45-106CP for the complete guidance. We have also made changes to make it clearer that the appraisal requirement applies to each interest in real property (i.e. one or more). Regarding paragraph 2.9(19.5)(c), instances where the issuer plans to use a material amount of the proceeds to acquire real property, we have reconsidered this proposal. We recognize the practical problems pointed out by the commenters, and have determined that the larger investor protection concerns are with property acquired from related parties. As a result, we have removed paragraph (c).

Number	Comment	Response
The appraisal requirement: inconsistent with reporting issuer disclosure requirements		
29.	One commenter questioned why an issuer that distributes securities under the OM Exemption should be subject to more onerous requirements (i.e. the requirement to provide a real property appraisal in certain circumstances) than reporting issuer requirements. The commenter sees this as creating an undue burden, and inconsistency in how issuers are regulated.	We acknowledge the comment. For OM distributions, there have been particular problems with the stated valuations of real property. As a result, we are still of the view that in some circumstances the appraisal requirement is justified in order to protect investors. However, in the Amendments, we have significantly scaled back the appraisal requirement to deal with the high level of concern about this proposal. Please see our response to comment 28 for further detail.
The appraisal requirement has no materiality threshold		
30.	One commenter observes that as proposed, an appraisal requirement applies without regard to the size of the issuer making the acquisition and is incongruent with the materiality standards set out in the instructions to Form 45-106F2 with respect to business acquisition disclosure. In the commenter's view, this over-emphasizes acquisitions, when investors should be more focused on the issuer as a whole.	As noted, we have significantly scaled back the appraisal requirement to deal with the high level of concern about this proposal. Please see our response to comment 28 for further detail. Also as noted, for OM distributions, there have been particular problems with the stated valuations of real property. As a result, we are still of the view that in some circumstances the appraisal requirement is justified in order to protect investors, irrespective of the materiality of the acquisition.
The appraisal requirement could undervalue an issuer		
31.	One commenter asserted that an appraisal that cannot take into account any proposed improvements or developments will always disclose a value that is lower than the value ascribed by management.	We acknowledge the comment. While we recognize that the inability to include proposed improvements may have some drawbacks, it is important for investor protection purposes that the appraisal appraise the property in its present condition. We also note that an issuer may discuss proposed improvements in its OM.
32.	One commenter advised that appraisal without regard to developments or improvements could favour Real Estate Issuers that have a "buy and hold" strategy while disfavouring Real Estate Issuers that are developers, by undervaluing developers' investments. The commenter feels that this is inappropriate, as developers that wish to discuss what they believe the value of real property would be after their business plans are complete will need to essentially "disprove" an appraisal that assumes no action is taken, which appraisal is required to be featured with equal or greater prominence.	Please see our response to comment 31.
The appraisal requirement could provide a false sense of security to investors		
33.	One commenter is concerned that appraisals obfuscate the fact that an equity investor does not have any direct recourse to the issuer's real estate interests, and will be subordinate to all of the issuer's creditors should the issuer fail. That is, an investment could be lost in its entirety even if the appraisal was accurate.	We acknowledge the comment. In our understanding, investors are generally aware that typically they are not secured creditors as to the issuer's assets.

Number	Comment	Response
The appraisal requirement: concerns about confidentiality and competitive advantage		
34.	One commenter observes that property sales are often subject to strict confidentiality obligations. However, any appraisal, by necessity, may reference certain information that is the subject of the confidentiality covenants. The commenter is concerned that this may put the issuer in a position where it cannot to rely on the OM Exemption.	We are not aware of anything of a general binding nature specifying that appraisals must be confidential. In our understanding, any confidentiality over an appraisal is at the discretion of the party requesting the appraisal and the appraiser. We also note that the appraisal requirements recently imposed in NI 45-106 with respect to syndicated mortgages do not contemplate that the appraisal will be confidential.
35.	One commenter made the following comments about the appraisal requirement and confidentiality: • The appraisal requirement would appear to capture property that the issuer intends to purchase, but purchase agreements that are still in negotiation are typically subject to confidentiality agreements. • Appraisals are provided based on financial information provided by the vendor. The appraisal report typically contains this information or information derived from it, but vendors often provide the information on the condition of confidentiality. • Appraisal reports often provide that the information from the report can only be disseminated with the consent of the appraiser. The commenter notes that the requirements to deliver and file appraisals would clash with this condition. • The commenter sees the need for independent appraisals for properties transacted with a Related Party, but suggests that the CSA engage with the Appraisal Institute of Canada regarding the confidentiality issue.	Please refer to our response to comment 34. Regarding purchase agreements in negotiation, we acknowledge the comment. We note that in the Amendments we have significantly scaled back the appraisal requirement, but think that appraisals are still necessary for investor protection purposes in those narrowed circumstances. In these cases, issuers would need to obtain the required information, irrespective of the vendor's desire for confidentiality.
36.	One commenter notes that providing purchasers with an appraisal could put the issuer at a competitive disadvantage by limiting the price in a future sale to the appraised value, and also noted that the appraisal could be seen as proprietary information that should not be provided to investors.	We submit that greater transparency as to valuation has investor protection benefits, but does not determine a selling price, which is arrived at through negotiation between a purchaser and seller.
The appraisal requirement: timing concerns or clarifications		
37.	One commenter stated that the Proposed Amendments should specify how current the appraisal must be.	Paragraph 2.9(19.6)(d) of the Amendments states that the appraised fair market value of the interest in real property must be as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.
38.	Two commenters are concerned that the 2020 Proposed Amendments require appraisals to be updated due to the passage of time during the offering period.	The Amendments do not contain a general requirement to update appraisals. However, if distributions under an OM are ongoing, because an appraisal must be dated within 6 months preceding the date that the appraisal is delivered to the purchaser, an appraisal previously obtained by an issuer may be required to be updated due to the passage of time.

Number	Comment	Response
		As noted, we have significantly scaled back the appraisal requirement to deal with the high level of concern about this proposal. Please see our response to comment 28 for further detail.
39.	One commenter requests clarification as to whether an issuer has to meet the appraisal requirement if it arises after finalization of an OM, but before the issuer accepts an agreement to purchase the security from a purchaser.	Yes, the requirement would apply in this instance. Please see our response to comment 28 for further detail.
40.	One commenter expressed concern about the appraisal requirement and the passage of time. Specifically, the commenter appears to be contemplating a situation where the appraisal requirement is triggered, and the issuer carries out ongoing distributions under the OM for longer than 6 months. In view of this scenario, the commenter suggests that the CSA reconsider the requirement that the appraisal be as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.	Please see our response to comment 38. We also note that the appraisal requirements recently imposed in NI 45-106 with respect to syndicated mortgages included, in response to a recommendation from commenters, a requirement that the appraisal be dated within 6 months preceding the date that the appraisal is delivered to the purchaser. We believe that the same concern about currency of the appraisal applies to other distributions under the OM Exemption, and have therefore mirrored this requirement.
41.	One commenter suggests that the appraisal date should be required to be within less than 6 months, if there has been an event that has a material adverse impact on the issuer's total portfolio. The commenter suggests that this could be most useful for issuers with properties that are in development or pre-development. The commenter provided the expropriation of nearby properties as an example of an event that could have a material adverse impact on the issuer's total portfolio.	We acknowledge the comment. We have not made the suggested change, because we are concerned that the burden of a more nuanced requirement may outweigh its benefit. We also note that the comment appears to contemplate a material change, and if so, the OM would be required to be amended.
The appraisal requirement: increased fees		
42.	One commenter asserts that appraisers may demand increased fees if their appraisal will accompany an offering document, due to perceptions about increased liability and/or reputational risk.	We acknowledge the comment. As noted, we have significantly scaled back the appraisal requirement. As also noted, we are of the view that for the narrowed set of circumstances in which the requirement will still apply, appraisals are necessary, despite the concern about higher fees.
The appraisal requirement as to purchases from related parties: 2.9(19.5)(a)		
43.	One commenter supports the requirement.	We thank the commenter for the support and input.
44.	The commenter highlights the following issues and makes certain suggestions. The requirement is not limited by time or materiality, which would require an issuer to obtain appraisals for any real property acquired from a Related Party in perpetuity. This would create a very significant cost that effectively prohibits the use of the OM Exemption. The purpose of this requirement appears to be to ensure that the Related Party transaction was fair. When making such determination, an investor should consider the fair market value of the property at the time of the transaction, not at the time that an offering	Please see our response to comment 28. We have not proposed a materiality threshold. However, as noted above, the appraisal requirement has been significantly scaled back.

Number	Comment	Response
	memorandum is delivered, which could be well after the time of the transaction. To better align this proposed requirement with what appears to be its purpose, we propose that: (i) issuers are only required to include an appraisal for a Related Party acquisition completed prior to the date of the offering memorandum if the financial statements included in the offering memorandum do not include the results of such acquisition for six months; and (ii) such appraisal, if required, be a one-time requirement to be dated within six months of the acquisition date (not the time of delivery of the offering memorandum). Lastly, the commenter proposes that such appraisal requirement be subject to a materiality qualifier whereby an appraisal is only required if the acquisition represents at least 25% of the consolidated assets of the issuer, determined in accordance with C.2 of the instructions to Form 45-106F2.	
45.	Another commenter notes that the requirement captures all interests previously acquired from related parties, and indicates that this could be burdensome, and that the CSA should re-examine this requirement.	Please see our response to comment 28.
The appraisal requirement as to use of a material amount of the proceeds: 2.9(19.5)(c)		
46.	One commenter disagrees with this requirement, and is of the view that the cost outweighs any benefit to investors.	Please see our response to comment 28.
47.	One commenter disagrees with this proposed requirement. If the CSA decides to retain it, the commenter suggests clarifying the term “material amount”. Another commenter also suggests that the CSA clarify “material amount”.	Please see our response to comment 28.
48.	One commenter believes that different issuers may interpret the term “material” differently. The commenter also understands the requirement to potentially require appraisals on hundreds of properties, and makes suggestions for this case.	Please see our response to comment 28.
49.	One commenter asserts that the requirement would work for issuers that are using the proceeds to purchase one interest in real property, but that it is unclear for issuers that plan to purchase multiple properties, because it is not clear for which interest in real property an appraisal would be required. The commenter also indicates that the requirement is unworkable for these issuers.	Please see our response to comment 28.
50.	One commenter asserts that the requirement to provide an appraisal if an issuer intends to spend a material amount of the offering proceeds on an interest in real property is unclear. The commenter believes that an appraisal may be important for single purpose investments, i.e. an issuer’s only activity relates to one property, but that	Please see our response to comment 28.

Number	Comment	Response
	the value of providing investors with appraisals diminishes if an issuer has a diversified portfolio of properties. The costs of providing appraisals in this case would be prohibitive. The commenter is of the view that the Proposed Amendments should clarify that the requirement applies only if a material amount of the proceeds is directed to any one property. The commenter also believes that the term "material" should be clarified.	
The appraisal requirement: delivery, and delivery timing		
51.	One commenter suggests that instead of physical delivery, the OM specify a web page on which any appraisals associated with an OM can be viewed.	As noted, we have significantly scaled back the appraisal requirement, reducing the instances in which an appraisal will be required. For these instances, we have retained the structure of the current delivery requirement for appraisals in connection with syndicated mortgages.
52.	One commenter notes that due to the length of some appraisal reports, it might not be practical to attach the reports to the OM. The commenter suggests that disclosure of the valuation and details regarding the appraiser in the OM with a digital link to the full report would be a more practical approach.	We note that the appraisal report is not required to be attached to the OM. With respect to making appraisals available through a link, please see our response to comment 51.
53.	One commenter is of the view that an offering memorandum is typically prepared before an appraisal is requested, and as a result, suggests that the CSA reconsider the requirement that an appraisal would need to be delivered at the same time or before the issuer delivers an offering memorandum to the purchaser.	We are of the view that in order to be timely and relevant for investors, any appraisal needs to be delivered to the purchaser by the time the purchaser receives the OM.
The appraisal requirement: fair market value		
54.	One commenter believes the CSA should define the term "fair market value".	We intend "fair market value" to have its generally accepted meaning.
The appraisal requirement: cannot consider any proposed improvements or proposed development		
55.	One commenter asserts that the appraisal must be based on the current status of the project and not contemplate any change in value for significant events that have not yet occurred.	The Amendments specify that the appraisal "provides the appraised fair market value of the interest in real property, without considering any proposed improvements or proposed development".
56.	One commenter supports this proposed requirement, especially for transactions involving related parties.	We thank the commenter for the support and input.
Requirements when disclosing a value other that the appraised fair market value: 2.9(19.7)		
57.	One commenter agrees with these provisions, and believes that such disclosure would be forward-looking information **(FLI**) or future-oriented financial information **(FOFI**), and suggests that the CSA reference the requirements pertaining to same.	Whether or not such disclosure would include FLI or FOFI would depend on its particular facts. We note that Instruction B. 14 of Form 45-106F2 imposes requirements in respect of FLI or FOFI that occurs anywhere in an OM.
58.	One commenter believes this proposed requirement should also require disclosure of the inherent limitations and risks of the assumptions relied upon.	The provision requires disclosure of the material factors or assumptions used to determine the representation or opinion. We believe that this disclosure will be sufficient.

Number	Comment	Response
Appraisal: filing requirement		
59.	One commenter agrees with this requirement, notwithstanding any confidentiality concerns of appraisers or issuers.	We thank the commenter for the support and input.
Form 45-106F2: cover page		
60.	One commenter is in favour of the new requirement for an issuer to state on the cover page if there is a working capital deficiency, as well as if they have paid dividends or distributions that exceeded cash flow from operations.	We thank the commenter for the support and input.
Form 45-106F2: Item 1.2.1 (Proceeds Transferred to Other Issuers)		
61.	One commenter notes that in the circumstances described in the Item, an issuer would have to make extensive disclosure about another issuer, and the first issuer would bear the statutory liability for any misrepresentations in this material, not the other issuer. The commenter is concerned that this is unfair, given that despite whatever precautions the issuer may have taken, the issuer is still dependent on the other issuer for the information.	We acknowledge the comment. The requirement is meant to address scenarios where a significant amount of the proceeds of the offering are transferred to another issuer that is not a subsidiary of the issuer. We also note that the in-force requirement that an OM provide a reasonable investor with sufficient information to make an investment decision, and that the OM not contain a misrepresentation, would operate to require extensive disclosure on the other issuer in most cases. However, our compliance work has revealed that some issuers do not make this disclosure, or do not make it to the correct extent. Item 1.2.1 is intended to protect investors by reducing those instances. We also note that generally, staff have observed these arrangements taking place between Related Parties and in these cases we expect it will be easier and less burdensome for the issuer to obtain the information. We also note that in the Amendments we have renumbered parts of the replacement Form 45-106F2 shown in the 2020 Proposed Amendments to eliminate repealed section numbers and decimal numbering (the **Renumbering**). Due to the Renumbering, Item 1.2.1 in the 2020 Proposed Amendments became Item 1.3 in the Amendments.
62.	One commenter notes that proposed Item 1.2.1 of Form 45-106F2 requires that if a significant portion of an issuer's business will be managed by another issuer, the disclosure required by several items of Form 45-106F2 as well as Schedules 1 and 2 if applicable be provided as if the other issuer were the issuer preparing the OM. For mortgage investment entities that are externally managed, this would include the manager. While requiring some of this information relating to the manager would be useful, other items such as the financial statements would result in significant additional regulatory burden and costs. This may also increase reluctance to use the OM exemption since the manager may not want to provide financial statements, particularly if they are involved in other businesses.	We note that the requirement applies if "a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer", or if "a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer". We share the commenter's concern. We have deleted in the Amendments "a significant amount of the issuer's business is carried out by another issuer that is not a subsidiary controlled by the issuer".

Number	Comment	Response
Form 45-106F2: Item 1.3 (Reallocation)		
63.	One commenter notes that Item 1.3, which requires a statement indicating that funds would only be reallocated for sound business reasons, has been removed in the 2020 Proposed Amendments. The commenter is unsure if this removal means that such reallocation is no longer permitted, and would appreciate clarification.	The Amendments remove Item 1.3 because we do not think that it has any practical effect. We note that the duties of management to run the issuer prudently come from other legal obligations, and we are of the view that Item 1.3 does not create these obligations, or supplement them.
Form 45-106F2: Item 2.6.1 (Additional Disclosure for Issuers Without Significant Revenue)		
64.	One commenter notes that this requirement appears to pertain to mining issuers, and suggests that it be amended to make this clear.	Although the requirement includes additional disclosure for mining issuers, it pertains to all types of issuers that meet the criteria of the section. Due to the Renumbering, Item 2.6.1 in the 2020 Proposed Amendments became Item 2.7 in the Amendments.
65.	One commenter is also unclear whether the Item applies only to resource issuers, and suggests that the term “without significant revenue” should be more clearly defined. The commenter would prefer a “revenue” section in the OM, focusing on how an issuer earns revenue. The commenter also stated that, as a best practice, issuers could provide a picture of anticipated sales given their revenue model, and referencing items 8 and 12 of the OM.	With respect to the application of the Item, please see our response to comment 64. We have adapted this requirement from section 5.3 of NI 51-102, in which the term “without significant revenue” was used without a definition. Issuers are permitted to include anticipated sales in their OM, provided that they comply with sections 4A.2 and 4A.3 of NI 51-102. Under the current requirements, how an issuer will earn revenue should be discussed in order to meet the OM Standard of Disclosure. Therefore, we do not believe a separate section for revenue is necessary.
Form 45-106F2: Item 2.7: (Material Contracts)		
66.	One commenter observes that the section refers to material contracts to which the issuer is a party, yet the definition of material contract includes contracts entered into by a subsidiary of the issuer. The commenter suggests resolving this inconsistency.	We thank the commenter for the input. We have deleted, in the Amendments, the words “to which the issuer is currently a party”. Due to the Renumbering, Item 2.7 in the 2020 Proposed Amendments became Item 2.8 in the Amendments.
Form 45-106F2: Items 3.1 (Compensation and Security Holdings of Certain Parties) and 3.2 (management experience)		
67.	One commenter suggests that Items refer to not only directors but trustees.	Through the definitions incorporated into NI 45-106, trustees are included.
68.	One commenter believes that the requirements are intrusive and exceed the bounds of privacy, for example, place of residence, expected compensation, and experience associated with principal occupation. The commenter suggests that experience related to the person’s role in the issuer would be more helpful to a purchaser. In addition, the commenter believes including beneficial owners holding more than 50% of a non-individual person in Item 3.1 is not helpful for investors.	We submit that except for the addition of related parties not already included in the other parties identified, the changes to these items are of an organizational nature, and the elements that the commenter is highlighting are already contained in the in-force legislation. We continue to believe that this disclosure is relevant to investors.

Number	Comment	Response
Form 45-106F2: Item 3.3 (Penalties, Sanctions and, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters)		
69.	One commenter suggests that the disclosure regarding penalties or sanctions for contravening securities legislation be with respect to any time in the past, instead of limited to the 10 years preceding the date of the OM. The commenter notes that this approach is taken in Item 13.1(d) of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*, which requires the applicant to disclose whether they have ever been subject to any disciplinary proceedings or order under securities or derivatives legislation.	We acknowledge the comment. In this case, we have made the requirement consistent with other such requirements that apply to issuers, such as Item 10.2 of Form 51-102F2 *Annual Information Form*, rather than requirements pertaining to registrants.
70.	One commenter was supportive of the requirements in Item 3.3 to disclose penalties or sanctions for contravening securities legislation.	We thank the commenter for the support and input.
Form 45-106F2: Item 4.2 (Long Term Debt Securities)		
71.	One commenter suggests removing “Securities” from the heading of this section, as the text of the section requires disclosure of all indebtedness, such as bank credit facilities.	We thank the commenter for this input. We agree with the commenter that the item would include bank credit facilities. Although the definition of “security” in the local securities acts includes various forms of debt, we agree that for convenience and ease of use, it makes sense to remove the word “securities” from the title.
72.	One commenter is of the view that in providing the disclosure about the interest rate, the issuer should be required to specify whether the rate is fixed or variable, which will help determine whether there is a risk that the rate could go up.	We expect that that issuers will specify whether the rate is fixed or variable.
Form 45-106F2: Item 5A (Redemption and Retraction History) and Item 5B (Certain Dividends or Distributions)		
73.	One commenter believes that some of the information required in proposed Items 5A and 5B may be harmful to issuers, because it will disclose information to their competitors that can be used against them.	We recognize that the items require disclosure of potentially sensitive information, but we are of the view that any risk to an issuer’s competitive position is outweighed by the importance of the disclosure to investors. Due to the Renumbering, Item 5A in the 2020 Proposed Amendments became Item 6 in the Amendments.
74.	One commenter suggested additional disclosure requirements for Item 5A aimed at disclosure of redemption or retraction requests that have not been fulfilled because an investor was not willing to accept redemption notes.	All repurchase requests that have not been fulfilled must be reflected in the table set out in Item 6.
75.	One commenter is not convinced that the information to be provided in the column entitled “source of funds used to complete the redemptions or retractions” of Item 5A(1)(a) would be useful information to investors. As money is fungible, it is artificial for an issuer to allocate a particular source of funds to redemptions compared to other matters. For example, it appears that an issuer with revenue that is continuing to raise capital could insert either of those sources in this column.	We acknowledge the commenter’s point about the fungible nature of money. We continue to believe that an issuer’s best efforts to pinpoint the source of funds will be informative for investors.

Number	Comment	Response
76.	One commenter was supportive of the additional disclosure relating to redemptions in the 2020 Proposed Amendments, including restrictions on redemptions, and the amount of requests received and fulfilled. However, the commenter believes that determining and disclosing the source of funds might be difficult, particularly for mortgage investment entities, because of the numerous types of cash flows typical of these entities. The commenter would prefer that the source of funds be eliminated from the required disclosure.	Please see our response to comment 75.
77.	One commenter strongly supports Item 5A and believes it will be helpful to investors.	We thank the commenter for the support and input.
78.	One commenter suggested that Item 5B require more detailed disclosure and explanation.	We did not increase the requirements of Item 5B due to concerns about imposing undue burden on issuers. Due to the Renumbering, Item 5B in the 2020 Proposed Amendments became Item 7 in the Amendments.
79.	One commenter strongly supports Item 5B, advising that the source of funds for dividends and distributions is an important indicator of possible cash flow constraints, and that it can help investors identify if the issuer is raising capital to fund existing distribution (or redemption) obligations.	We thank the commenter for the support and input.
Form 45-106F2: Instruction A. 5.1 (relating to maximum offering amount)		
80.	One commenter made two comments about this instruction: • That the CSA should provide guidance on what "reasonably expects" means. • That the CSA should clarify whether the instruction contemplates only the issuer's fiscal year, or some other time period.	With respect to "reasonably expects", we have used this wording so that the test is objective. With respect to the time period contemplated in the instruction, the instruction specifies "under the offering memorandum". This is intended to capture the total amount raised under the OM, for however long the issuer intends to raise money under it.
Form 45-106F2: Instruction B. 12.1 (b) (for ongoing distributions, amending the OM to include an interim financial report for the issuer's most recently completed 6-month period)		
81.	One commenter is strongly opposed to this proposed requirement, for reasons that include the following: • Increased burden on issuers. • The requirement is inappropriate for issuers that are not reporting issuers. • The requirement will deter issuers from using the OM Exemption. • The required review of the amended OM by management, legal counsel and the exempt market dealer (**EMD**) will increase burden. • Increased translation costs relating to the report and any other amendments. If the CSA goes ahead with the requirement, the commenter made suggestions that include the following: • That the report be filed on the System for Electronic Document Analysis and Retrieval	Due to the lack of support for this proposal and high level of concern expressed by commenters, the members of the CSA, except Ontario, are not pursuing this requirement. In Ontario: • We published a cost-benefit analysis with the 2020 Proposed Amendments and concluded that the anticipated benefits outweighed the costs. Commenters did not provide details of specific costs that were not considered in our cost-benefit analysis other than French translation, which does not apply in Ontario. • While we continue to be of the view that amending the OM to include an interim financial report for the issuer's most recently completed 6-month period is appropriate, in response to comments, we have added an exemption to

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	(**SEDAR**) rather than included in the issuer's OM. • EMDs have a 90 day period to review the report, and are not required to cease acting within that period unless there are obvious defects.	this requirement. The exemption would allow issuers to not amend their OM to include a 6-month financial report if the issuer appends an additional certificate to its OM that certifies that (i) the OM does not include a misrepresentation when read as of the date of the additional certificate, (ii) there has been no material change in relation to the issuer that is not disclosed in the OM, and (iii) the OM, when read as of the date of the additional certificate, provides a reasonable purchaser with sufficient information to make an informed investment decision. • Since the OM Exemption is premised in part on disclosure to prospective investors, we believe this approach balances investor protection while recognizing the possibility that an issuer in continuous distribution may not have had any material changes. • The CSA has added guidance to 45-106CP on materiality determinations.
82.	One commenter made a general comment that this requirement will be very costly for issuers.	Please see our response to comment 81.
83.	Rather than requiring an issuer to amend its OM to include the interim financial report for its most recently completed 6-month period, one commenter suggests a requirement to file the interim financial report. The commenter notes that amending an OM is very costly, and that this requirement would require some issuers to amend their OM after only a few months. The commenter also notes that this is similar to the shelf prospectus regime, and that the OM will still be required to be amended if a material change occurs.	Please see our response to comment 81.
84.	One commenter was also concerned about the time and costs involved in amending an OM, and believes that the benefits of including the interim financial report for the most recently completed 6-month period when distributions are ongoing may be outweighed by the burden on issuers. The commenter suggested that as an alternative, issuers could be encouraged to make this report available to investors, but not be required to incorporate the report into the document.	Please see our response to comment 81.
85.	One commenter was of the view that more frequent amendments to an OM will require more frequent reviews by EMDs to fulfill their know-your-product obligations, which could cause delay, and could cause issuers to distribute via channels that do not involve a registrant, which would decrease investor protection.	We acknowledge the comment. We note that know-your-product obligations apply to registrants at the time of sale, and are not limited to instances when an OM is amended.
86.	One commenter is of the view that this requirement will impose significant regulatory burden and cost. The commenter explains that it amends its offering memorandums annually, which includes obtaining real property appraisals that are relied on in connection with the financial statements, and review by its external legal counsel, auditors and independent trustees. The commenter also translates its amended	Please see our response to comment 81.

Number	Comment	Response
	OMs into French. The commenter advises that this process as a whole is very costly. The commenter submits that the true cost of this requirement was not fully captured in the cost analysis in the local Ontario annex. The commenter does not support this requirement for the following additional reasons: • In the commenter's view, a 6-month interim financial report typically does not include significant new information. • The commenter has never received a request for this report. • Any significant change in financial position constituting a material change would require an amendment in any event. If the CSA proceeds with this requirement, the commenter suggests that requiring the issuer to file the statements on SEDAR rather than amending the OM would be much less burdensome.	
87.	One commenter is of the view that the requirement to amend the OM to include 6 month interim financial statements will result in significant additional costs and is unnecessary. The commenter feels that the requirement to update the OM when material changes have occurred is sufficient.	Please see our response to comment 81.
88.	One commenter asserts that the current financial statement requirements, along with the requirement that the OM not contain a misrepresentation, are sufficient and that the benefit of 6 month interim financial statements is outweighed by the additional costs.	Please see our response to comment 81.
89.	One commenter is of the view that the requirement to amend the OM to include interim financial statements for a six month period is unnecessary since the OM must already be amended if there is a material change. The commenter asserts that this will result in additional costs that will be borne by the investor, as it will reduce their return on investment.	Please see our response to comment 81.
Form 45-106F2: Instruction B. 12.1: clarification		
90.	One commenter is seeking clarification on the effect of Instruction B. 12.1. Specifically, the commenter seeks confirmation of its understanding that assuming the OM is not otherwise required to be amended, Instruction B. 12.1 would not cause more than two amendments of an OM per year. The commenter provided examples to illustrate its understanding.	Please see our response to comment 81.
General Comments about Schedules 1 and 2		
91.	One commenter believes that the requirements of Schedules 1 and 2 are very extensive, and therefore onerous for issuers.	We acknowledge the concern about burden. We submit that the Amendments have been changed from the 2020 Proposed Amendments in a way that strikes an appropriate balance between concerns about burden and concerns about investor protection.

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	The commenter also believes that the disclosure of some of the information could be harmful as to an issuer's competitive position.	We respectfully disagree with the comment about an issuer's competitive position. We believe that a prospectus exemption that is premised on a disclosure document, such as the OM Exemption, emphasizes disclosure to investors over keeping information confidential.
92.	One commenter agrees with most of the disclosure requirements in Schedule 1.	We thank the commenter for the support and input.
93.	One commenter states that they believe the disclosure required by Schedules 1 relating to the condition, background and transaction history of the property is reasonable and appropriate.	We thank the commenter for the support and input.
94.	One commenter welcomes the 2020 Proposed Amendments as they apply to CIVs. The commenter supports the additional requirements relating to the disclosure of a CIV's investment objectives and strategies, as well as the inclusion of a portfolio summary, as they are necessary changes to ensure that investors have sufficient information to make informed investment decisions. The commenter views many of these changes as aligning with current best practices.	We thank the commenter for the support and input.
95.	Two commenters agree with most of the disclosure requirements in Schedule 2.	We thank the commenters for the support and input.
96.	One commenter was supportive of the requirements in proposed Schedule 1. The commenter notes that Real Estate Issuers can often have complex structures, and that the need for clarity on an issuer's working relationships or planned use of funds is essential. The commenter is also supportive of the disclosure required by sections 3 and 4 of Schedule 2. The commenter also stated that providing direction that the additional disclosure required by Schedules 1 and 2 should be included in Item 2.2 of the OM may be helpful as this would ensure that this disclosure is near the start of the OM.	We thank the commenter for the support and input. The instructions to Schedule 1 and Schedule 2 state that issuers can integrate the disclosure from the schedules into their OMs where they choose. This is so an issuer can ensure that the disclosure in its OM is clear and logically organized.
97.	One commenter is supportive of the portfolio disclosure required by Schedule 2 including investment strategy, portfolio composition and performance data.	We thank the commenter for the support and input.
Form 45-106F2: Schedule 1: Section 2 (Application)		
98.	One commenter is requesting clarification in respect of subsection 2(2), which limits the application of Schedule 1. The commenter would like further guidance regarding when this limitation would apply. The commenter is of the view that this limitation is important, as an issuer with a large portfolio would need to provide large volumes of information to meet the requirements of section 3 of Schedule 1. While this may be appropriate for an issuer with a single property, the commenter believes that for issuers with	We believe that subsection 2(2) allows an issuer to make a determination, based on its own particular circumstances. With respect to section 3, we note the following. First, subsection (2) allows an issuer making disclosure for multiple properties to present the information on a summarized basis. Second, with respect to the content of section 3, as explained below, we have made changes to address

Number	Comment	Response
	a large portfolio, the information currently provided by issuers in the OM is more useful than the disclosure required by section 3.	certain of the commenters' concerns, and to make the requirement more practical for issuers with a portfolio of properties.
Form 45-106F2: Schedule 1: Section 3 (Description of Real Property)		
99.	Two commenters assert that the requirement to set out the legal description of the interest in real property will be burdensome, and that instead the municipal address should suffice. One of the commenters owns condominium buildings, whose legal descriptions are especially lengthy as they are made up of the legal descriptions of all the units.	We acknowledge the comment. We have revised the provision to require the address or other description, to allow issuers other options beyond the legal description to describe the location of the real property.
100.	One commenter advises that minutia such as standard encumbrances (such as utilities easements), utilities providers, or minor legal proceedings are not necessary for investors to make an investment decision in most cases. The commenter suggests that a materiality threshold should be added to this section so that issuers and investors can focus on information that materially affects the value of such real property and would thus be important for investors to know.	Regarding paragraph 3(1)(c), we have qualified this requirement by making it as to encumbrances that would be material to a reasonable investor. We have made the same qualification to subsection 3(3). Regarding paragraph 3(1)(g), we have revised it so that it only applies if utilities and other services are not currently being provided.
101.	One commenter believes that because disclosure about encumbrances could be lengthy, only material encumbrances should be required to be disclosed.	Please see our response to comment 100.
102.	With respect to disclosure about encumbrances, one commenter notes that descriptions of easements can be lengthy, and submits that this information is not useful to investors. The commenter suggests that easements be excluded from paragraph 3(1)(c).	Please see our response to comment 100.
103.	With respect to disclosure about how and by whom utilities will be provided, one commenter questioned whether such disclosure is necessary. Another commenter asserted that because utilities are usually municipally owned or heavily regulated, and there is sometimes no choice of provider, this information is not useful to investors.	Please see our response to comment 100.
104.	Two commenters suggest that the disclosure required by paragraph 3(1)(k) of occupancy level for issuers that are landlords could be misleading on its own, because landlords often give rent incentives or abatements that result in tenants occupying space, but not paying rent. One of the commenters indicated that the extent of rent abatements or discounts in place should be disclosed.	We are concerned that the requirement to make disclosure about rental incentives or abatements could create undue complexity. We note that an OM must meet the OM Standard of Disclosure. For example, if an issuer disclosed a 100% occupancy rate but had provided significant rental incentives or abatements that were not disclosed, this likely would not meet the OM Standard of Disclosure.
105.	One commenter asserted that occupancy levels of real property should only be required to be disclosed if it is material information. The commenter observed that the materiality of occupancy levels can vary depending on the type of property, or the individual property, and suggests that	We are of the view that in most cases, occupancy level of leased property is material to the issuer. With respect to when an OM is required to be amended, please see the changes to the 45-106CP.

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	it be left to the issuer to determine if disclosure of occupancy levels is necessary to meet the OM Standard of Disclosure. The commenter also wondered if small changes in occupancy levels would require an amendment to an OM.	
106.	One commenter observes that subsection 3(2) attempts to alleviate the burden on issuers who hold 20 or more interests in real property. The commenter is of the view that 20 is an arbitrary number for providing this type of relief. If a Real Estate Issuer has multiple properties of a similar class or with similar characteristics, the commenter suggests that the issuer should be allowed to disclose such information summarily.	We acknowledge that there is an arbitrary element to bright-line tests. In this case, in order to make summarized disclosure a more useful accommodation, we have reduced the property threshold to 10.
Form 45-106F2 Schedule 1: Section 7 (Transfers)		
107.	One commenter supports the disclosure about real property transactions with Related Parties, including the requirement to disclose the consideration paid. The commenter believes that there should be an additional column where the basis for the consideration would be described, including the valuation methodology (e.g. price in the purchase and sale agreement, valued at NAV, carrying cost). The commenter also believes it should be required to disclose whether an independent valuation was made available.	We note that the disclosure calls for the consideration actually paid, rather than any methodology supporting it, or additional information made available at the time. As noted by the commenter, the purpose of this disclosure, and the other disclosure that would be required by the section, is to assist investors in evaluating whether or not the transaction with the Related Party was fair. We think that the requirements of the section accomplish this, and would be concerned about the burden associated with adding the disclosure suggested by the commenter.
Form 45-106F2 Schedule 1: Section 6 (Developer, or Manager under a Rental Pool Agreement or Rental Management Agreement: various information)		
108.	One commenter is concerned by the application of this section to persons that are not affiliates of the issuer. The commenter is concerned that the information required in this section is significant and onerous for an issuer to obtain when applied to third parties and it would be difficult, if not impossible, for an issuer to verify such information for third parties with sufficient certainty to allow the issuer's representatives to sign the certificate in the offering memorandum. In the case of a person to be disclosed in this section that is arm's length to the issuer, the commenter proposes that the disclosure be limited to the identity and experience of such person (proposed paragraph 6(2)(a)).	We acknowledge the concern about the burden and difficulty of this disclosure. However, we believe it is important for investors to know if critical parties such as developers or rental pool managers have recent insolvencies or sanctions. We are of the view that issuers should exercise care in selecting such parties and do the due diligence required to support the disclosure.
Form 45-106F2 Schedule 1: Sections 8 and 9 (approvals)		
109.	One commenter advised that when developing real property, there is so much uncertainty that often much of the information in proposed sections 8 and 9 cannot be known. The commenter suggests that these sections be subject to an overarching "if known and available" qualification.	In our view, this information is important, and can be determined or anticipated by the issuer.
110.	One commenter asserts that, in regard to disclosing a description of the approvals or permissions required, there may be a significant number of approvals and permits required. Some of these may be routine and basic while others may be significant and uncertain.	We have revised paragraph 8(a) to specify that it is with respect to any approval that would be material to a reasonable investor.

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	The commenter suggests that the disclosure should differentiate between permits and approvals based on their significance and uncertainty.	
Form 45-106F2: Schedule 1: Section 10 (Future Cash Calls)		
111.	One commenter notes that while they would prefer that issuers with large portfolios not be subject to the requirements in Schedule 1, they are supportive of a disclosure requirement for any future cash calls or potential future contributions.	We thank the commenter for the input. With respect to issuers with large portfolios, please see our response to comment 106.
Form 45-106F2 Schedule 2: section 3 (Portfolio Summary)		
112.	One commenter proposes that with respect to subsection (1), instead of this information being provided as at a date not more than 60 days before the date of the offering memorandum, that it be provided as at a date that is not prior to the end of the last financial period for which financial statements are required to be included in the offering memorandum, as many CIVs assess their portfolio at the time that financial statements are prepared.	We acknowledge the comment. We are of the view that this information should be reasonably current. We are also of the view that an issuer should be aware of this information at a recent date in order to meet the OM Standard of Disclosure.
113.	One commenter expressed concern about issuers amending loan terms in favour of a borrower order to avoid a default, and believes that such measures should be clearly disclosed. The commenter made similar comments about payment deferrals or reductions, such as in response to the COVID-19 pandemic.	We share the commenter's concern. We have added a new provision as paragraph (j) of subsection 3(3) that requires disclosure of such accommodations, if they would be material to a reasonable investor.
114.	One commenter believes that for issuers involved in factoring or otherwise holding receivables, the information on the portfolio should include information on the underlying business risks (e.g. with respect to potential non-payment of foreign receivables).	All issuers are required to disclose risk factors under Form 45-106F2 Item 8.
115.	One commenter expressed concerns that the requirements in subsection (3) could allow competitors to determine information about a specific mortgage to identify the property or the borrower. The commenter is specifically concerned with the requirement to disclose the property's location in accordance with paragraph (3)(k).	In our view, location does not need to be specific enough to identify the specific property. We also don't view the other information required to be disclosed in subsection (3) as being specific enough to identify the borrower.
116.	One commenter asserts that while the requirement to disclose NAV may be appropriate for an investment fund managed by a portfolio manager, this requirement may not be appropriate for other types of issuers that would be considered CIVs. The commenter notes that this requirement may lead to an inexperienced issuer providing inaccurate information.	We have removed the definition of NAV, as we intend NAV to have its generally accepted meaning. In our view, CIVs will be able to determine NAV in accordance with such generally accepted meaning.
Form 45-106F2 Schedule 2: section 4 (Portfolio Performance)		
117.	One commenter agrees with requiring portfolio performance information, but is concerned that the requirement will cause an OM to be amended more frequently than would otherwise be the case.	Under subsection 2.9(13.2) of NI 45-106, an OM must be amended if there is a material change between the date its certificate is signed and when the issuer accepts an agreement to purchase the security.

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		Under subsection 2.9(13.3) of NI 45-106, an OM delivered under the section must provide a reasonable purchaser with sufficient information to make an informed investment decision. This requirement could also cause an OM to be required to be amended. An OM would be required to be amended to reflect significant changes in portfolio performance, if subsections 2.9 (13.2) or (13.3) are triggered.
118.	One commenter believes that the CSA should publish guidance on the regulatory expectations for the preparation of portfolio performance information.	We are concerned that additional instructions or frameworks could add burden for issuers. As a result, the requirement contemplates that issuer can calculate portfolio performance as it deems appropriate, subject to certain parameters as set out in the section, and subject to other general standards, such as the OM Standard of Disclosure.
119.	One commenter is of the view that the requirement to provide performance data requires further clarification for mortgage investment entities. Investors in these entities are ultimately interested in target and historical yields. For mortgage investment entities, the 2020 Proposed Amendments should clarify that the performance data provided relates to historical dividends or distributions paid.	Subject to the OM Standard of Disclosure, issuers are free to add any clarifying disclosure they feel is necessary in their OMs. For example, if a mortgage investment entity believes that an explanation regarding its performance data would be useful to investors, it can include this disclosure in its OM.
120.	One commenter stated that the 10 year period required for performance data may be too long, depending on the nature of the performance data required, and formulating this data may be too burdensome for some issuers.	The 10 year requirement is to ensure a thorough depiction of the issuer's past performance. Issuers should have the inputs necessary to calculate performance data for this period. Regarding burden, the requirement allows an issuer to calculate portfolio performance as it deems appropriate, subject to certain parameters as set out in the section, and subject to other general standards, such as the OM Standard of Disclosure.
121.	Regarding performance information for the most 10 recently completed financial years, one commenter requested clarification of the expectations for issuers with less than 10 years of history. The commenter also requests additional guidance as to how the performance data should be presented.	Issuers with less than 10 years of history should disclose available performance data since inception. We are concerned that additional instructions or frameworks could add burden for issuers. As a result, the requirement contemplates that the issuer can calculate portfolio performance as it deems appropriate, subject to certain parameters as set out in the section, and subject to other general standards, such as the OM Standard of Disclosure.
Form 45-106F4 Risk Acknowledgement		
122.	One commenter recommends changing the line "You will not receive advice – [Instruction: Delete if sold by registrant] to [Instruction: Delete if sold by a registered portfolio manager] as other registrants such as EMDs do not provide investment advice.	Investment dealers and EMDs provide suitability advice, and therefore deleting this sentence if the securities have been sold by a registrant remains appropriate.
123.	One commenter asserts that the language "the issuer of your securities is a non-reporting issuer" is confusing given that issuers must publicly provide audited financial statements at the time of the	Reporting issuer is a defined term in local securities acts. Despite the fact that issuers using the OM Exemption are required to make annual filings in some jurisdictions, this fact alone does not make such

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	distribution, along with a Form 45-106F16 *Notice of Use of Proceeds* annually, as applicable.	issuers reporting issuers. Therefore, it is still important to include this statement in Form 45-106F4 *Risk Acknowledgement* (**Form 45-106F4**).
124.	One commenter is concerned about the revised warning at the top of Form 45-106F4. The commenter believes that the warning implies that it is likely that an investor will lose all of their money. The commenter believes that this new warning will make it more difficult to raise capital. The commenter also notes that, due to the nature of a mortgage investment entity's investments, a total loss of invested capital is unlikely.	This change is being proposed to improve consistency with other forms that have adopted this language, including Form 45-106F9 *Form for Individual Accredited Investors* and Form 45-108F2 *Risk Acknowledgement*.
Miscellaneous comments		
125.	On commenter asserted that all requirements pertaining to real estate under the OM Exemption should be in one place. Accordingly, the commenter strongly supports the information in local notices for British Columbia and Alberta indicating that if the 2020 Proposed Amendments or a version of them is enacted, BCSC staff plan to seek the repeal of BC Form 45-906F *Offering Memorandum – Real Estate Securities* and ASC staff plan to seek the repeal of ASC Rule 45-509 *Offering Memorandum for Real Estate Securities*.	We thank the commenter for the support and input.
126.	One commenter believes that there is no cogent rationale underlying the 2020 Proposed Amendments, and that the statement made by the CSA that larger, more complex issuers are using the OM Exemption than those originally envisioned is not a basis for the proposal. The commenter asks if there are specific deficiencies that regulators have identified. The commenter is also concerned that the proposal will have a negative effect on smaller issuers.	The statement made by the CSA that larger, more complex issuers are using the OM Exemption than those originally envisioned was intended as background and context to the proposals. The 2020 Proposed Amendments respond to an identified need for better disclosure by Real Estate Issuers and CIVs. The General Amendments that were included in the 2020 Proposed Amendments were based on issues identified in compliance reviews of OMs. We acknowledge that there is burden associated with the Amendments (for all sizes of issuers), but we believe that the burden is justified by the benefit of a clearer disclosure framework for issuers and improved disclosure for investors.
127.	One commenter expressed concern about continuous disclosure obligations being imposed on issuers relying on the OM Exemption.	The 2020 Proposed Amendments do not impose continuous disclosure requirements.
128.	One commenter observed that because the OM Exemption allows access to retail investors, structures are often designed to qualify for tax-deferred plans. The commenter is of the view that National Policy 41-201 *Income Trust and Other Indirect Offerings* is instructive when preparing offering memorandums for more complex structures.	We acknowledge the comment.
129.	One commenter suggested that if the 2020 Proposed Amendments are adopted, ongoing reviews of the effectiveness of the amendments should be done. The commenter also suggested that guidance should be	We acknowledge the comment. Reviews for compliance with requirements are undertaken based a prioritized approach and available resources. Any additional guidance would be proposed on an as-needed basis.

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	published to identify any compliance issues as to the amendments, so that they can be corrected.	
130.	One commenter observed that SN 45-309 specifically identifies OM deficiencies relating to mortgage investment entities and real estate development entities. The commenter is unsure why the principles outlined in SN 45-309 no longer apply and why the new requirements in the 2020 Proposed Amendments are necessary.	SN 45-309 contains guidance, and therefore issuers are not required to follow its recommendations. While some issuers have followed the guidance, others have not incorporated the guidance in their OMs. We note that some of the guidance in SN 45-309 has been put in the form of requirements in the Amendments. We also plan to revise SN 45-309 and publish such revised version in conjunction with final amendments. Additionally, SN 45-309 was published in 2012. Since this time, compliance reviews have indicated the need for tailored disclosure requirements to ensure that OMs provide sufficient information for purchasers to make an informed investment decision.
Comments falling outside the scope of the project		
131.	One commenter made a large number of comments that fell outside the scope of the project or were otherwise not feasible to respond to in detail. The comments included the following specific comments: • The OM Exemption should be made more suitable for early stage businesses. • Proposed Item 4.1 of Form 45-106F2 should provide more detailed disclosure. • The CSA should provide guidance on acceptable and unacceptable information from experts or other third parties that is included in an OM • There should be a requirement for issuers to make disclosure about any other offering taking place concurrently with the offering under the OM. • Newly-formed issuers with nominal assets should not be required to include audited financial statements in the offering memorandum. Other comments concerned the following topics: • CSA member OM review and compliance programs. • Form 45-106F2 items relating to insufficient funds and minimum offering. • Form 45-106F2 Item 1.2. • Form 45-106F2 Item 2.1. • Accounting principles that should apply to United States organized issuers using the OM Exemption. • Director independence and corporate governance.	We acknowledge the comments.

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Comments falling outside the scope of the project: the OM Exemption should be harmonized across Canada		
132.	One commenter urged the CSA to harmonize prospectus exemptions across Canada, including the OM Exemption. The commenter's observations included that the requirement to incorporate OM marketing materials into an OM is not uniform across Canada. The commenter made the same point about the availability of the OM Exemption for investment funds.	We acknowledge the comments.
Comments falling outside the scope of the project: investment funds and the OM Exemption		
133.	One commenter observed that currently, the availability of the OM Exemption to investment funds varies depending on province. With the proposed amendments relating to CIVs, investment funds would need to provide all of the disclosure applicable to CIVs. In light of such enhanced disclosure and its similarity to disclosure requirements for public investment funds, the commenter urges the CSA to allow investment funds to use the OM Exemption.	We acknowledge the comments.
134.	One commenter believes that all investment funds should be able to use the OM Exemption in all jurisdictions of Canada. The commenter asserts that the new requirements for CIVs will provide robust enough disclosure for investment funds. The commenter also notes that investment fund managers are registrants, and indicates that registration provides investor protection.	We acknowledge the comments.
Comments falling outside the scope of the project: investment limits should not apply to CIVs and Real Estate Issuers		
135.	One commenter asserts that issuers avoid the use of the OM Exemption in jurisdictions where investment limits apply. The commenter's view is that if the 2020 Proposed Amendments are adopted, the investment limits should no longer apply to issuers that are CIVs or Real Estate Issuers due to the added protection provided by the additional disclosure imposed by the 2020 Proposed Amendments.	Although we acknowledge the commenter's point and agree that additional disclosure is required for Real Estate Issuers and CIVs under the Amendments, revisiting the investment limits is outside the scope of the project.
Comments falling outside the scope of the project: whether videos are OM marketing materials		
136.	One commenter discussed the view that a video presentation relating to an offering under the OM Exemption could be OM marketing materials.	We acknowledge the comment. Guidance about OM marketing materials is outside the scope of the project.
Comments falling outside the scope of the project: using OM marketing materials to amend an OM		
137.	One commenter discussed the view that an OM can be amended using OM marketing materials, and certain ramifications of that.	We advise that OM marketing materials were never intended to be a means of amending an OM.
Comments falling outside the scope of the project: concerns about OM marketing materials		
138.	One commenter expressed concern about OM marketing materials, stating that they can be overly promotional. The commenter noted that in some	Changes in respect of OM marketing materials are outside the scope of this project. However, we wish to make responses to certain of the commenter's comments.

Number	Comment	Response
	jurisdictions, OM marketing materials are required to be incorporated by reference into an OM. The commenter cited certain specific concerns, including inadequate disclosure of risks, fees and assumptions. The commenter called for stricter rules on the composition of OM marketing materials, to ensure they are balanced.	A standard for marketing materials specifically (i.e. the marketing materials on their own) was originally proposed in connection with the 2013 Marketing Amendments, but was not adopted (for further information, see the CSA notice of amendments dated May 30, 2013). As noted above, for OM marketing materials that are incorporated by reference into an OM, the OM must meet the standard of disclosure set out in subsections 2.9(13.1) to (13.3) of NI 45-106 (the **OM Standard of Disclosure**). In addition, as also noted above, all communications are subject to the prohibition on misleading disclosure contained in local securities acts.
Comments falling outside the scope of the project: statutory liability for independent professionals		
139.	One commenter asserted that with respect to independent professionals (**Experts**), there is no statutory right of action for investors against them with respect to their reports included in an OM (**Right of Action as to Expert Reports**). The commenter is also of the understanding that Experts do not owe a legal duty of care under common law to investors who may have relied on their reports when they made their investment decision. Based on the foregoing, the commenter makes certain suggestions, including: • Until a Right of Action as to Expert Reports is implemented by securities regulators across Canada, the CSA should consider eliminating the requirement to include Expert reports and, instead, make their inclusion voluntary. • Including a requirement for the Expert to consent to disclosure of their report, which would make the Right of Action as to Expert Reports introduced by British Columbia in 2019 enforceable. • Including a document in Form 45-106F2 that would clarify the Expert's role, rights and obligations to investors. • That the cautionary language in Item 11.2 of Form 45-106F2 be changed from encouraging investors to obtain (costly) legal advice, to stating that investors are unable to sue Experts at common law. There should also be a summary of this disclosure or cross-reference to it on the cover page of the OM.	We acknowledge that some jurisdictions currently do not have legislation enabling a Right of Action as to Expert Reports. The CSA does not at this time have a project to introduce a harmonized Right of Action as to Expert Reports or a harmonized requirement for experts to file a consent for their expert reports. These matters may be considered in the future, depending on regulatory priorities. Any future work in this area would consider burden on issuers and any corresponding benefit to investors. We make no comment regarding the potential liability under common law of Experts for reports provided in connection with an OM.
Comments falling outside the scope of the project: revisit the entire Form 45-102F2 to simplify and condense it		
140.	One commenter suggests that when time permits, the CSA review Form 45-106F2 in its entirety and, after consulting with users and preparers of OMs, condense, simplify and 'plain language' the document. The commenter indicates that for example, more than	We acknowledge the comments. With respect to financial statement requirement instructions specifically, we note that if a disclosure document is required to include financial statements, instructions of significant detail and length are

Number	Comment	Response
	half of the in-force Form 45-106F2 is devoted to instructions regarding financial statements. The commenter believes that this would make it easier for issuers, particularly small businesses for which the OM Exemption was originally created, to comply with the disclosure requirements.	necessary. This can be seen in the prospectus rules, and in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**).
Comments falling outside the scope of the project: request for enhanced plain language instruction, summary information, and cross-referencing		
141.	The commenter encourages the CSA to consider imposing a "plain language requirement" for specific portions of the OM, including the summary section, with cross references to where more detailed disclosures can be found in the document.	Instruction A. 2 to the Form 45-106F2 instructs issuers to draft the OM so that it is easy to read and understand, using plain language and avoiding technical terms. In-force Form 45-1065F2 requires certain summary information, with cross-references to where more detailed disclosure can be found. The Amendments have added additional matters, in the same format, to this part of the OM.
Comments falling outside the scope of the project: suggested different format for disclosure, and certain additional disclosures		
142.	One commenter believes the use of diagrams and tables, such as those that are already required for the "Use of Available Funds" disclosure, is more digestible for investors than dense descriptive disclosure. Given the length and detailed nature of the prescribed form of OM, the commenter suggests mandating that issuers include an easily understandable organizational chart of their structure, showing the flow of fees and other funds upfront. It is particularly important for issuers to be transparent about the amount, frequency and source of all fees that are payable in connection with the investment and the impact the payment of such fees will have on the net returns payable to the investors. Currently, fees paid to various services providers may be described throughout the document and thus it is difficult for investors to aggregate these costs in order to compare the total fees to other products or market norms. The commenter also urges the CSA to continue to consider emphasizing clear and prominent fee and conflict disclosures upfront on the face pages of the OM.	A generalized change in the format of disclosure for an OM, and some of the other changes mentioned, are outside the scope of the project. However, we wish to highlight certain in-force requirements or aspects of the Amendments that are relevant to portions of this comment. The Amendments provide for certain costs or financial considerations to be highlighted in summary form at the beginning of the OM, such as compensation paid to sellers or finders, working capital deficiency, payments to related parties, dividends or distributions that exceeded cash flow from operations and fees associated with redemption or retraction. We also note that with respect to disclosure of fees and costs, an OM must meet the OM Standard of Disclosure.
Comments falling outside the scope of the project: allow issuers raising smaller amount to use reviewed financial statements rather than audited financial statements		
143.	One commenter suggested that requiring a review of an issuer's financial statements, rather than an audit, for offerings at or below a set amount such as $2 million and restricted to certain types of issuers such as CIVs, could help provide a bridged approach to OM use for issuers engaged in crowdfunding. This approach could allow available exemptions to work in tandem more efficiently, and provide a possible path for issuers to the public markets or other exit or growth opportunities.	We acknowledge the comments.

Number	Comment	Response
Comments falling outside the scope of the project: revising Form 45-106F2 Items 1.1 and 1.2 regarding funds from the offering and the use of those funds		
144.	One commenter observed that the 2020 Proposed Amendments do not focus on the current "Use of Available Funds" chart in Form 45-106F2. However, the commenter believes this chart must be improved in order to help investors understand the projected gross return of an investment and that, in some cases, the aggregate fees and costs associated with an investment could represent a large percentage of the aggregate capital raised, therefore substantially reducing the projected net return of such investment. Investors could then determine whether it will be difficult to earn a return on capital, or even a return of original capital, in the early years of an investment. This could also help with potential confusion investors face from their client statements showing the investment at cost, which usually does not represent the redemption price. The chart should require an issuer to state the expected use of funds in both dollar terms and as a percentage of the amount raised. Such disclosure would also better represent the "J curve" of certain types of investments such as private equity funds (where certain vehicles tend to deliver negative returns in the early years).	Reformulating Form 45-106F2 Items 1.1 and 1.2 is outside the scope of the project. However, we would like to highlight certain aspects of in-force Form 45-106F2 or of the Amendments that are relevant to these comments. Form 45-106F2 Item 1.1 (use of available funds) requires that the costs of the offering be disclosed. With respect to ongoing costs and fees, as noted above, an OM must meet the OM Standard of Disclosure. The Amendments in section 2 of Schedule 2 of Form 45-106F2 also specifically require for CIVs disclosure of remuneration paid to outside parties involved in managing the CIV's investments. Overall, we understand the comment to advocate for a projection of the investment's return over time. We are concerned that being required to do this would be unduly onerous for issuers, and therefore have not proposed such a requirement.
Comments falling outside of the scope of the project: impact on other exemptions		
145.	One commenter is concerned that this level of comprehensive disclosure under the OM Exemption is a signal by regulators of the level of disclosure they will expect in compliance reviews in offering materials by issuers under all prospectus exemptions. This could reduce the number of smaller issuers using OMs, whether under the OM Exemption or other exemptions, which would ultimately result in investors receiving less disclosure.	The Amendments do not impact any other prospectus exemptions and do not change the level of disclosure expected to be provided in OMs used in conjunction with other prospectus exemptions.

ANNEX B

AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.

2. Section 1.1 is amended in paragraph (b) of the definition of "eligibility adviser***" by replacing "***public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not***" with "***chartered professional accountant who is a member in good standing of an organization of chartered professional accountants in a jurisdiction of Canada provided that the lawyer or chartered professional accountant does not***".***

3. Section 1.1 is amended by adding the following definitions:

"collective investment vehicle" means either of the following:

(a) an investment fund;

(b) any other issuer, the primary purpose of which is to invest money provided by its security holders in a portfolio of securities other than securities of subsidiaries of the issuer;

"material contract" means any contract that an issuer or any of its subsidiaries is a party to that is material to the issuer;

"real estate activities" means activities, the primary purpose of which is to generate for security holders income or gain from the lease, sale or other disposition of real property but, for greater certainty, does not include any of the following:

(a) activities in respect of a "mineral project", as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(b) "oil and gas activities" as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

(c) in Québec, activities relating to the forms of investments subject to *Regulation Respecting Real Estate Prospectus and Registration Exemptions* (Québec);

"related party**"** means any of the following:

(a) a director, officer, promoter or control person of an issuer;

(b) in regard to an individual referred to in paragraph (a), a child, parent, grandparent, sibling or other relative living in the same residence;

(c) in regard to an individual referred to in paragraph (a) or (b), the individual's spouse;

(d) an insider of an issuer;

(e) a person controlled by a person referred to in paragraphs (a) to (d), or controlled by a person referred to in paragraphs (a) to (d) acting jointly or in concert with another person;

(f) in the case of a person referred to in paragraph (a) or (d) that is not an individual, a person that, alone or together with one or more persons acting jointly or in concert, controls that person;***.***

4. Subparagraphs 2.9(1)(b)(i), (2)(c)(i) and (2.1)(c)(i) are amended by replacing "(13)***" with "***(13.3)***".***

5. Paragraph 2.9(2.2)(a) is amended by adding ",***" after "***non-redeemable investment fund***".***

6. Subsection 2.9(5.2) is amended by replacing "A***" with "***In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, a***".***

7. Subsection 2.9(13) is repealed.

8. Section 2.9 is amended by adding the following subsections:

(13.1) An issuer must not make a misrepresentation in its offering memorandum.

(13.2) If a material change with respect to the issuer occurs after the certificate under subsection (8) or (14.1) is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend

the offering memorandum to reflect the material change and deliver the amended offering memorandum to the purchaser.

(13.3) An issuer must not deliver an offering memorandum under this section unless the offering memorandum contains sufficient information to enable a reasonable purchaser to make an informed investment decision..

9. Subsection 2.9(14) is repealed.

10. Section 2.9 is amended by adding the following subsection:

(14.1) An issuer that amends its offering memorandum must include in the amended offering memorandum a newly dated certificate signed in compliance with subsections (9), (10), (10.1), (10.2), (10.3), (11), (11.1) and (12), as applicable..

11. Subsection 2.9(17) is replaced with the following:

(17) An issuer must file a copy of an offering memorandum delivered under this section and any amended offering memorandum on or before the 10th day after the distribution under the offering memorandum or the amended offering memorandum..

12. Section 2.9 is amended by adding the following subsection:

(17.0.1) An offering memorandum or amended offering memorandum filed under this section must be in a format that allows for the searching of words electronically using reasonably available technology..

13. Subsection 2.9(19) is amended by replacing "subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage***" with "***subsections (19.1), (19.3), (19.6) and (19.7), a qualified appraiser is independent of an issuer***".***

14. Section 2.9 is amended by adding the following after subsection (19.4):

(19.5) Subsection (19.6) does not apply to an issuer unless all of the following apply:

(a) the issuer is relying on subsection (1), (2) or (2.1);

(b) the issuer is engaged in real estate activities;

(c) one or both of the following apply:

(i) the issuer proposes to acquire an interest in real property from a related party and a reasonable person would believe that the likelihood of the issuer completing the acquisition is high;

(ii) except in its financial statements contained in the offering memorandum, the issuer discloses in the offering memorandum a value for an interest in real property.

(19.6) An issuer must, at the same time or before the issuer delivers an offering memorandum to the purchaser under subsection (1), (2) or (2.1), deliver to the purchaser an appraisal of the interest in real property referred to in paragraph (19.5)(c) to which all of the following apply:

(a) the appraisal is prepared by a qualified appraiser that is independent of the issuer;

(b) the appraisal includes a certificate signed by a qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

(c) the appraisal provides the appraised fair market value of the interest in real property without considering any proposed improvements to or proposed development of the interest;

(d) the appraised fair market value referred to in paragraph (c) is as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.

(19.7) If an issuer relying on subsection (1), (2) or (2.1) is engaged in real estate activities, the issuer must not disclose in any communication related to the distribution a representation of, or opinion as to, a value for an interest in real property referred to in paragraph (19.5)(c), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), unless the issuer has a reasonable basis for that value.

(19.8) If an issuer relying on subsection (1), (2) or (2.1) is engaged in real estate activities, and discloses in any communication related to the distribution a representation of, or opinion as to, a value for an interest in real property referred to in paragraph (19.5)(c), other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.6), the issuer must also disclose in that communication,

(a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.6),

(b) the material factors or assumptions used to determine the representation or opinion, and

(c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.

(19.9) An issuer must file a copy of any appraisal delivered under subsection (19.6) concurrently with the filing of the offering memorandum or any amended offering memorandum or, if the appraisal is produced after the filing of the offering memorandum or any amended offering memorandum, on or before the 10th day after the first distribution for which the appraisal was required to be delivered to a purchaser**..**

15. Section 6.4 is amended by adding the following:

(4) An issuer that is engaged in real estate activities must supplement its offering memorandum with Schedule 1 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, unless the offering memorandum is prepared under subsection (2).

(5) An issuer that is a collective investment vehicle must supplement its offering memorandum with Schedule 2 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, unless the offering memorandum is prepared under subsection (2)**..**

16. Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is repealed and replaced with the material in Schedule B-1.

17. Form 45-106F4 Risk Acknowledgement is amended

(a) by repealing and replacing all content prior to Schedule 1 with the material in Schedule B-2,

(b) in B. of Schedule 1, by replacing "subsection 7.3(3) of the *Securities Act* (Ontario)***" with "***subsection 73.3 of the *Securities Act* (Ontario)***" , and***

(c) in B. of Schedule 2, by replacing "subsection 7.3(3) of the *Securities Act* (Ontario)***" with "***subsection 73.3 of the *Securities Act* (Ontario)***" .***

18. Form 45-106F18 Supplemental Offering Memorandum Disclosure for Syndicated Mortgages is amended by repealing instruction 7.

Transition

19. Subsections 6.4(1), (4) and (5) of National Instrument 45-106 *Prospectus Exemptions* do not apply to an issuer in respect of an offering memorandum if both of the following apply:

(a) the date of the certificate required under subsection 2.9(8) or (14.1) of National Instrument 45-106 *Prospectus Exemptions* is before March 8, 2023;

(b) the offering memorandum was prepared in accordance with the version of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* in force on March 7, 2023.

Effective date

20. (1) This Instrument comes into force on March 8, 2023.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after March 8, 2023, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

Schedule B-1

FORM 45-106F2
OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office: Address:
Phone #:
Website address:
Email address:

Currently listed or quoted? [If no, state in bold type: "**These securities do not trade on any exchange or market.**". If yes, identify the exchange or market.]

Reporting issuer? [Yes/No. If yes, state where.]

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state in bold type: "**There is no minimum.**" and also state in bold type: "**You may be the only purchaser.**"]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 8. [If income tax consequences are not material, delete this item.]

Insufficient Funds

If item 2.6 applies, state in bold type: "**Funds available under the offering may not be sufficient to accomplish the proposed objectives. See item 2.6.**".

Compensation Paid to Sellers and Finders

If item 9 applies, state the following: "A person has received or will receive compensation for the sale of securities under this offering. See item 9.".

Underwriter(s)

State the name of any underwriter.

Guidance: The requirements of National Instrument 33-105 *Underwriting Conflicts* may be applicable.

Resale Restrictions

State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 12."

Working Capital Deficiency

If the issuer is disclosing a working capital deficiency under item 1.1, state the following, with the bracketed information completed: "[name of issuer] has a working capital deficiency. See item 1.1.".

Payments to Related Party

If the issuer is disclosing payment to a related party under item 1.2, state the following, with the bracketed information completed as applicable: "[All of][Some of] your investment will be paid to a related party of the issuer. See item 1.2.".

Certain Related Party Transactions

If the issuer is making disclosure under item 2.9(b), or subsection 7(2) of Schedule 1, state the following with the bracketed information completed as applicable: "This offering memorandum contains disclosure with respect to one or more transactions between [name of issuer] and a related party, where [name of issuer] [paid more to a related party than the related party paid for a business, asset or real property] [and] [was paid less by a related party for a business, asset or real property than [name of issuer] paid for it]. See [item 2.9(b)] [and] [subsection 7(2) of Schedule 1].".

Certain Dividends or Distributions

If the issuer is making disclosure under item 7, state the following with the bracketed information completed: "[name of issuer] has paid dividends or distributions that exceeded cash flow from operations. See item 7.".

Conditions on Repurchases

If the purchaser will have a right to require the issuer to repurchase the securities and there is any restriction, fee or price associated with this right, state in bold type with the bracketed information completed, as applicable: "**You will have a right to require the issuer to repurchase the securities from you, but this right is qualified by [a specified price] [and] [restrictions] [and] [fees]. As a result, you might not receive the amount of proceeds that you want. See item 5.1.**"

Purchaser's Rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have a right to damages or to cancel the agreement. See item 13."

State in bold type:

"**No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 10.**"

Instructions

1. Include all of the above information at the beginning of the offering memorandum.

2. After the above information, include a table of contents for the rest of the information in the offering memorandum.

Guidance

National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* may be applicable to disclosure in the offering memorandum.

Item 1: Use of Available Funds

1.1 *Funds* – Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, provide details about each additional source of funding. If there is no minimum offering, state "$0" as the minimum. Disclose any working capital deficiency of the issuer as at a date not more than 30 days before the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

		Assuming minimum offering	Assuming maximum offering
A.	Amount to be raised by this offering	$	$
B.	Selling commissions and fees	$	$
C.	Estimated offering costs (including legal, accounting and audit)	$	$
D.	Available funds: D = A - (B+C)	$	$
E.	Additional sources of funding required	$	$
F.	Working capital deficiency	$	$
G.	Total: G = (D+E) - F	$	$

1.2 *Use of Available Funds* – Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming minimum offering	Assuming maximum offering
	$	$
	$	$
Total: Equal to G in the Funds table above	$	$

1.3 *Proceeds Transferred to Other Issuers* – If a significant amount of the proceeds of the offering will be invested in, loaned to, or otherwise transferred to another issuer that is not a subsidiary controlled by the issuer, provide the disclosure specified by items 2, 3, 4.1, 4.2, 10 and 14 and, as applicable, Schedule 1 of this form if the other issuer is engaged in real estate activities, and Schedule 2 of this form if the other issuer is a collective investment vehicle, as if each of those other issuers were the issuer preparing the offering memorandum. In addition, describe the relationship between the issuer and each of those other issuers, and supplement the description with a diagram.

Item 2: Business of the Issuer and Other Information and Transactions

2.1 *Structure* – State whether the issuer is a partnership, corporation or trust, or if the issuer is not a corporation, partnership or trust then state what type of business association the issuer is. State any statute under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

***2.2 The Business* –** Describe the issuer's business.

(a) For a non-resource issuer include in the description the following:

(i) principal products or services;

(ii) operations;

(iii) market, marketing plans and strategies;

(iv) a discussion of the issuer's current and prospective competitors.

(b) For a resource issuer include in the description the following:

(i) a description of principal properties (including interest held);

(ii) a summary of material information including, as applicable, the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed.

Guidance

1. For a resource issuer disclosing scientific or technical information for a mineral project, see General Instruction A.8 of this Form.

2. For a resource issuer disclosing information about its oil and gas activities, see General Instruction A.9 of this Form.

2.3 ***Development of Business –*** Describe the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include any major events that have occurred or conditions that have influenced (favourably or unfavourably) the development or financial condition of the issuer.

2.4 ***Long Term Objectives –*** With respect to the issuer's objectives subsequent to the next 12 months after the date of the offering memorandum, describe each significant event associated with those objectives, state the specific time period in which each event is expected to occur, and the costs related to each event.

2.5 ***Short Term Objectives***

(a) Disclose the issuer's objectives for the next 12 months after the date of the offering memorandum.

(b) Using the following table, disclose how the issuer intends to meet those objectives.

Actions to be taken	Target completion date or, if not known, number of months to complete	Cost to complete
		$
		$

2.6 ***Insufficient Funds***

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. With respect to any alternative financing that has been arranged, disclose the amount, source and all outstanding conditions.

2.7 ***Additional Disclosure for Issuers Without Significant Revenue***

(1) If the issuer has not had significant revenue from operations in either of its two most recently completed financial years, or has not had significant revenue from operations since inception, provide, for each period referred to in subsection (2), a breakdown of the material components of the following:

(a) exploration and evaluation assets or expenditures and, if the issuer's business primarily involves mining exploration and development, provide the breakdown on a property-by-property basis;

(b) expensed research and development costs;

(c) intangible assets arising from development;

(d) general and administration expenses;

(e) any material costs, whether expensed or recognized as assets, not referred to in paragraphs (a) through (d).

(2) Include the disclosure in subsection (1) with respect to each period for which financial statements are included in the offering memorandum.

(3) Subsection (1) does not apply to any period for which the information specified under subsection (1) has been disclosed in the financial statements that are included in the offering memorandum.

2.8 *Material Contracts –* Disclose the key terms of all material contracts including, for certainty, the following:

(a) if the contract is with a related party, the name of the related party and the relationship to the issuer;

(b) a description of any asset, property or interest acquired, disposed of, leased or under option;

(c) a description of any service provided;

(d) purchase price and payment terms (including payment by instalments, cash, securities or work commitments);

(e) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate;

(f) the date of the contract;

(g) the amount of any finder's fee or commission paid or payable to a related party in connection with the contract;

(h) any material outstanding obligations under the contract.

2.9 *Related Party Transactions*

With respect to any purchase and sale transaction between the issuer and a related party that does not relate to real property,

(a) using the following table and starting with the most recent transaction, provide the specified information, and

Description of business or asset	Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration exchanged in connection with transfer

(b) explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the business or asset.

Item 3: Compensation and Security Holdings of Certain Parties

3.1 *Compensation and Securities Held*

Using the following table, provide the specified information for the following:

(a) each director, officer and promoter of the issuer;

(b) each person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, 10% or more of any class of voting securities of the issuer;

(c) any related party not specified in paragraph (a) or (b) that received compensation in the most recently completed financial year or is expected by the issuer to receive compensation in the current financial year.

Full legal name and place of residence or, if not an individual, jurisdiction of organization	If paragraph (a) or (b) applies, specify whether the person is a director, officer, promoter or person referred to in paragraph (b); if paragraph (c) applies, specify the person's relationship to the issuer; in all cases, specify the date that the person became a person identified in paragraph (a), (b) or (c)	Compensation paid by issuer or related party in the most recently completed financial year and the compensation expected to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of minimum offering	Number, type and percentage of securities of the issuer held after completion of maximum offering

Instructions to Item 3.1

1. If the issuer has not completed its first financial year, disclose for the period from the date of the issuer's inception to the date of the offering memorandum.

2. Compensation includes any form of remuneration including, for certainty, cash, shares and options.

3. If a person identified in paragraph (a), (b) or (c) is not an individual, state in a note to the table the full legal name of any person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, more than 50% of the voting rights of the person.

3.2 *Management Experience* - Using the following table, provide the specified information for the directors and executive officers of the issuer for the 5 years preceding the date of the offering memorandum.

Full Legal Name	Principal occupation and description of experience associated with the occupation

3.3 *Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters*

(a) If any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the details of the penalty, other sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days.

(b) If any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to a director, executive officer or control person of the issuer, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets.

(c) Disclose and describe the details of the offence, if the issuer or a director, executive officer or control person of the issuer has ever pled guilty to or been found guilty of any of the following:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

3.4 *Certain Loans*

For any debenture, bond or loan agreement between the issuer and a related party, disclose the following:

(a) as at a date not more than 30 days before the date of the offering memorandum, the parties to the agreement, including which party is lender and which party is borrower, the principal amount, the repayment terms, any security, due date and interest rate;

(b) during the two most recently completed financial years and up to a date not more than 30 days before the date of the offering memorandum, any material amendment to the agreement, or any release, cancellation or forgiveness.

Item 4: Capital Structure

4.1 ***Securities Except for Debt Securities*** - Using the following table, provide the specified information about outstanding securities of the issuer, not including debt securities. Add notes to the table to describe the material terms of the securities, including, for certainty, voting rights or restrictions on voting, exercise price and date of expiry, any right of the purchaser to require the issuer to repurchase the securities including any price, fee or restriction associated with that right, and any interest rate or dividend or distribution policy.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at a date not more than 30 days before the date of the offering memorandum	Number outstanding after minimum offering	Number outstanding after maximum offering

4.2 ***Long Term Debt*** - Using the following table, provide the specified information about outstanding debt of the issuer for which all or a portion is due, or may be outstanding, more than 12 months from the date of the offering memorandum. Add notes to the table to disclose any amounts of the debt that are due within 12 months of the date of the offering memorandum. In addition, add notes to the table to describe any conversion terms. If the securities being offered are debt securities, complete the applicable parts of the table for the debt, and add columns to the table disclosing the amount of the debt that will be outstanding after both the minimum and maximum offering.

Description of debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at a date not more than 30 days before the date of the offering memorandum
			$
			$

4.3 ***Prior Sales*** - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the 12 months before the date of the offering memorandum, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

Item 5: Securities Offered

5.1 ***Terms of Securities***

(a) Describe the material terms of the securities being offered, including, for certainty, the following:

(i) voting rights or restrictions on voting;

(ii) conversion or exercise price and date of expiry;

(iii) any right of the purchaser to require the issuer to repurchase the securities, including any price, fee or restriction associated with that right;

(iv) interest rate, and dividend or distribution policy.

(b) Provide a sample calculation in respect of any right of the purchaser to require the issuer to repurchase the securities.

5.2 ***Subscription Procedure***

(a) Describe how a purchaser can subscribe for the securities and the method of payment.

(b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two-day period).

(c) Disclose any conditions to closing, including any receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration.

Item 6: Repurchase Requests

(1) With respect to any securities of the issuer for which investors have a right to require the issuer to repurchase the securities, disclose the following:

(a) for each of the two most recently completed financial years, the information specified by the following table;

Description of security	Date of end of financial year	Number of securities with outstanding repurchase requests on the first day of the year	Number of securities for which investors made repurchase requests during the year	Number of securities repurchased during the year	Average price paid for the repurchased securities	Source of funds used to complete the repurchases	Number of securities with outstanding repurchase requests on the last day of the year

(b) for the period after the end of the issuer's most recently completed financial year and up to a date not more than 30 days before the date of the offering memorandum, the information specified by the following table;

Description of security	Beginning and end dates of the period	Number of securities with outstanding repurchase requests on the first day of the period	Number of securities for which investors made repurchase requests during the period	Number of securities repurchased during the period	Average price paid for the securities repurchased	Source of funds used to complete the repurchases	Number of securities with outstanding repurchase requests on the last day of the period

(c) with respect to the periods specified in (a) and (b), the reason for any non-fulfillment of investor repurchase requests, unless the non-fulfillment was in accordance with terms governing the right.

Item 7: Certain Dividends or Distributions

If in the two most recently completed financial years, or any subsequent interim period, the issuer paid dividends or distributions that exceeded cash flow from operations, disclose the source of those payments.

Item 8: Income Tax Consequences and RRSP Eligibility

8.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

8.2 If income tax consequences are a material aspect of the securities being offered, provide

(a) a summary of the significant income tax consequences to Canadian residents, and

(b) the name of the person providing the income tax disclosure in (a).

8.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 9: Compensation Paid to Sellers and Finders

If any person has or will receive any commission, corporate finance fee or finder's fee or any other compensation in connection with the offering, provide the following information:

(a) a description of each type of compensation and the estimated amount to be paid for each type;

(b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering);

(c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date);

(d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 10: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Guidance: Risk factors will generally fall into the following three categories:

(a) Investment Risk - risks that are specific to the securities being offered. Some examples include

- arbitrary determination of price,
- no market or an illiquid market for the securities,
- resale restrictions, and
- subordination of debt securities.

(b) Issuer Risk - risks that are specific to the issuer. Some examples include

- insufficient funds to accomplish the issuer's business objectives,
- no history or a limited history of revenue or profits,
- lack of specific management or technical expertise,
- management's regulatory and business track record,
- dependence on key employees, suppliers or agreements,
- dependence on financial viability of guarantor,
- pending and outstanding litigation, and
- political risk factors.

(c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include

- environmental and industry regulation,
- product obsolescence, and
- competition.

Item 11: Reporting Obligations

11.1 Disclose the documents, including any financial information required by the issuer's corporate legislation, constating documents, or other documents under which the issuer is organized, that will be sent to purchasers on an annual or ongoing basis. If the issuer is not required to send any documents to the purchasers on an annual or ongoing basis, state in bold type: "**We are not required to send you any documents on an annual or ongoing basis.**"

11.2 If corporate or securities information about the issuer is available from a government, securities regulatory authority or regulator, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 12: Resale Restrictions

12.1 Restricted Period – For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon state one of the following, as applicable:

(a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer] became a reporting issuer in any province or territory of Canada."

(b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date."

12.2 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

"Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

(a) [name of issuer] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or

(b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

Item 13: Purchasers' Rights

13.1 Statements Regarding Purchasers' Rights **-** State the following:

"If you purchase these securities, you will have certain rights, some of which are described below. For information about your rights, you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

(a) [name of issuer] to cancel your agreement to buy these securities, or

(b) for damages against [state the name of issuer and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation.]

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer]:

(a) to cancel your agreement to buy these securities, or

(b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

13.2 Cautionary Statement Regarding Report, Statement or Opinion by Expert - If a report, statement or opinion by a solicitor, auditor, accountant, engineer, appraiser, notary in Québec or other person or company whose profession or business could, to a reasonable person, be viewed as giving authority to a statement made by that person or company, is included or referenced in the offering memorandum, and purchasers do not have a statutory right of action in the local jurisdiction against that person or company for a misrepresentation in the offering memorandum, state the following, with the bracketed information completed, as applicable:

> "This offering memorandum [includes][references] [describe any report, statement or opinion, the party that gave it, and the effective date of the document]. You do not have a statutory right of action against [this party][these parties] for a misrepresentation in the offering memorandum. You should consult with a legal adviser for further information."

Item 14: Financial Statements

Include in the offering memorandum immediately before the certificate page of the offering memorandum all financial statements specified in the Instructions.

Item 15: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

Instructions for Completing
Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers

A. General Instructions

1. Refer to subsections 2.9(13.1), (13.2) and (13.3) of the Instrument, which set out the standard of disclosure for an offering memorandum.

2. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.

3. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure in response to a requirement or part of a requirement that does not apply.

4. The issuer may include additional information in the offering memorandum other than that specifically required by the form.

5. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.

6. It is an offence to make a misrepresentation in the offering memorandum. This applies to both information that is required by the form and additional information that is provided. Include particulars of any material facts, which have not been disclosed under any of the Item numbers and for which failure to disclose would constitute a misrepresentation in the offering memorandum. Refer also to subsection 3.8(3) of Companion Policy 45-106CP for additional information.

7. Do not disclose a maximum offering amount unless the issuer reasonably expects, as at the date of the offering memorandum, to distribute that amount under the offering memorandum.

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.

9. If an oil and gas issuer is disclosing information about its oil and gas activities, it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). Under section 5.3 of NI 51-101, disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction, references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.

11. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 of the Instrument, the issuer must modify the disclosure in item 13 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

13. The term "quasi-criminal offence" includes offences under tax, immigration or money laundering legislation.

B. Financial Statements - General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired, and summarized financial information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of an acquired business or business to be acquired that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, regardless of whether the issuer is a reporting issuer or not.

Under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, financial statements are generally required to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. An issuer using this form cannot use Canadian GAAP applicable to private enterprises, except, subject to the requirements of NI 52-107, certain issuers may use Canadian GAAP applicable to private enterprises for financial statements for a business referred to in Instruction C.1. An issuer that is not a reporting issuer may prepare acquisition statements in accordance with the requirements of NI 52-107 as if the issuer were a venture issuer as defined in NI 51-102. For the purposes of this form, the "applicable time" in the definition of a venture issuer is the acquisition date.

2. Include all financial statements required by these instructions in the offering memorandum immediately before the certificate page of the offering memorandum.

3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from inception to a date not more than 90 days before the date of the offering memorandum,

   (b) a statement of financial position as at the end of the period referred to in paragraph (a), and

   (c) notes to the financial statements.

4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for

      (i) the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and

      (ii) the financial year immediately preceding the financial year in subparagraph (i), if any,

   (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),

   (c) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

      (i) discloses in its annual financial statements an unreserved statement of compliance with IFRS, and

      (ii) does any of the following:

         (A) applies an accounting policy retrospectively in its annual financial statements;

         (B) makes a retrospective restatement of items in its annual financial statements;

         (C) reclassifies items in its annual financial statements,

   (d) in the case of an issuer's first IFRS financial statements as defined in NI 51-102, the opening IFRS statement of financial position at the date of transition to IFRS as defined in NI 51-102, and

   (e) notes to the financial statements.

5. If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under Instruction B.4.

6. If the issuer has completed one or more financial years, include in the offering memorandum an interim financial report of the issuer comprised of

   (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed interim period that ended

      (i) more than 60 days before the date of the offering memorandum, and

      (ii) after the year-end date of the financial statements required under Instruction B.4(a)(i),

   (b) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(c) a statement of financial position as at the end of the period required by paragraph (a) and the end of the immediately preceding financial year,

(d) a statement of financial position as at the beginning of the earliest comparative period for which financial statements that are included in the offering memorandum comply with IFRS in the case of an issuer that

(i) discloses in its interim financial report an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*, and

(ii) does any of the following:

(A) applies an accounting policy retrospectively in its interim financial report;

(B) makes a retrospective restatement of items in its interim financial report;

(C) reclassifies items in its interim financial report,

(e) in the case of the first interim financial report in the year of adopting IFRS, the opening IFRS statement of financial position at the date of transition to IFRS,

(f) for an issuer that is not a reporting issuer in at least one jurisdiction of Canada immediately before filing the offering memorandum, if the issuer is including an interim financial report of the issuer for the second or third interim period in the year of adopting IFRS,

(i) the issuer's first interim financial report in the year of adopting IFRS, or

(ii) both

(A) the opening IFRS statement of financial position at the date of transition to IFRS, and

(B) the annual and date of transition to IFRS reconciliations required by IFRS 1 *First-time Adoption of International Financial Reporting Standards* to explain how the transition from previous GAAP to IFRS affected the issuer's reported financial position, financial performance and cash flows, and

(g) notes to the financial statements.

7. If an issuer presents the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income filed under Instruction B.6.

8. An issuer is not required to include the comparative financial information for the period in Instruction B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year ended less than 120 days before the date of the offering memorandum.

9. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending 9, 6, or 3 months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

10. The comparative financial information required under Instruction B.6(b) and (c) may be omitted if the issuer has not previously prepared financial statements in accordance with its current or, if applicable, its previous GAAP.

11. The financial statements required by Instructions B.3, B.4 and B.14(a) must be audited. The financial statements required by Instructions B.6, B.8, B.14(b) and the comparative financial information required by Instruction B.4 may be unaudited; however, if any of those financial statements have been audited, the auditor's report must be included in the offering memorandum.

12. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.

13. All unaudited financial statements and unaudited comparatives must be clearly labelled as unaudited.

14. If the distribution is ongoing, and the offering memorandum does not contain audited annual financial statements for the issuer's most recently completed financial year, the issuer must do the following:

(a) amend the offering memorandum to include the audited annual financial statements and the accompanying auditor's report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end;

(b) present the amended offering memorandum and the audited annual financial statements in accordance with the instructions in Parts A, B and C and, for that purpose, the reference to the financial year in Instruction B.4(a)(i) shall mean the issuer's most recently completed financial year.

15. If the distribution is ongoing, and the offering memorandum is amended pursuant to subsection 2.9(13.2) of the Instrument to reflect a material change, the issuer must present the amended offering memorandum in accordance with the instructions in Parts A, B and C, including any interim financial report required by Instruction B.6(a).

16. In Ontario, if more than 60 days have elapsed since the end of the second interim period that commenced following the later of the issuer's inception and the issuer's most recently completed financial year, the offering memorandum does not comply with the requirements of this form unless

(a) the offering memorandum, as amended, includes the interim financial report for the most recently completed second interim period,

(b) the interim financial report required by paragraph (a) is presented in accordance with the instructions in Parts A, B and C and, for that purpose, Instruction B.6 shall apply regardless of whether the issuer has completed a financial year and the reference to the interim period in Instruction B.6(a) shall mean the issuer's most recently completed second interim period,

(c) the date of the offering memorandum, as amended, is after the end of this most recently completed second interim period, and

(d) the offering memorandum, as amended, contains all of the disclosure required by this form as of the date in paragraph (c).

17. In Ontario, Instruction B.16 does not apply if the issuer appends to the offering memorandum an additional certificate that

(a) clearly identifies the offering memorandum,

(b) forms part of the offering memorandum,

(c) certifies all of the following to be true:

(i) the offering memorandum does not contain a misrepresentation when read as of the date in paragraph (d);

(ii) there has been no material change in relation to the issuer that is not disclosed in the offering memorandum;

(iii) the offering memorandum, when read as of the date in paragraph (d), provides a reasonable purchaser with sufficient information to make an informed investment decision,

(d) is dated after the end of the issuer's most recently completed second interim period, and

(e) is signed in accordance with subsections 2.9(9) to (12) of the Instrument.

18. In Ontario, if an issuer appends a certificate referred to in Instruction B.17 to its offering memorandum, it must file with the securities regulatory authority in Ontario a copy of the offering memorandum with the appended certificate on or before the 10th day after the distribution under the offering memorandum.

19. In Ontario, Instruction B.16 does not apply if the offering memorandum complies with all of the following:

(a) the offering memorandum, as amended, includes the interim financial report for the issuer's most recently completed third interim period;

(b) the interim financial report referred to in paragraph (a) is presented in accordance with the instructions in Parts A, B and C and, for that purpose, Instruction B.6 shall apply regardless of whether the issuer has completed a financial year and the reference to the interim period in Instruction B.6(a) shall mean the issuer's most recently completed third interim period;

(c) the date of the offering memorandum, as amended, is after the end of this most recently completed third interim period;

(d) the offering memorandum, as amended, contains all of the disclosure required by this form as of the date in paragraph (c).

20. Forward-looking information, as defined in NI 51-102, included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 must be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.

C. Financial Statements – Business Acquisitions

1. If the issuer

(a) has acquired a business during the past two years and the audited financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 9 consecutive months, or

(b) is proposing to acquire a business and the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high,

include the financial statements specified in Instruction C.4 for the business if either of the tests in Instruction C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.

2. Include the financial statements specified in Instruction C.4 for a business referred to in Instruction C.1 if either

(a) the issuer's proportionate share of the consolidated assets of the business exceeds 100% of the consolidated assets of the issuer calculated using the annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the acquisition date or, for a proposed acquisition, the date of the offering memorandum, or

(b) the issuer's consolidated investments in and advances to the business as at the acquisition date or the proposed date of acquisition exceeds 100% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the last day of the issuer's most recently completed financial year that ended before the date of acquisition or the date of the offering memorandum for a proposed acquisition. For information about how to perform the investment test in this paragraph, please refer to subsections 8.3(4.1) and (4.2) of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

3. If an issuer or a business has not yet completed a financial year, or its first financial year ended within 120 days of the offering memorandum date, use the financial statements referred to in Instruction B.3 to make the calculations in Instruction C.2.

4. If under Instruction C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include

(a) if the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum

(i) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows

(A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or

(B) if the date of acquisition precedes the ending date of the period referred to in clause (A), for the period from inception to the acquisition date or a date not more than 45 days before the acquisition date,

(ii) a statement of financial position dated as at the end of the period referred to in subparagraph (i), and

(iii) notes to the financial statements,

(b) if the business has completed one or more financial years

(i) annual financial statements comprised of

(A) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the following annual periods:

(I) the most recently completed financial year that ended before the acquisition date and more than 120 days before the date of the offering memorandum, and

(II) the financial year immediately preceding the most recently completed financial year specified in subclause (I), if any,

(B) a statement of financial position as at the end of each of the periods specified in clause (A),

(C) notes to the financial statements, and

(ii) an interim financial report comprised of

(A) either

(I) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the most recently completed year-to-date interim period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(I), and a statement of comprehensive income and a statement of changes in equity for the 3-month period ending on the last date of the interim period that ended before the acquisition date and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under subclause (b)(i)(A)(I), or

(II) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the period from the first day after the financial year referred to in subparagraph (b)(i) to a date before the acquisition date and after the period end in subclause (b)(ii)(A)(I),

(B) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the corresponding period in the immediately preceding financial year, if any,

(C) a statement of financial position as at the end of the period required by clause (A) and the end of the immediately preceding financial year, and

(D) notes to the financial statements.

Refer to Instruction B.9 for the meaning of “interim period”.

5. The information for the most recently completed financial period referred to in Instruction C.4(b)(i) must be audited and accompanied by an auditor’s report. The financial statements required under Instruction C.4(a), Instruction C.4(b)(ii) and the comparative financial information required by Instruction C.4(b)(i) may be unaudited; however, if those financial statements or comparative financial information have been audited, the auditor’s report must be included in the offering memorandum.

6. If the offering memorandum does not contain audited financial statements for a business referred to in Instruction C.1 for the business’s most recently completed financial year that ended before the acquisition date and the distribution is ongoing, update the offering memorandum to include those financial statements accompanied by an auditor’s report when they are available, but in any event no later than the date 120 days following the year-end.

7. The term “business” should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider

(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and

(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

8. If a transaction or a proposed transaction for which the likelihood of the transaction being completed is high has been or will be a reverse takeover as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part A. The legal parent is considered to be the business acquired. Instruction C.1 may also require financial statements of the legal parent.

9. An issuer satisfies the requirements in Instruction C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. Notwithstanding the requirements in subparagraph 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, an auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may express a qualification of opinion relating to inventory if

(a) the issuer includes in the offering memorandum a statement of financial position that is for a date that is after the date to which the qualification relates,

(b) the statement of financial position referred to in paragraph (a) is accompanied by an auditor's report that does not express a qualification of opinion relating to closing inventory, and

(c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year that expressed a qualification of opinion relating to inventory.

2. If an issuer has, or will account for a business referred to in Instruction C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if

(a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that

(i) summarizes information as to the aggregated amounts of assets, liabilities, revenue and profit or loss of the business, and

(ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of profit or loss,

(b) the financial information provided under paragraph (a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business, and

(c) the offering memorandum discloses that

(i) the financial information provided under paragraph (a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under paragraph (a) has been derived, and

(ii) the audit opinion with respect to the financial information or financial statements referred to in subparagraph (i) was an unmodified opinion.

3. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if either of the following apply:

(a) the acquisition is significant based only on the asset test;

(b) the issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those financial statements do not exist or the issuer does not have access to those financial statements, and the following apply:

(i) the acquisition was not or will not be a reverse takeover, as defined in NI 51-102;

(ii) the following apply:

(A) the offering memorandum includes an operating statement for the business or related businesses for each of the financial periods for which financial statements would, but for this section, be required under Instruction C.4 prepared in accordance with subsection 3.11(5) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(B) the operating statement for the most recently completed financial period referred to in Instruction C.4(b)(I) is audited;

(C) the offering memorandum includes a description of the property or properties and the interest acquired by the issuer;

(D) the offering memorandum includes information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates;

(E) the offering memorandum includes actual production volumes of the property for the most recently completed year;

(F) the offering memorandum includes estimated production volumes of the property for the first year reflected in the estimate disclosed under clause (D).

4. Financial statements for a business that is an interest in an oil and gas property, or for the acquisition or proposed acquisition by an issuer of an oil and gas property, are not required to be audited if, during the 12 months preceding the acquisition date or the proposed acquisition date, the average daily production of the property is less than 20% of the average daily production of the seller for the same or similar periods and

(a) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,

(b) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and

(c) the offering memorandum discloses

(i) that the issuer was unable to obtain an audited operating statement,

(ii) the reasons for that inability,

(iii) the fact that the purchase agreement includes the representations and warranties referred to in paragraph (b), and

(iv) that the results presented in the operating statements may have been materially different if the statements had been audited.

Schedule 1 – Additional Disclosure Requirements for an Issuer Engaged in Real Estate Activities

Guidance

For an issuer engaged in real estate activities, see subsection 6.4(4) of the Instrument with respect to the completion of this schedule.

Instructions

1. Despite General Instruction A.3, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Definitions

In this schedule

"rental management agreement" means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from real property for another person;

"rental pool agreement" means an agreement creating a rental pool;

"rental pool" means an arrangement under which revenues derived from, or expenses relating to, two or more properties are pooled and shared among the owners of the properties in accordance with their proportionate interests in the pool.

2. Application

(1) This schedule applies to the following:

(a) each interest in real property held by the issuer;

(b) each interest in real property proposed to be acquired by the issuer, if the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high.

(2) Despite subsection (1), and except in the circumstances described in sections 4, 5, 10 and 11, this schedule does not apply in respect of an interest in real property, or more than one interest in real property taken together, that when considered in relation to all interests in real property held by the issuer, is not significant enough to influence a decision by a reasonable investor to buy, hold or sell a security of the issuer.

3. Description of Real Property

(1) Describe the following with respect to each interest in real property:

(a) the real property's location, by address or other description;

(b) the nature of the interest;

(c) any encumbrances that would be material to a reasonable investor;

(d) any restriction on sale or disposition;

(e) any environmental liabilities, hazards or contamination;

(f) any tax arrears;

(g) if utilities and other services are not currently being provided, describe how they will be provided and who will provide them;

(h) the current use;

(i) the proposed use and why the issuer considers the real property to be suitable for its plans;

(j) with respect to any buildings affixed to the real property, the type of construction, age and condition, and a description of any units for sale or rental;

(k) for real property that the issuer leases to others, the occupancy level as at a date not more than 60 days before the date of the offering memorandum.

(2) If the issuer is providing disclosure on 10 or more interests in real property, it may for the purposes of subsection (1) disclose the information on a summarized basis with respect to either of the following:

(a) the portfolio of real property interests as a whole;

(b) the portfolio of real property interests broken into subgroups.

(3) Describe any current legal proceedings, or legal proceedings that the issuer knows to be contemplated, relating to each interest in real property, that would be material to a reasonable investor, including, for each proceeding, the name of the court, the date instituted, the parties to the proceeding, the nature of the claim, any amount claimed, whether the proceeding is being contested, and the present status of the proceeding.

Instruction to Section 3

With respect to a proposed acquisition of one or more interests in real property, disclose the issuer's expectations regarding the matters set out in paragraphs (1)(b), (c) and (d).

4. Appraisal

(1) If subsection 2.9(19.6) of the Instrument applies, disclose the following for any appraisal:

(a) the appraised fair market value of the interest in real property that is the subject of the appraisal;

(b) the effective date of the appraisal;

(c) that the appraisal is required to be delivered to the purchaser at the same time or before the offering memorandum is delivered to the purchaser.

(2) For each interest in real property to which subsection (1) applies, provide the most recent assessment by any assessing authority.

5. Purchaser's Interest in Real Property

If the purchaser will acquire an interest in real property, disclose the following:

(a) a description of the interest;

(b) how the interest will be evidenced in a public registry;

(c) any existing or anticipated encumbrances on the interest.

6. Developer, or Manager under a Rental Management Agreement or Rental Pool Agreement, Organization, Occupation and Experience, and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Subsection (2) applies for the following persons:

(a) a person other than the issuer that is or will be acting in the role of developer in respect of an interest in real property;

(b) in respect of real property in which the purchaser will acquire an interest, a person other than the issuer that will be acting in the role of manager under a rental management agreement, or manager under a rental pool agreement.

(2) For each person described in subsection (1)

(a) state the legal name of the person, describe the business of the person and any experience that the person has in similar projects or a similar business, and, if the person is not an individual, the laws under which the person is organized or incorporated and the date that the person was organized or incorporated,

(b) if the person is not an individual, in the form of the following table, provide the specified information for any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(c) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, describe the details of the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(d) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, a director, executive officer or control person of the person, or an issuer of which any of those persons was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, and

(e) disclose and describe the details of the offence, if the person, or a director, executive officer or control person of the person has ever pled guilty to or been found guilty of any of the following:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

7. Transfers

(1) For each interest in real property, for any transaction that a related party was party to, using the following table, starting with the most recent transaction and specifying which party was the related party, disclose the following:

Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration

(2) Explain the reason for any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party for the interest in real property.

8. Approvals

For each interest in real property, if that real property is being developed, disclose the following:

(a) any approval required from a regulatory body or any level of government that would be material to a reasonable investor;

(b) the anticipated cost and timing of the approval;

(c) any reports required as part of the approval process, including the anticipated cost and timing of producing or procuring those reports;

(d) what will happen if the approval is not obtained, including the effect on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

9. Costs and Objectives

For each interest in real property, if that real property is being developed, disclose the following:

(a) estimated costs to complete the development;

(b) any significant assumptions that underlie the cost estimates;

(c) when significant costs will be incurred;

(d) the objectives of the project that are expected to be met within the 24 months following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting each objective;

(ii) how the issuer will meet each objective;

(iii) the estimated cost of meeting each objective;

(iv) how the issuer will fund the cost of meeting each objective;

(e) the objectives for the project that are expected to be met after the 24-month period following the date of the offering memorandum, including the following:

(i) the expected timeline for meeting each objective;

(ii) how the issuer will meet each objective;

(iii) if the objectives are to be completed in phases, details about each phase;

(iv) the estimated cost of meeting each objective;

(v) how the issuer will fund the cost of meeting each objective;

(f) what reasonably might happen if any of the stated objectives are not met, including the effect of not meeting the objective on the following:

(i) the project;

(ii) the purchaser's investment;

(iii) if applicable, the purchaser's interest in the real property.

10. Future Cash Calls

If the purchaser is required to contribute additional funds in the future, disclose the following:

(a) the amount the purchaser is required to contribute;

(b) when the purchaser will be required to contribute;

(c) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser fails to contribute;

(d) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the real property, if the purchaser contributes, but other purchasers fail to contribute.

11. Rental Pool Agreement or Rental Management Agreement

If the purchaser will acquire an interest in real property, and that interest will be or could be subject to a rental pool agreement or a rental management agreement, disclose the following:

(a) the key terms of the agreement, including, for certainty, those provisions dealing with whether the agreement is mandatory or optional, the duration of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and any fees payable under the agreement;

(b) whether financial or other information about the rental pool or the results arising from the rental management agreement will be made available to purchasers, and if so, include the following:

(i) a description of the information;

(ii) if the information will include financial information, whether that financial information will be audited or subject to an independent review;

(iii) the frequency with which the information will be made available;

(iv) whether the information will be delivered to purchasers or whether access will be provided to it;

(v) if purchasers are to be provided access to the information, a description of the means of gaining access to it;

(c) the following statement, with the bracketed information completed as applicable:

"The success or failure of the [rental pool][arrangement resulting from the rental management agreement] will depend in part on the abilities of the manager.";

(d) if the purchaser will be responsible for paying any loss arising pursuant to the rental pool agreement or rental management agreement, the following statement, with the bracketed information completed as applicable:

"If the [rental pool][rental management agreement] generates a loss, the purchaser must contribute further funds in addition to the purchaser's initial investment.".

12. Information Statements

If the purchaser will acquire an interest in real property, state the following in bold type:

"**Your rights relating to your interest in real property will be those provided under the laws of the jurisdiction in which the real property is located. Therefore, it is prudent to consult a lawyer who is familiar with the laws of that jurisdiction before making an investment.**

All real estate investments are subject to significant risk arising from changing market conditions.".

13. Risk Factors Relating to Real Property

With respect to the issuer's interests in real property, and any interest in real property to be acquired by the purchaser, describe the risk factors that would influence a reasonable investor's decision whether to invest, including, if applicable:

(a) risks associated with the following:

(i) the development of undivided real property into subdivisions;

(ii) the leasing of real property;

(iii) the holding of real property for sale or development;

(b) risks associated with encumbrances, conditions or covenants on the real property that could affect the following:

(i) the purchaser's interest in the real property, if applicable;

(ii) the completion of the development of real property;

(c) risks pertaining to the development of real property, including the following:

(i) a right or lack of right of the purchaser with respect to the management and control of the real property;

(ii) a right or lack of right of the purchaser to change the developer of the property;

(d) risks pertaining to potential liability for the following:

(i) environmental damage;

(ii) unpaid obligations to builders, contractors and tradespersons;

(e) risks associated with litigation that relates to the real property.

Schedule 2 – Additional Disclosure Requirements for an Issuer that is a Collective Investment Vehicle

Guidance

For an issuer that is a collective investment vehicle, see subsection 6.4(5) of the Instrument with respect to the completion of this schedule.

Instructions

1. Despite General Instruction A.3, an issuer may choose where to integrate the disclosure specified by this schedule within the offering memorandum.

2. Information specified by this schedule that is disclosed in the offering memorandum in response to another provision of this form need not be repeated.

1. Investment Objectives and Strategy

(1) Except with respect to mortgage lending, describe the following:

(a) the issuer's investment objectives, investment strategy and investment criteria;

(b) any limitations or restrictions on investments, including concentration limits and use of leverage;

(c) how securities are identified, selected and approved for purchase or sale.

(2) For any mortgage lending by the issuer, describe the following:

(a) the issuer's investment objectives with respect to the following:

(i) the type of properties for which the issuer lends money;

(ii) the issuer's geographical focus;

(iii) the material mortgage terms, including range of interest rates and length of term;

(iv) the priority ranking of mortgages, in terms of first priority, second priority and third or lower priority;

(b) any policies or practices of the issuer with respect to the following:

(i) after initial funding of a mortgage, conducting any subsequent valuation of a property;

(ii) loaning money to a related party;

(iii) renewals;

(iv) concentrating funds in a single mortgage or lending funds to a single borrower or group of affiliated borrowers;

(v) determining that a borrower has the ability to repay a mortgage.

2. Portfolio Management and Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

(1) Identify the person responsible for the following:

(a) establishing and implementing the issuer's investment objectives and investment strategy;

(b) setting any limitations or restrictions on investments;

(c) monitoring the performance of the portfolio;

(d) making any adjustments to the issuer's portfolio.

(2) For each person described in subsection (1) that is not registered under the securities legislation of a jurisdiction of Canada,

(a) in the form of the following table, provide the specified information for the person and any directors and executive officers of the person for the 5 years preceding the date of the offering memorandum,

Full legal name	Principal occupation and description of experience associated with the occupation

(b) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, describe the penalty, sanction or order, including the reason for it and whether it is currently in effect:

(i) a penalty or other sanction imposed by a court relating to a contravention of securities legislation;

(ii) a penalty or other sanction imposed by a regulatory body relating to a contravention of securities legislation;

(iii) an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days,

(c) if any of the following have occurred during the 10 years preceding the date of the offering memorandum with respect to the person, or an issuer of which the person was a director, executive officer or control person at the time, state that it has occurred:

(i) a declaration of bankruptcy;

(ii) a voluntary assignment in bankruptcy;

(iii) a proposal under bankruptcy or insolvency legislation;

(iv) a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets,

(d) disclose and describe the details of the offence, if the person has ever pled guilty to or been found guilty of any of the following:

(i) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory of the United States of America;

(iv) an offence under the criminal legislation of any other foreign jurisdiction, and

(e) disclose any exemption relied on by the person from the requirement to be registered under the securities legislation of a jurisdiction of Canada.

(3) For any person identified in subsection (1) that is not an employee of the issuer, disclose any remuneration paid to the person, and how the remuneration is calculated.

(4) Identify any person that is not an employee of the issuer, other than a person identified under subsection (1), that performs a significant role or provides a significant service for the issuer with respect to the securities in the issuer's portfolio, and describe the following:

(a) the role performed or service provided;

(b) the remuneration paid to the person and how that remuneration is calculated.

3. Portfolio Summary

(1) Except with respect to mortgage lending, as at a date not more than 60 days before the date of the offering memorandum, disclose the following:

(a) a description of the portfolio, or a description of the portfolio divided into subgroups including the percentage of the net asset value in each subgroup;

(b) the percentage of the net asset value that is impaired;

(c) the total number of positions held in securities.

(2) Except with respect to mortgage lending, if a security comprises 10% or more of the issuer's net asset value, disclose the following with respect to the security:

(a) the percentage of net asset value represented;

(b) a description of the security;

(c) any security interest held against the security;

(d) the amount of any impairment assigned to the security.

(3) For any mortgage lending by the issuer, disclose the following:

(a) the average of the interest rates payable under the mortgages, weighted by the principal amount of the mortgages;

(b) the average of the terms to maturity of the mortgages, weighted by the principal amount of the mortgages;

(c) the average loan-to-value ratio of the mortgages, calculated for each mortgage by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property, weighted by the principal amount of each mortgage;

(d) the principal amount, and the percentage of the total principal amount of the mortgages, that rank in the following:

(i) first priority;

(ii) second priority;

(iii) third or lower priority;

(e) the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each jurisdiction of Canada, each state or territory of the United States of America and each other foreign jurisdiction;

(f) a breakdown by property type, and the principal amount, and the percentage of the total principal amount of the mortgages, that is attributable to each property type;

(g) with respect to mortgages that will mature in less than one year of the date of the summary provided in subsection (1), the percentage that those mortgages represent of the total principal amount of the mortgages;

(h) with respect to mortgages with payments more than 90 days overdue, the number of those mortgages, the principal amount of those mortgages, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(i) with respect to mortgages that have an impaired value, the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(j) for any mortgages that are not impaired or in default, but for which the issuer has made accommodations to respond to financial difficulties of the borrower, if the accommodations would be material to a reasonable investor, a summary of the accommodations, and the principal amount, and the percentage that those mortgages represent of the total principal amount of the mortgages;

(k) if known by the issuer, or if reasonably available to the issuer, the average credit score of the borrowers, weighted by the principal amount of the mortgages;

(l) if a mortgage comprises 10% or more of the total principal amount of the mortgages, disclose the following with respect to the mortgage:

(i) the principal amount, and the percentage of the total principal amount of the mortgages;

(ii) the interest rate payable;

(iii) the term to maturity;

(iv) the loan-to-value ratio, calculated by dividing the total principal amount of the issuer's mortgage and all other loans ranking in equal or greater priority to the issuer's mortgage by the fair market value of the property;

(v) whether the mortgage ranks in first, second, or third or lower priority;

(vi) the property type;

(vii) where the property is located;

(viii) any payment that is more than 90 days overdue;

(ix) any impairment of the mortgage;

(x) if known by the issuer, or if reasonably available to the issuer, the credit score of each borrower.

(4) If the issuer's portfolio includes self-liquidating financial assets other than mortgages, with respect to those assets, and for any subgroups identified in paragraph (1)(a), disclose the following:

(a) the collection rate for each of the issuer's two most recently completed financial years that ended more than 120 days before the date of the offering memorandum;

(b) the issuer's reasonably anticipated loss and collection rate for the current financial year.

Instruction to Section 3

Calculate impairment in accordance with the accounting standards applicable to the issuer, and in a manner that is consistent with the disclosure in the issuer's financial statements.

4. Portfolio Performance

(1) For the 10 most recently completed financial years of the issuer ended more than 120 days before the date of the offering memorandum, provide performance data for the issuer's portfolio.

(2) Describe the methodology used with respect to the following:

(a) determining the value of the securities in the portfolio for the purposes of calculating the performance data;

(b) calculating the performance data of the portfolio.

Instruction to Section 4

The methodology described in paragraph (2)(a) must be the same as the methodology used in the issuer's financial statements.

5. Ongoing Disclosure

Describe any information that purchasers will receive on an ongoing basis about the issuer's portfolio. If none, state that fact.

6. Conflicts of Interest

Describe any conflicts of interest, including, for certainty, with respect to related parties, that a reasonable purchaser would need to be made aware of to make an informed investment decision.

Schedule B-2

FORM 45-106F4
RISK ACKNOWLEDGEMENT

WARNING!
This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.

1.	**Risks and other information** The issuer must delete any rows required to be deleted The purchaser must initial each statement to confirm understanding	**Your Initials**
	Risk of loss – You could lose your entire investment of $ _____. [*Instruction: Insert the total dollar amount of the investment.]*	
	No approval – No securities regulatory authority or regulator has evaluated or approved the merits of these securities or the disclosure in the offering memorandum.	
	No registration – The person selling you these securities is not registered with a securities regulatory authority or regulator and has no duty to tell you whether this investment is suitable for you. *[Instruction: Delete if sold by registrant]*	
	Liquidity risk – You will not be able to sell these securities except in very limited circumstances. You may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*	
	Repurchase – You have a right to require the issuer to repurchase the securities, but there are limitations on this right. *[Instruction: Delete if inapplicable]*	
	Four month hold – You will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting or if the purchaser is a Manitoba resident]*	
	You are buying Exempt Market Securities They are called *exempt market securities* because the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections). *Exempt market securities* are more risky than other securities.	
	You will not receive advice – *[Instruction: Delete if sold by registrant]* You will not get professional advice about whether the investment is suitable for you, but you can still seek that advice from a registered adviser or registered dealer. In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon to qualify as an eligible investor, you may be required to obtain that advice.	
	The securities you are buying are not listed *[Instruction: Delete if securities are listed or quoted]* The securities you are buying are not listed on any stock exchange, and they may never be listed.	
	The issuer of your securities is a non-reporting issuer *[Instruction: Delete if issuer is reporting]* A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer. For more information on the exempt market, contact your local securities regulator. You can find contact information at www.securities-administrators.ca.	
	Total investment – You are investing $ _____ [*Instruction: total consideration*] in total; this includes any amount you are obliged to pay in future. _____ [*Instruction: name of issuer*] will pay $_____ [*Instruction: amount of fee or commission*] of this to _____ [*Instruction: name of person selling the securities*] as a fee or commission.	
	Your name and signature	
	By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.	
	First and last name (print)**:**	

Signature:	Date:
[Instruction: Sign 2 copies of this document. Keep one copy for your records.]	

2.	**Salesperson information** Below information must be completed by the salesperson
[Instruction: The salesperson is the person who meets with, or provides information to, the purchaser with respect to making this investment. That could include a representative of the issuer, a registrant or a person who is exempt from the registration requirement.]	
First and last name of salesperson (print):	
Telephone:	Email:
Name of firm:	

3.	**Additional information** The issuer must complete the required information in this section before giving the form to the purchaser

You have 2 business days to cancel your purchase

To do so, send a notice to [name of issuer] stating that you want to cancel your purchase. You must send the notice before midnight on the 2nd business day after you sign the agreement to purchase the securities. You can send the notice by fax or email or deliver it in person to [name of issuer] at its business address. Keep a copy of the notice for your records.

Issuer Name and Address:

Fax: Email:

You will receive an offering memorandum

Read the offering memorandum carefully because it has important information about the issuer and its securities. Keep the offering memorandum because you have rights based on it. Talk to a lawyer for details about these rights.

ANNEX C

CHANGES TO
COMPANION POLICY 45-106CP *PROSPECTUS EXEMPTIONS*

1. Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.

2. The following sections are added after section 2.9:

2.10 Real estate activities

We consider the following non-exhaustive list to be examples of instances in which an issuer is engaged in "real estate activities" as defined in section 1.1 of NI 45-106:

- An issuer that is developing or redeveloping real property for sale as commercial or industrial space, residential building lots or homes, or condominiums;
- An issuer that is developing or redeveloping real property for lease;
- An issuer that owns real property for lease;
- An issuer that buys, holds or sells real property, with a view to making a gain or income;
- An issuer of an interest in real property that is a security.

If an issuer (the first issuer) is engaged in real estate activities through one or more of its subsidiaries, we consider the first issuer to be engaged in real estate activities.

2.11 Collective investment vehicle

We are of the view that the definition of "collective investment vehicle" applies to mortgage investment entities, issuers that act as lender for a portfolio of non-mortgage loans, and in certain circumstances, issuers that invest in receivables.

If an issuer (the first issuer) satisfies the definition of "collective investment vehicle" through the actions of one or more its subsidiaries, we consider the first issuer to be a collective investment vehicle**..**

3. Subsection 3.8(3) is replaced with the following:

(3) Standard of disclosure for an offering memorandum, amending an offering memorandum and related matters

(a) Standard of disclosure for an offering memorandum

There are three elements that make up the standard of disclosure for an offering memorandum. Subsection 2.9(13.1) of the Instrument provides that an issuer must not make a misrepresentation in its offering memorandum. A statement can only be or not be a misrepresentation when it is made, which for an offering memorandum is the date of the offering memorandum. As provided at the beginning of the offering memorandum form, the date of the offering memorandum is the date of the certificate. A statement that is not a misrepresentation when it is made cannot become a misrepresentation later, irrespective of whether circumstances have changed to render the statement inaccurate. However, with respect to ongoing events for the issuer, we refer issuers to subsections 2.9(13.3) and (13.2) of the Instrument.

Under subsection 2.9(13.3) of the Instrument, an issuer must not deliver an offering memorandum under the section unless it provides a reasonable purchaser with sufficient information to make an informed investment decision.

Subsection 2.9(13.2) of the Instrument provides that if a material change with respect to the issuer occurs after the certificate for the offering memorandum or amended offering memorandum is signed, and before the issuer accepts an agreement to purchase the security from the purchaser, the issuer must amend the offering memorandum to reflect the material change and deliver the amended offering memorandum to the purchaser.

(b) Amending an offering memorandum

Instruction B.14 of Form 45-106F2 provides that if a distribution is ongoing, an issuer must, after a certain period, amend its offering memorandum to include financial statements for its most recently completed financial year.

There are a number of requirements in Form 45-106F2 that refer to a completed financial year or years. As a result, each time an issuer amends its offering memorandum to include financial statements for a financial year, it is required to ensure that any disclosure that is in response to a requirement that references a financial year is revised if necessary.

With respect to an interim period, if an issuer amends its offering memorandum to include a further interim financial report, the same analysis applies. That is, there are a number of requirements in Form 45-106F2 that refer to a completed interim period, and the issuer is required to ensure that any disclosure that is in response to a requirement that references an interim period is revised if necessary.

It is not necessary for an offering memorandum to contain annual financial statements or an interim financial report for more financial years or interim periods than are required by B. of the instructions to Form 45-106F2. Accordingly, an issuer amending its offering memorandum to include more recent annual financial statements or a more recent interim financial report may exclude, in its amended offering memorandum, any annual financial statements or interim financial report for a financial year or interim period that is no longer required.

As discussed in paragraph (a), an issuer is also required to amend its offering memorandum if a material change occurs after the certificate is signed, and before the issuer accepts an agreement to purchase the security from the purchaser. See subsection 2.9(13.2) of the Instrument. Material change is defined in provincial and territorial securities legislation.

In making materiality judgments it is necessary to consider a number of factors that cannot be captured in a simple bright-line test. National Policy 51-201 *Disclosure Standards* provides guidance regarding materiality determinations by reporting issuers.

Most of the issuers that rely on the offering memorandum exemption are not reporting issuers. Accordingly, materiality determinations must be assessed in the context of their specific circumstances and the overall disclosure to investors, including the offering memorandum and related documents. For example, if an issuer's offering memorandum discloses prospective operations and its financial statements reflect only an opening balance sheet, the raising of significant funds and commencing operations may constitute a material change. Similarly, where a collective investment vehicle such as a mortgage investment entity does not have a portfolio of mortgage loans at the time of its offering memorandum, the activity of deploying funds in a portfolio of mortgages could constitute a material change, particularly if the portfolio has characteristics and risks that have not been disclosed.

With respect to the requirement in paragraph 2.9(19.5)(a) of the Instrument to provide an appraisal in connection with a proposed acquisition from a related party, we note that issuers carrying out ongoing distributions could trigger this requirement after the date the certificate is signed.

If the proposed acquisition is not a material change, issuers should consider whether under subsection 2.9(13.3) of the Instrument the offering memorandum is required to be amended prior to delivery to reflect the proposed acquisition, so that the offering memorandum contains sufficient information for a reasonable investor to make an investment decision.

If a distribution is ongoing and an issuer becomes subject to instruction C.1 of Form 45-106F2 with respect to the acquisition or proposed acquisition of a business, and the financial statements required by that instruction are not contained in the offering memorandum, the issuer is required to amend its offering memorandum to include them.

For each delivery of an offering memorandum, we remind issuers of subsection 2.9(13.3) of the Instrument, which is discussed in paragraph (a). It may be necessary to amend an offering memorandum to meet this requirement.

We also note that an issuer may voluntarily amend its offering memorandum.

Finally, we note that marketing materials were never intended to be a means of amending an offering memorandum.

(c) New certificate

Each time an issuer amends its offering memorandum, it is required under subsection 2.9(14.1) of the Instrument to include a newly dated certificate in the amended offering memorandum. We also note that the date of the offering memorandum is the date of the certificate.

There are certain offering memorandum requirements that refer to the date of the offering memorandum. As a result, each time an issuer includes a new certificate in its offering memorandum, it is required to ensure that any disclosure in response to a requirement that references the date of the offering memorandum is revised if necessary.

The certificate referred to in this subsection is the certificate required by Form 45-106F2 item 15, or Form 45-106F3 item 12, as applicable**.**

4. ***Section 3.8 is changed by adding the following after subsection 3.8(3):***

(3.1) Certificate of promoter

"Promoter" is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemption**.**

5. ***Section 3.8 is changed by adding the following after subsection 3.8(4):***

(4.1) Appraisal requirement

We remind issuers carrying out ongoing distributions under an offering memorandum that it is possible to trigger the appraisal requirement under subsection 2.9(19.5) of the Instrument after the date of the certificate of the offering memorandum. In this case, for all subsequent purchasers, the issuer is required pursuant to subsection 2.9(19.6) of the Instrument to deliver the appraisal at the same time or before it delivers its offering memorandum**.**

6. ***Subsection 3.8(13) is changed***

(a) by deleting "for syndicated mortgages***", and***

(b) by replacing "the issuer of a syndicated mortgage***" with "***an issuer***".***

7. ***Subsection 3.8(14) is changed by adding "***of property subject to a syndicated mortgage***" after "***Appraisals***".***

8. ***Section 3.8 is changed by adding the following after subsection 3.8(14):***

(15) Collective investment vehicles - disclosure

An issuer that is a collective investment vehicle should consider the complexity of its offering and determine whether appropriate and sufficient information can be provided under its offering memorandum, as these distributions can be made to less sophisticated investors. Disclosure should be clear and described in plain language, avoiding technical terms as much as possible. If the disclosure will be complex or contains technical terms that are difficult to easily describe, the issuer should consider whether a distribution under the offering memorandum exemption is appropriate**.**

9. Section 5.3 is deleted.

10. These changes become effective on March 8, 2023.

ANNEX D

LOCAL MATTERS (ONTARIO)

Authority for Amendments

In Ontario, the rule-making authority for the Amendments is paragraph 20 of subsection 143(1) of the *Securities Act* (Ontario).

Delivery to Minister of Finance

In Ontario, the Amendments and other required materials were delivered to the Minister of Finance on December 7, 2022.

The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action by February 6, 2023, the Amendments will come into force and the Changes will come into effect on March 8, 2023 (the **Effective Date**).

Transition Provision

Once the Amendments come into force, subsection 6.4(6) of NI 45-106 provides a transition provision that subject to certain conditions, allows an issuer to continue using an OM that was prepared in accordance with the version of Form 45-106F2 that was in-force immediately prior to the Effective Date. An issuer may not rely on subsection 6.4(6) of NI 45-106 if they were required to amend the OM, or chose to amend the OM, on or after the Effective Date.

The transition provision is only an accommodation relating to the pre-Amendments version of Form 45-106F2. There is no transition provision for any of the other Amendments.

We also remind issuers and their advisors that the Amendments to Form 45-106F2 generally clarify existing disclosure required under the pre-Amendments version of Form 45-106F2. For example, an issuer would generally be required to disclose the information required by Item 1.3, Schedule 1 or Schedule 2, as applicable to the issuer's business, in order for the OM to provide a prospective purchaser with sufficient information to make an informed investment decision.

Questions

Please refer your questions on this Annex to either of the following:

David Surat
Acting Manager, Corporate Finance
dsurat@osc.gov.on.ca

Melissa Taylor
Senior Legal Counsel, Corporate Finance
mtaylor@osc.gov.on.ca

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:
DMP Power Global Growth Class
DMP Resource Class
DMP Value Balanced Class
Dynamic Active Core Bond Private Pool
Dynamic Active Credit Strategies Private Pool
Dynamic Advantage Bond Class
Dynamic Advantage Bond Fund
Dynamic Alternative Managed Risk Private Pool Class (formerly Dynamic Alternative Investments Private Pool Class)
Dynamic Alternative Yield Class
Dynamic Alternative Yield Fund
Dynamic American Class (formerly Dynamic American Value Class)
Dynamic American Fund (formerly Dynamic American Value Fund)
Dynamic Asia Pacific Equity Fund (formerly Dynamic Far East Value Fund)
Dynamic Asset Allocation Private Pool
Dynamic Blue Chip Balanced Fund (formerly Dynamic Focus+ Balanced Fund)
Dynamic Blue Chip Equity Fund (formerly Dynamic Focus+ Equity Fund)
Dynamic Canadian Bond Fund (formerly Dynamic Income Fund)
Dynamic Canadian Dividend Fund
Dynamic Canadian Equity Private Pool Class
Dynamic Canadian Value Class
Dynamic Conservative Yield Private Pool
Dynamic Conservative Yield Private Pool Class
Dynamic Corporate Bond Strategies Class
Dynamic Corporate Bond Strategies Fund
Dynamic Credit Spectrum Fund (formerly Dynamic High Yield Credit Fund)
Dynamic Diversified Inflation Focused Fund (formerly Dynamic Diversified Real Asset Fund)
Dynamic Dividend Advantage Class
Dynamic Dividend Advantage Fund (formerly Dynamic Dividend Value Fund)
Dynamic Dividend Fund
Dynamic Dividend Income Class
Dynamic Dividend Income Fund
Dynamic Dollar-Cost Averaging Fund
Dynamic Emerging Markets Equity Fund
Dynamic Energy Evolution Fund
Dynamic Energy Income Fund (formerly Dynamic Focus+ Energy Income Trust Fund)
Dynamic Equity Income Fund (formerly Dynamic Focus+ Diversified Income Fund)
Dynamic European Equity Fund (formerly Dynamic European Value Fund)
Dynamic Financial Services Fund (formerly Dynamic Focus+ Wealth Management Fund)
Dynamic Global All-Terrain Fund
Dynamic Global Asset Allocation Class
Dynamic Global Asset Allocation Fund (formerly Dynamic Global Value Balanced Fund)
Dynamic Global Balanced Fund
Dynamic Global Discovery Class
Dynamic Global Discovery Fund
Dynamic Global Dividend Class (formerly Dynamic Global Dividend Value Class)
Dynamic Global Dividend Fund (formerly Dynamic Global Dividend Value Fund)
Dynamic Global Equity Fund
Dynamic Global Equity Income Fund
Dynamic Global Equity Private Pool Class
Dynamic Global Fixed Income Fund
Dynamic Global Infrastructure Class
Dynamic Global Infrastructure Fund
Dynamic Global Real Estate Fund (formerly Dynamic Focus+ Real Estate Fund)
Dynamic Global Strategic Yield Fund
Dynamic Global Yield Private Pool
Dynamic Global Yield Private Pool Class
Dynamic High Yield Bond Fund
Dynamic International Discovery Fund
Dynamic International Dividend Private Pool
Dynamic International Equity Fund (formerly Dynamic Global Value Fund)
Dynamic Investment Grade Floating Rate Fund
Dynamic Money Market Class
Dynamic Money Market Fund
Dynamic North American Dividend Private Pool
Dynamic Power American Growth Class
Dynamic Power American Growth Fund
Dynamic Power Balanced Fund
Dynamic Power Canadian Growth Fund
Dynamic Power Global Balanced Class
Dynamic Power Global Growth Class
Dynamic Power Global Growth Fund
Dynamic Power Global Navigator Class
Dynamic Power Small Cap Fund
Dynamic Precious Metals Fund
Dynamic Preferred Yield Class
Dynamic Premium Bond Private Pool
Dynamic Premium Bond Private Pool Class
Dynamic Premium Yield Class
Dynamic Premium Yield Fund
Dynamic Short Term Bond Fund
Dynamic Small Business Fund (formerly Dynamic Focus+ Small Business Fund)
Dynamic Strategic Energy Class (formerly Dynamic Global Energy Class)
Dynamic Strategic Gold Class
Dynamic Strategic Resource Class
Dynamic Strategic Yield Class
Dynamic Strategic Yield Fund
Dynamic Sustainable Credit Fund (formerly Dynamic Sustainable Credit Private Pool)
Dynamic Sustainable Equity Fund

Dynamic Tactical Bond Private Pool
Dynamic Total Return Bond Class (formerly Dynamic Aurion Total Return Bond Class)
Dynamic Total Return Bond Fund (formerly Dynamic Aurion Total Return Bond Fund)
Dynamic U.S. Balanced Class (formerly Dynamic Blue Chip U.S. Balanced Class)
Dynamic U.S. Dividend Advantage Fund (formerly Dynamic U.S. Dividend Advantage Class)
Dynamic U.S. Equity Income Fund
Dynamic U.S. Equity Private Pool Class
Dynamic U.S. Monthly Income Fund (formerly Dynamic U.S. Value Balanced Fund)
Dynamic U.S. Sector Focus Class
Dynamic U.S. Strategic Yield Fund
Dynamic Value Balanced Class
Dynamic Value Balanced Fund
Dynamic Value Fund of Canada
DynamicEdge Balanced Class Portfolio
DynamicEdge Balanced Growth Class Portfolio
DynamicEdge Balanced Growth Portfolio
DynamicEdge Balanced Income Portfolio (formerly Dynamic Strategic Income Portfolio)
DynamicEdge Balanced Portfolio
DynamicEdge Conservative Class Portfolio
DynamicEdge Defensive Portfolio
DynamicEdge Equity Class Portfolio
DynamicEdge Equity Portfolio
DynamicEdge Growth Class Portfolio
DynamicEdge Growth Portfolio
Marquis Balanced Class Portfolio
Marquis Balanced Growth Class Portfolio
Marquis Balanced Growth Portfolio
Marquis Balanced Income Portfolio
Marquis Balanced Portfolio
Marquis Equity Portfolio
Marquis Growth Portfolio
Marquis Institutional Balanced Growth Portfolio
Marquis Institutional Balanced Portfolio
Marquis Institutional Bond Portfolio
Marquis Institutional Canadian Equity Portfolio
Marquis Institutional Equity Portfolio
Marquis Institutional Global Equity Portfolio
Marquis Institutional Growth Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Dec 2, 2022
NP 11-202 Final Receipt dated Dec 2, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3446921

Issuer Name:
IG Graduation Portfolio
IG Target Education 2030 Portfolio
IG Target Education 2035 Portfolio
IG Target Education 2040 Portfolio
Principal Regulator – Manitoba
Type and Date:
Preliminary Simplified Prospectus dated Dec 2, 2022
NP 11-202 Preliminary Receipt dated Dec 5, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3469508

Issuer Name:
Horizons Tactical Absolute Return Bond ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Nov 28, 2022
NP 11-202 Final Receipt dated Dec 1, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3448152

Issuer Name:
Fidelity ClearPath® 2065 Portfolio
Fidelity SmartHedge U.S. Equity Fund
Fidelity SmartHedge U.S. Equity Multi-Asset Base Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 1, 2022
NP 11-202 Preliminary Receipt dated Dec 1, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3469169

Issuer Name:
Purpose Money Market Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated November 24, 2022
NP 11-202 Final Receipt dated Nov 30, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3338291

Issuer Name:
Sun Life Money Market Fund
Sun Life Money Market Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated December 1, 2022
NP 11-202 Final Receipt dated Dec 5, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3380519

Issuer Name:
Purpose High Interest Savings ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated November 24, 2022
NP 11-202 Final Receipt dated Nov 30, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3439956

Issuer Name:
Canada Life Money Market Fund
Canada Life Pathways Money Market Fund
Canada Life Canadian Low Volatility Fund
Canada Life Pathways Canadian Equity Fund
Canada Life Canadian Growth Fund
Canada Life U.S. Low Volatility Fund
Canada Life U.S. Value Fund
Canada Life Pathways US Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated November 23, 2022
NP 11-202 Final Receipt dated Nov 30, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3394907

Issuer Name:
First Trust Cboe Vest U.S. Equity Buffer ETF – November
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated November 18, 2022
NP 11-202 Final Receipt dated Nov 29, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3409862

NON-INVESTMENT FUNDS

Issuer Name:
Ayr Wellness Inc. (formerly, Ayr Strategies Inc.)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 30, 2022
NP 11-202 Preliminary Receipt dated December 1, 2022
Offering Price and Description:
C$500,000,000.00 - Subordinate Voting Shares Restricting Voting Shares Limited Voting Shares Warrants Subscription Receipts Debt Securities Convertible Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3468897

Issuer Name:
Largo Physical Vanadium Corp. (formerly, Column Capital Corp.)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 29, 2022
NP 11-202 Preliminary Receipt dated November 30, 2022
Offering Price and Description:
$100,000,000.00 - COMMON SHARES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3467221

Issuer Name:
Raging Rhino Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment dated November 30, 2022 to Preliminary CPC Prospectus dated September 19, 2022
NP 11-202 Preliminary Receipt dated November 30, 2022
Offering Price and Description:
$250,000.00 - 2,500,000 COMMON SHARES
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3438629

Issuer Name:
Sorrento Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Amendment dated November 29, 2022 to Preliminary Long Form Prospectus dated September 2, 2022
NP 11-202 Preliminary Receipt dated November 29, 2022
Offering Price and Description:
Minimum Offering 4,285,714.00 - 750,000.00
Maximum Offering 7,142,857.00 - 1,250,000.00
Price Per Offered Share: $0.175
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Brayden R. Sutton
Project #3434698

Issuer Name:
Volatus Aerospace Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 28, 2022
NP 11-202 Preliminary Receipt dated November 29, 2022
Offering Price and Description:
$25,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Glen Lynch
Ian McDougall
Project #3464044

Issuer Name:
BGP Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 1, 2022
NP 11-202 Receipt dated December 2, 2022
Offering Price and Description:
No securities are being offered pursuant to this prospectus.
Underwriter(s) or Distributor(s):
-
Promoter(s):
BGP ACQUISITION SPONSOR LP
ROBERT ARANDA
ERIC LUJAN,
Project #3448450

Issuer Name:
Celestial Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated November 30, 2022
NP 11-202 Receipt dated November 30, 2022
Offering Price and Description:
Minimum $400,000.00 - 4,000,000 Common Shares
Maximum $500,000.00 - 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #3456458

Issuer Name:
DECISIVE DIVIDEND CORPORATION
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated November 30, 2022
NP 11-202 Receipt dated November 30, 2022
Offering Price and Description:
UP TO $100,000,000.00 - Common Shares Debt Securities Warrants Subscription Receipts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3453353

Issuer Name:
Hawthorn Resources Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated November 30, 2022
NP 11-202 Receipt dated December 1, 2022
Offering Price and Description:
$500,000.00 - 5,000,000 Common Shares
Price of $0.10 per Common Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
Neil MacRae
Project #3397985

Issuer Name:
Plurilock Security Inc. (formerly, Libby K Industries Inc.)
Principal Regulator - British Columbia
Type and Date:
Amendment dated November 28, 2022 to Final Shelf Prospectus dated September 9, 2022
NP 11-202 Receipt dated November 29, 2022
Offering Price and Description:
$50,000,000.00 - Common Shares Warrants Subscription Receipts Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3218164

Issuer Name:
Uranium Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus - MJDS dated November 30, 2022
NP 11-202 Receipt dated December 1, 2022
Offering Price and Description:
Common Shares Debt Securities Warrants Subscription Receipts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3458760

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Crestpoint Asset Management Ltd.	Exempt Market Dealer	November 29, 2022
Voluntary Surrender	MD Financial Management Inc.	Commodity Trading Manager	November 30, 2022

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

B.11.2 Marketplaces

B.11.2.1 CME Amsterdam B.V. – Application for Variation of Exemption Order – Notice of Commission Order

NOTICE OF COMMISSION ORDER

APPLICATION BY
CME AMSTERDAM B.V.
FOR VARIATION OF COMMISSION ORDER

On December 1, 2022, the Commission issued an order (the **Order**)

a. revoking and replacing the order exempting CME Amsterdam BV (the **Applicant**) from the requirement to be recognized as an exchange contained in section 21 of the Act; and

b. exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101, and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103.

A copy of the Order is published in Chapter B.2 of the OSC Bulletin published on December 8, 2022.

The Commission published the Applicant's application and draft order for comments on October 21, 2022 in the OSC Bulletin and the OSC website. No comments were received. No changes were made to the draft order published for comment.

The Order is consistent with Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges* and the updated exemption criteria included at Appendix 1 to Schedule A of the Order.

B.11.2.2 BrokerTec Europe Limited – Application for Exemption from Recognition as an Exchange and from the Marketplace Rules – Notice of Commission Order

NOTICE OF COMMISSION ORDER

APPLICATION BY
BROKERTEC EUROPE LIMITED
FOR EXEMPTION FROM
RECOGNITION AS AN EXCHANGE AND FROM THE MARKETPLACE RULES

On December 1, 2022, the Commission issued an order (the **Order**) exempting BrokerTec Europe Limited (the **Applicant**) from:

a. the requirement to be recognized as an exchange under section 21(1) of the *Securities Act* (Ontario) (the **Act**) pursuant to section 147 of the Act; and

b. the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101, and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103.

A copy of the Order is published in Chapter B.2 of the OSC Bulletin published on December 8, 2022.

The Commission published the Applicant's application and draft order for comments on October 21, 2022 in the OSC Bulletin and the OSC website. No comments were received. No changes were made to the draft order published for comment.

The Order is consistent with Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges* and the updated exemption criteria included at Appendix 1 to Schedule A of the Order.

B.11.2.3 Instinet Canada Cross Ltd. – Change to Instinet Canada Cross Trading System – Notice of Proposed Change and Request for Comment

INSTINET CANADA CROSS LTD.

NOTICE OF PROPOSED CHANGE AND REQUEST FOR COMMENT

CHANGE TO INSTINET CANADA CROSS TRADING SYSTEM

Instinet Canada Cross (**ICX**) plans to implement the changes described below subject to approval by the Ontario Securities Commission (the **OSC**). ICX is publishing this Notice of Proposed Change and Request for Comment in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto" which ICX is required to follow. Market participants are invited to provide the OSC with comments on the proposed change.

Feedback on the proposed change should be in writing and submitted by January 16, 2023 to:

Market Regulation Branch
Ontario Securities Commission
22nd Floor
20 Queen Street West
Toronto, Ontario M5H 3S8
e-mail: marketregulation@osc.gov.on.ca

And to:

Jonathan Sherwin
Chief Compliance Officer
Instinet Canada Cross Ltd.
121 King Street West, Suite 1770
Toronto, ON M5H 3T9
e-mail: jonathan.sherwin@instinet.com

Feedback received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of OSC staff's review and to specify the intended implementation date of the change.

If you have any questions concerning the information below, please contact Jonathan Sherwin, Chief Compliance Officer of ICX, at 647-280-7856.

Introduction of Two Classes of Conditional Order Types and Matching Instruction Functionality

A. Detailed description of the proposed change

Overview

ICX proposes the following changes:

1) Adding two classes or types of Conditional Orders, **Manual Conditional Orders** and **Algorithmic Conditional Orders**, that may be submitted by ICX Subscribers (**Subscribers**) to the ICX Conditional Order Book. Manual Conditional Orders and Algorithmic Conditional Orders are collectively referred to in this notice as "**Conditional Orders**". The purpose of the proposed change is to facilitate block size interactions for both automated order systems as well as market participants that may not utilize automated order systems.

   Electronic messaging, order interaction, and matching of Conditional Orders will differ between the two types of Conditional Orders, as described in greater detail below.

2) ICX also intends to offer its Subscribers a new feature (the **Match Instruction**) to enhance its Conditional Order functionality. The Match instruction feature will allow a firm order resting in the ICX Order Book (**Firm Order**) to automatically generate a firm-up invitation for a Conditional Order where the ICX system detects a potential match. Match Instruction will facilitate large-sized trades, as it will only (a) be available as an option to Firm Orders with a minimum order size of either (i) at least 51 standard trading units and $30,000 in notional value, or (ii) at least $100,000 in notional value and (b) only interact with contra side Conditional Orders with a minimum order size of either (i) at least 51 standard trading units and $30,000 in notional value, or (ii) at least $100,000 in notional value.

ICX will continue to operate through two main components (1) a "FIX" (or Financial Information exchange) electronic gateway system that allows Subscribers to enter, revise, and cancel orders (both Firm and Conditional Orders are supported); and (2) a

proprietary matching engine. The ICX Conditional Order Book is made available for Canadian symbols tradeable on ICX through the Conditional Order engine, which also facilitates the resulting firm-up process for Conditional Orders. While the ICX Conditional Order Book is distinct from the ICX Order Book, Subscribers submit and manage Conditional Orders on the ICX Conditional Order Book, via FIX, in the same manner they may submit and manage orders transmitted to the ICX Order Book. Subscribers transmitting Conditional Orders on the ICX Conditional Order Book or orders to the ICX Order Book will continue to be responsible for complying with UMIR requirements including any risk or other market access controls related to any Direct Electronic Access or other routing arrangements they may provide to their clients. ICX only accepts Firm or Conditional Orders from ICX Subscribers; ICX does not accept orders directly from the clients or customers of Subscribers (i.e. "sponsored access").

ICX will generate firm up messages for Conditional Orders where contra-side interest is eligible to match within the Canadian Best Bid and Offer (**CBBO**) by price, broker and time priority. Unmarketable Conditional Orders or those not in accordance with any Subscriber-selected minimum quantity requirements are not eligible to generate a firm-up message.

Subscribers with Conditional Orders in the ICX Conditional Order Book will be invited by ICX to "firm-up" their trading interest when contra-side Conditional Orders in the ICX Conditional Order Book or Firm Orders in the ICX Order Book are available subject to the order interaction methodologies described below. Subscribers may then choose to transmit an executable order to the ICX Order Book for potential matching and execution, which is commonly known as a "firm-up". The Conditional Orders that generate firm-up requests to trade will be cancelled on the ICX Conditional Order Book. Subscribers can re-enter a new Conditional Order after they receive the invitation. These processes, and an associated compliance mechanism designed to limit potential information leakage, are described in further detail below.

Workflow examples of order flows are set out in the attached Appendix.

1. Description of Algorithmic and Manual Conditional Orders

There will be two new classes of Conditional Orders: Algorithmic Conditional Orders and Manual Conditional Orders. ICX Subscribers may transmit either or both types of Conditional Orders. During the setup, configuration, and testing process related to Conditional Orders, ICX Subscribers will be asked to identify whether they are utilizing automated order systems to transmit Conditional Orders. ICX will classify Algorithmic Conditional Orders as orders transmitted by automated order systems, and ICX will classify Manual Conditional Orders as orders that do not originate from automated order systems. ICX Subscribers utilizing both types of systems may transmit both types of Conditional Orders, utilizing a FIX tag to identify the type of Conditional Order the Subscriber is transmitting. Upon Subscriber setup and on an ad hoc basis afterwards, to the extent that a Subscriber's firm up response times or rates differ from the expected response times or rates of the applicable class of Conditional Orders, ICX may discuss this with the relevant Subscriber, and/or request that the Subscriber modify the Conditional Order classification utilized by the Subscriber.

Both classes of Conditional Orders may also include the following order instructions:

- Minimum Executable Quantity
- Time in Force (Day, Immediate or Cancel)
- Limit or Market Price instruction

2. Description of the Match Instruction

ICX proposes the introduction of a new FIX Tag to facilitate Subscribers' Match Instruction(s) by transmitting an alphanumeric value on the firm order message sent to ICX. A Match Instruction allows Subscribers to make their firm orders eligible to generate invitations to firm up for eligible contra side Conditional Orders.

While Subscribers may utilize the Match Instruction to limit their potential interactions with contra-side Conditional Orders, Subscribers are not able to limit the interactions of their Firm Orders with respect to contra-side Firm Orders. When a Subscriber transmits a Firm Order to ICX, whether as a result of an invitation to firm up or independent of any such invitation, the Firm Order will trade with any matching contra side Firm Order(s), without regard to whether those orders originated from a firm up invitation.

Subscribers may elect that their Firm Orders (including Firm Orders in response to an invitation) interact with, (1) both Algorithmic and Manual Conditional orders or (2) no Conditional Orders. Absent an affirmative Match Instruction, Firm Orders (including Firm Orders in response to an invitation) will be ineligible to interact with Conditional Orders. Subscribers submitting Conditional Orders cannot elect that their orders interact with Algorithmic and Manual Conditional orders, or Firm orders. Conditional Orders may interact with all other Conditional Orders and Firm orders that have elected to interact with Conditional Orders. In addition to a Match Instruction, for a firm up to occur between a Conditional Order and a Firm Order, both the Conditional and Firm Orders must meet certain minimum size thresholds. To be eligible to firm up, both the Conditional and Firm Orders must have a minimum order size of either (a) at least 51 standard trading units and $30,000 in notional value, or (b) at least $100,000 in notional value.

When the Match Instruction has been elected and ICX identifies a potential contra-side Conditional Order, the Subscriber with the relevant eligible Conditional Orders will receive an invitation to firm-up, as described below. Such invitation will only provide the symbol and side (i.e., buy or sell) of the trading opportunity but will not display the size, the limit price, the type of order, whether the contra side liquidity is immediately actionable or the counterparty identity of the contra. Similarly, any pricing instruction of the contra may be inferred to be at or better than the CBBO mid-point, but the actual contra's limit may not be inferred.

3. Order Interaction, Matching and Execution

If the proposed change is approved, ICX will offer the following types of Conditional Order interactions:

- Algorithmic to Algorithmic (this interaction is identical to the current ICX Conditional Order offering);
- Manual to Manual; and
- Algorithmic to Manual or Manual to Algorithmic.

Additionally, if the proposed change is approved the following types of interactions may occur between Conditional Orders and Firm Orders that have elected to interact with Conditional Orders:

- Algorithmic to Firm Order (with elected Match Instruction)
- Manual to Firm Order (with elected Match Instruction)

Because of the differences between the Subscriber systems or processes that transmit Algorithmic Conditional Orders as opposed to Manual Conditional Orders (i.e., Algorithmic Conditional Orders are transmitted by automated order systems and typically respond in sub-second increments whereas Manual Conditional Orders will often originate from human traders who will not typically respond in sub-second time increments), ICX proposes to introduce differing message sequences and expected response times depending upon the types of contra side Conditional Orders that are involved in a potential match. These different message sequences are designed to facilitate and improve operational processes for both types of Conditional Orders, including by providing human traders additional time to respond to a potential trading opportunity than would be needed by an automated system, as described in greater detail below.

For Algorithmic to Algorithmic Conditional Order interactions, the process will be as follows:

Invitations to firm up will be transmitted simultaneously to both Subscribers. Upon receiving an invitation to firm up, Algorithmic Subscribers are expected to respond in five seconds or less. Upon transmission of an invitation to firm up, ICX will cancel the associated Conditional Order.

If a Subscriber rejects the notification, (whether by affirmatively declining the trading opportunity or allowing the invitation to time out) the Subscriber's Conditional Order will already have been cancelled and the Subscriber will not receive a trade. If a Subscriber accepts the notification, the Subscriber submits a Firm Order to the ICX Order Book providing information that references the Subscriber's original Conditional Order. Subscribers may also include additional instructions (e.g., specify a time in force, such as Day or Immediate or Cancel) for their Firm Order. Once a Subscriber routes a Firm Order in response to an invitation to the ICX Order Book, the order is immediately eligible for matching and execution with contra side Firm Orders in accordance with existing ICX matching and execution logic, including with any other Firm Orders (e.g. Firm Orders related to Manual or Algorithmic Conditional Orders as well as Firm Orders unrelated to Conditional Orders) that may be resting on the ICX Order Book. However, a Firm Order transmitted in response to an invitation to firm up following a match with a contra side Algorithmic Conditional Order will not interact with any other contra side Conditional Orders in the ICX Conditional Order Book until the sooner of (i) 5 seconds from the time of the invitation; or (ii) when the contra has responded. After 5 seconds have elapsed or when the contra side has responded, if sooner, a Firm Order that remains unexecuted and has not been cancelled may interact with another Conditional Order, resulting in an invitation to firm up to the contra side Conditional Order, as described in detail below. All executions on ICX are done at the CBBO mid-point.

For Manual to Manual Conditional Order interactions, the process will be as follows:

Invitations to firm up will be transmitted simultaneously to both Subscribers. Upon receiving the notification to firm up, Manual Subscribers are expected to respond within 30 seconds. Upon transmission of an invitation to firm up, ICX will cancel the associated Conditional Order.

If a Subscriber rejects the notification, (whether by affirmatively declining the trading opportunity or allowing the invitation to time out) the Subscriber's Conditional Order will already have been cancelled and the Subscriber will not receive a trade. If a Manual Subscriber accepts the invitation to firm up, the Subscriber may do so by:

(1) Routing a Firm Order to the ICX Order Book providing information that references the Subscriber's original Conditional Order. Subscribers may also include additional instructions (e.g., specify a time in force, such as

Day or Immediate or Cancel) for their Firm Order. Once a Subscriber routes a Firm Order in response to an invitation to the ICX Order Book, the order is immediately eligible for matching and execution with contra side Firm Orders in accordance with existing ICX matching and execution logic, including with any other Firm Orders (e.g. Firm Orders related to Manual or Algorithmic Conditional Orders as well as Firm Orders unrelated to Conditional Orders) that may be resting on the ICX Order Book. However, a Firm Order transmitted in response to an invitation to firm up following a match with a contra side Manual Conditional Order will not interact with any other contra side Conditional Orders in the ICX Conditional Order Book until the sooner of (i) 30 seconds have elapsed from the time of the invitation; or (ii) the time when the contra side has responded. All executions on ICX are done at the CBBO mid-point.

Or

(2) Utilizing an automated order system to submit an Algorithmic Conditional Order (referencing the Subscriber's original Manual Conditional Order) which will rest on the ICX Conditional Order Book. This process allows a Subscriber, in the event contraside activity is identified in response to a Manual Conditional Order, to automate its response to future invitations to firm up. For a period of 30 seconds from the time of the initial invitation or when the contra has responded, if sooner, Conditional Orders transmitted in response to an invitation to firm up following a match with a contra side Manual Conditional Order will only interact with a contra side Firm or Conditional Order related to the initial match. Algorithmic Conditional Orders transmitted in response to an invitation to Firm Up will not interact with any unrelated contra side Conditional Orders until 30 seconds have elapsed from the time of the initial invitation or when the contra has responded, if sooner. If both Manual Subscribers transmit Algorithmic Conditional Orders, ICX will follow the process as described above for Algorithmic to Algorithmic Conditional Order interactions. In the event one Manual Subscriber transmits a Firm Order and the other Manual Subscriber transmits an Algorithmic Conditional Order, ICX will follow the process as described below for Algorithmic to Firm Order (with elected Match Instruction) interactions.

Because manual workflows can take more time to respond than automated systems, utilizing workflow (2) above may allow Manual Subscribers to respond with an Algorithmic Conditional Order that will immediately respond with a firm order, if there is a contra at the time the Subscriber chooses to respond. If there is no contra, the Algorithmic Conditional order will not be invited to send a firm order. Responding with an Algorithmic Conditional Order also allows the Subscriber to automate the response of subsequent alerts and minimize missed trading opportunities with Algorithmic Conditional orders or Firm Orders (with elected Match Instruction) that may only be available for short duration.

For Algorithmic to Manual or Manual to Algorithmic Conditional Order interactions, the process will be as follows:

If a match occurs between an Algorithmic and Manual Conditional Order, ICX will first transmit an invitation to firm up to the Subscriber that transmitted the Manual Conditional Order. Upon transmission of an invitation to firm up, ICX will cancel the associated Conditional Order. The Subscriber that transmitted the Manual Conditional Order is expected to respond within 30 seconds. If the Subscriber accepts the invitation to firm up via the methods described below, ICX will then transmit an invitation to firm up to the Subscriber who submitted the paired Algorithmic Conditional Order Upon transmission of an invitation to firm up, ICX will cancel the associated Conditional Order.

The Manual Subscriber may accept or reject the notification (whether by affirmatively declining the trading opportunity or allowing the invitation to time out). If the Manual Subscriber rejects the notification, the Subscriber's Conditional Order will already have been cancelled and no invitation to firm up will be sent to the Algorithmic Conditional Order. If the Manual Subscriber chooses to accept the notification, the Manual Subscriber may do so by:

(1) Routing a Firm Order to the ICX Order Book providing information that references the Subscriber's original Conditional Order. Subscribers may also include additional instructions (e.g., specify a time in force such as Day or Immediate or Cancel) for their Firm Order. Once a Subscriber routes a Firm Order in response to an invitation to the ICX Order Book, the order is immediately eligible for matching and execution with contra side Firm Orders in accordance with existing ICX matching and execution logic, including with any other Firm Orders (e.g. Firm Orders related to Manual or Algorithmic Conditional Orders as well as Firm Orders unrelated to Conditional Orders) that may be resting on the ICX Order Book. Following the receipt of a Firm Order, ICX will transmit an invitation to firm up to the Subscriber who submitted the paired Algorithmic Conditional Order and follow the process as described below for Algorithmic to Firm Order (with elected Match Instruction) interactions. A Firm Order transmitted in response to an invitation to firm up following a match with a contra side Algorithmic Conditional Order will not interact with any other contra side Conditional Orders in the ICX Conditional Order Book until 5 seconds have elapsed from the time of the invitation or when the contra has responded, if sooner. All executions on ICX are done at the CBBO mid-point,

Or

(2) Utilizing an automated order system to submit an Algorithmic Conditional Order (referencing the Subscriber's original Manual Conditional Order) which will rest on the ICX Conditional Order Book. This process allows a Subscriber, in the event contraside activity is identified in response to a Manual Conditional Order, to automate its response to future invitations to firm up. For a period of 5 seconds from the time of the initial invitation or when the contra has responded, if sooner, Conditional Orders transmitted in response to an invitation to firm up following a match with a contra side Algorithmic Conditional Order will only interact with a contra side Firm or Conditional Order related to the initial match. During this period, ICX will follow the process as described above for Algorithmic to Algorithmic Conditional Order interactions.

Additionally, if the proposed change is approved the following types of interactions may occur between Conditional Orders and Firm Orders that have elected to interact with Conditional Orders:

- For Algorithmic to Firm Order (with elected Match Instruction), the process will be as follows:

An invitation to firm up will be transmitted to the Subscriber that transmitted the Algorithmic Conditional Order. The Subscriber receiving the invitation is expected to respond within 5 seconds. Upon transmission of an invitation to firm up, ICX will cancel the associated Conditional Order.

A Subscriber may accept or reject the notification (whether by affirmatively declining the trading opportunity or allowing the invitation to time out). If a Subscriber rejects the notification, the Subscriber's Conditional Order will already have been cancelled and the Subscriber will not receive a trade. In the event a Subscriber chooses to accept the notification, the Subscriber submits an order to the ICX Order Book providing information that references the Subscriber's original Conditional Order. Throughout this process, the Firm Order generating the invitation to firm up will remain eligible to match with other Firm Orders, but will not interact with additional contra side Conditional Orders. The Firm Order will be ineligible to interact with other Conditional Orders in the ICX Conditional Order Book while the invitation to firm up is outstanding for a period of 5 seconds or when the contra has responded, if sooner. Subscribers may also include additional instructions (e.g., specify a time in force, such as Day or Immediate or Cancel) for their Firm Order. Once a Firm Order is routed to ICX Order Book, the order is eligible for matching and execution in accordance with existing ICX matching and execution logic. All executions on ICX are done at the CBBO mid-point.

- For Manual to Firm Order (with elected Match Instruction), the process will be as follows:

An invitation to firm up will be sent to the Subscriber that transmitted the Manual Conditional Order. The Manual Subscriber is expected to respond within 30 seconds. Upon transmission of an invitation to firm up, ICX will cancel the associated Conditional Order.

The Manual Subscriber may accept or reject the notification (whether by affirmatively declining the trading opportunity or allowing the invitation to time out). If the Manual Subscriber rejects the notification, the Manual Subscriber's Conditional Order will already have been cancelled and the Manual Subscriber will not receive a trade. Throughout this process, the Firm Order generating the invitation to firm up will remain eligible to match with other Firm Orders, but will not interact with additional contra side Conditional Orders. The Firm Order will be ineligible to match with other Conditional Orders in the ICX Conditional Order Book while the invitation to firm up is outstanding for a period of 30 seconds or when the contra has responded, if sooner.

If the Manual Subscriber chooses to accept the notification, the Manual Subscriber may do so by:

(1) Routing a Firm Order to the ICX Order Book providing information that references the Subscriber's original Conditional Order. This order is eligible for matching and execution in accordance with existing ICX matching and execution logic. Subscribers may also include additional instructions (e.g., specify a time in force, such as Day or Immediate or Cancel) for their Firm Order. All executions on ICX are done at the CBBO mid-point.

Or

(2) Utilizing an automated order system to submit an Algorithmic Conditional Order (referencing the Subscriber's original Manual Conditional Order) which will rest on the ICX Conditional Order Book. Such orders are eligible for matching and execution in accordance with existing ICX matching and execution logic and the processes described herein. This process allows a Subscriber, in the event contraside activity is identified in response to a Manual Conditional Order, to automate its response to future invitations to firm up. In such an event, ICX will follow the process as described above for Algorithmic to Firm Order (with elected Match Instruction) interactions.

4. Compliance Mechanism

As part of this proposed change, ICX will modify the existing compliance mechanism for Conditional Orders, which is intended to limit information leakage. ICX will continue to monitor Conditional Orders transmitted and related firm-up rates for each Subscriber in order to limit a Subscriber's ability to receive information about potential trading interest within the ICX without transmitting related Firm Orders to ICX. Subscribers transmitting Algorithmic Conditional Orders will be evaluated as to whether they transmit a Firm Order in a five second time period.

In the event that a Subscriber's individual user ID or connection firm-up rate drops below 50% for the relevant trade date, provided that no less than 10 firm up notifications have been sent, ICX will manually suspend such a Subscriber's ability to send new Conditional Orders for the duration of that trading day.

At the time such restriction is implemented, ICX personnel will attempt to contact or notify the relevant Subscriber on a best efforts basis. At the start of each subsequent trading day, the restriction will be lifted. On a periodic basis (e.g., monthly), ICX personnel will review each Subscriber's firm-up rate and group Subscribers into quartiles based upon their firm-up rates over the relevant time period. Subscribers that are grouped into the lowest quartile based upon their firm-up rate in three consecutive periods will be further reviewed for their fall down rates. ICX personnel will inquire as to the reason for the relatively high fall-down rates and use this information to determine whether additional action is necessary. ICX will temporarily prohibit a Subscriber user ID from submitting additional Conditional Orders when that Subscriber user ID or connection is associated with less than 50% firm-up rates over the three periods. The compliance system is predicated on the premise that Subscribers can use multiple venues for their conditional orders and ICX may experience lower than anticipated firm-up rates depending on how the Subscribers integrate the various competing venue offerings and options. The bottom quartile is being used to identify a population of Subscribers that consistently demonstrates low firm-ups rates that may decrease the quality and experience by other Subscribers that have consistently higher firm-up rates. ICX believes this compliance mechanism will encourage higher firm-up rates and more liquidity and is reasonably designed to allow for compliance with Ontario securities law, as explained in Section E below.

5. Fees

Current ICX fees will apply to trades resulting from a Conditional Order. If, in the future, one or more new fees are determined to be appropriate with respect to trades that result from a Conditional Order, ICX will file a fee change amendment to our Form 21-101F2 at such future time.

B. Expected Implementation Date

The Proposed Change is expected to be implemented 60 days after approval by OSC Staff.

C. Rationale for the proposed change

The proposed changes will allow ICX to add liquidity and value by improving its current order offerings.

The Match Instruction feature and the different Conditional Order classes will promote fair-access by allowing Subscribers to ICX the opportunity to interact with greater levels of large size orders without impacting the pricing mechanisms of existing marketplaces in Canada. Features similar to the proposed Match Instruction are already in use on marketplaces in Canada, and in the United States and Europe.

The different Conditional Order classes will facilitate block size interactions for both automated order systems as well as market participants that may not utilize automated order systems.

D. Expected impact of the proposed change on Market Structure, Subscribers, Investors and the capital markets

The proposals described in this letter are expected to have positive impacts on market structure, subscribers, investors and capital markets by expanding the liquidity and price improvement options for large-sized orders in Canada. The proposed classes of Conditional Orders and the Match Instruction feature are substantially similar to other conditional order types and features currently offered by other Canadian marketplaces such as MatchNow. ICX expects to continue to operate as a non-displayed dark market. Conditional Orders will be handled as described above and will not be displayed.

ICX believes that the addition of different Conditional Order classes will encourage block size trading and benefit Canadian investors. Specifically, the proposed changes will permit ICX Subscribers to utilize proprietary systems to submit Automated Conditional Orders as well as to allow human traders to enter and interact with block size trading interest in ICX via Manual Conditional Orders. Subscribers may also choose whether to integrate their systems with third party order management systems utilized by their customers when facilitating block sized transactions in ICX in a manner that complies with UMIR requirements. Other marketplaces support a sponsored access model; ICX believes its different workflows and classes of Conditional Orders will provide an alternative.

E. Expected impact of the proposed change on ICX's compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market

We foresee no negative impact with respect to compliance with Ontario securities law and the requirements for fair access.

In particular, the proposed Match Instruction and Conditional Order types would be optional and would be made available to all ICX Subscribers. All ICX Subscribers would be permitted to use any order type they wished to utilize, based upon their operational workflows and the systems they utilize to transmit orders to ICX. All marketplace participants will be subject to the same rules and conditions; no individual or group will have any unfair advantage or disadvantage relative to other parties. All Firm Orders from all

ICX Subscribers will continue to execute via an identical protocol. All order types are available for all Subscribers. We believe these factors are in accordance with the "fair access" requirements set out in section 5.1 of National Instrument 21-101 - *Marketplace Operation* ("**NI 21-101**").

While optional, ICX believes that the addition of a flexible Conditional workflows in furtherance of block size trading will benefit Canadian investors and contribute to fair and orderly markets. As described above, Subscribers may choose whether to integrate their systems with third party order management systems utilized by their customers when facilitating block sized transactions in ICX in a manner that complies with UMIR requirements. Other marketplaces support a sponsored access model; ICX believes its different workflows and classes of Conditional Orders will provide an alternative that is beneficial to Canadian investors.

ICX will take reasonable steps to monitor order entry and trading activity through the proposed Conditional Order types for compliance with ICX's operational policies and procedures, as well as to encourage compliance with securities laws and the rules of ICX's regulatory services provider (IIROC), just as it does for all order types, in accordance with the "fair and orderly markets" requirements set out in section 5.7 of NI 21-101 and subsections 7.6(2) and (3) of the Companion Policy to NI 21-101 ("**21-101CP**").

Subsection 7.1(1) of NI 21-101 requires that a marketplace that "displays" orders of exchange-traded securities to a person or company provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor (the "**Pre-Trade Information Transparency Requirement**"). Section 1.1 of NI 21-101 defines the term "order" as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. Subsection 5.1(2) of 21-101CP notes that the Canadian securities regulatory authorities will consider an indication to be 'firm' (and therefore to constitute an 'order') if it is actionable i.e., it can be executed without further discussion between the person or company entering the indication and the counterparty. A Firm Order interacting with a Conditional Order could be considered actionable.

Under the Match Instruction feature, the invitation sent to the Conditional Order could be considered to be a "display" of the Firm Order that generated it, and would require ICX to provide the order information to the information processor pursuant to subsection 7.1(1) of NI 21-101 —something that ICX, as a "dark" marketplace, does not do.

For this reason, ICX has separately applied to the securities regulatory authority or regulator in Ontario, Quebec, Alberta, Manitoba and British Columbia for an order granting ICX exemptive relief from the Pre-Trade Transparency Requirement pursuant to section 15.1 of NI 21-101. The considerations that ICX has articulated in support of its exemptive relief application may be summarized as follows:

(1) The Match Instruction feature will facilitate large-sized trades, as only Firm Orders that meet the designated threshold (51 standard trading units and $30,000 or $100,000) may opt in to interact with Conditional Orders, which will also be required to meet the same threshold.

(2) The Match Instruction Feature only becomes available if a Subscriber takes the affirmative action of designating that its Firm Orders interact with Conditional Orders (on an order-by-basis, or as a "default" for all the Subscriber's Firm Orders).

(3) When a Firm Order so designated offers contra-side liquidity for a Conditional Order, the invitation to firm up sent to the Subscriber that placed the Conditional Order will only provide the symbol and side (i.e., buy or sell) of the Firm Order. The size of the Firm Order may be inferred since the Match Instruction interaction will be limited to the minimum size requirements set out above. Similarly, the contra-side's price may be inferred since it will be at or better than the Canadian Best Bid and Offer mid-point.

(4) When a Firm Order so designated offers contra-side liquidity for a Conditional Order, the Subscriber that placed the Conditional Order and that is receiving the invitation to firm up will be unable to determine whether the contra side order is another Conditional Order or a Firm Order.

(5) There can be no guarantee that the Subscriber who entered the Conditional Order will 'firm up' the invitation in a Match Instruction interaction. In the meantime, the Firm Order remains eligible to trade with other Firm Orders on the ICX Order Book.

F. Summary of consultations undertaken in formulating the proposed change and the internal governance process followed to approve it

ICX discussed the proposed change with several Subscribers and received supportive responses. The Proposed Change was approved by the management of ICX.

G. If the proposed change will require subscribers or service vendors to modify their systems after implementation, the expected impact on the systems of subscribers and service vendors together with an estimate of the amount of time needed to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the proposed change on ICX, its market structure, subscribers, investors or the Canadian capital markets

The proposed change will require some work by existing Subscribers to modify their own systems, but only insofar as they wish to utilize Conditional Orders, because this is optional functionality.

ICX could not make a reasonable estimate of the time needed for Subscribers to modify their own systems as a result of the proposed change, as this will depend on the specific circumstances of each Subscriber.

ICX will update its FIX specification document and make it publicly available, including to ICX Subscribers no fewer than 45 days prior to implementing the proposed changes. ICX personnel will support client testing related to the changes and assist Subscribers in their efforts to utilize the new functionality.

H. Where the proposed change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment

Not applicable.

I. Alternatives Considered

None.

J. If applicable, whether the proposed Significant Change would introduce a feature that currently exists in other markets or jurisdictions

Both the implementation of two conditional order types (Manual and Algorithmic) and the potential for matching and execution between firm and conditional orders are features that ICX affiliates currently offer market participants in the United States and Europe. Many of the components of the proposed change described above are similar to features of the BlockCross ATS (United States)[1] and BlockMatch (Europe).[2]

[1] Offered by Instinet, LLC.
[2] Offered by Instinet Europe Limited.

Appendix: Workflow examples

Example 1: Algorithmic to Algorithmic Conditional Interaction – Time Priority

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Algo
Conditional Order 2	100,000	Buy	MidPeg	50.02	9:32 AM	Broker B	Algo
Conditional Order 3	40,000	Sell	MidPeg	50.01	9:33 AM	Broker C	Algo

Step 1
Conditional Order 1 is invited to Firm Up; Conditional Order 1 is cancelled on the ICX Conditional Order Book (9:33:00 AM)

Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book (9:33:00 AM)

Conditional Order 2 remains open on ICX Conditional Order Book

Step 2
Broker A sends Firm Order to buy 50,000 shares @ 50.02 referencing Conditional Order 1. This order is eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when the Broker C responds, if sooner.

Broker C sends Firm Order to sell 40,000 shares @ 50.01 referencing Conditional Order 3. This order is eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when Broker A responds, if sooner.

Step 3
Broker A gets a fill for 40,000 shares @ 50.015 and the 10,000 share balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX Firm orders and contra side Conditional Orders until canceled or expired

Broker C gets a fill for 40,000 shares @ 50.015.

Example 2: Algorithmic to Algorithmic Conditional Interaction – Time Priority with Price and Quantity Adjustment in Firm Up

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Algo
Conditional Order 2	100,000	Buy	MidPeg	50.02	9:32 AM	Broker B	Algo
Conditional Order 3	40,000	Sell	MidPeg	50.01	9:33 AM	Broker C	Algo

Step 1
Conditional Order 1 is invited to Firm Up; Conditional Order 1 is cancelled on the ICX Conditional Order Book (9:33 AM)

Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book (9:33 AM)

Conditional Order 2 remains open on ICX Conditional Order Book

Step 2
Broker A sends Firm Order to buy 60,000 shares @ 50.04 referencing Conditional Order 1. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when Broker C responds, if sooner.

Broker C sends Firm Order to sell 30,000 shares @ 50.01 referencing Conditional Order 3. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when Broker A responds, if sooner.

Step 3
Broker A gets a fill for 30,000 shares @ 50.015 and the 30,000 share balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders and contra side Conditional Orders until canceled or expired.

Broker C gets a fill for 30,000 shares @ 50.015.

Example 3: Algorithmic to Algorithmic Conditional Interaction – Time Priority and subsequent Conditional Interaction

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Algo
Conditional Order 2	100,000	Buy	MidPeg	50.02	9:32 AM	Broker B	Algo
Conditional Order 3	80,000	Sell	MidPeg	50.01	9:33 AM	Broker C	Algo

Step 1
Conditional Order 1 is invited to Firm Up; Conditional Order 1 is cancelled on the ICX Conditional Order Book (9:33:00 AM)

Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book (9:33:00 AM)

Conditional Order 2 remains open on ICX Conditional Order Book

Step 2
Broker A sends a Firm Order to buy 50,000 shares @ 50.02 referencing Conditional Order 1. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when Broker C responds, if sooner. (9:33:01 AM)

Broker C sends Firm Order to sell 80,000 shares @ 50.01 referencing Conditional Order 3. Broker 3 has also elected for the Firm order to interact with Conditional Orders. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when Broker A responds, if sooner. (9:33:02 AM)

Step 3
Broker A gets a fill for 50,000 shares @ 50.015.(9:33:02 AM)

Broker C gets a fill for 50,000 shares @ 50. 015 and the 30,000 share balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders and contra side Conditional Orders until canceled or expired. (9:33:02 AM)

Step 4
Conditional Order 2 is invited to Firm Up; Conditional Order 2 is cancelled on the ICX Conditional Order Book (9:33:02 AM).

Step 5
Broker B sends a Firm Order to buy 100,000 shares @ 50.02 referencing Conditional Order 2. This order is immediately eligible to interact with any resting Firm orders in ICX.

Step 6
Broker B gets a fill for 30,000 shares @ 50.015 and the 70,000 share balance of their Firm order rests in the ICX order book.

Broker C gets a fill for 30,000 shares @ 50. 015.

Example 4: Algorithmic to Algorithmic Conditional Interaction – Firm Up Order is not eligible to trade at CBBO midpoint

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Algo
Conditional Order 2	100,000	Buy	MidPeg	50.02	9:32 AM	Broker B	Algo
Conditional Order 3	40,000	Sell	MidPeg	50.01	9:33 AM	Broker C	Algo

Step 1
Conditional Order 1 is invited to Firm Up; Conditional Order 1 is cancelled on the ICX Conditional Order Book (9:33:00 AM)

Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book (9:33:00 AM)

Conditional Order 2 remains open on ICX Conditional Order Book

Step 2
Broker A sends Firm Order to buy 50,000 shares @ 50.01 referencing Conditional Order 1. This order is eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when Broker C responds, if sooner.

Broker C sends Firm Order to sell 40,000 shares @ 50.01 referencing Conditional Order 3. This order is eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 5 seconds after the invitation to firm up was sent, or when Broker A responds, if sooner.

Step 3
No trade occurs as the CBBO midpoint (50.015) is above the limit price of Broker A's Firm Order.

Example 5: Manual to Manual Conditional interaction; Firm Order responses, no fall down.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Manual
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	Manual

Step 1
Conditional Order 1 is invited to Firm Up; Conditional order 1 is cancelled on the ICX Conditional Order Book

Conditional Order 2 is invited to Firm Up; Conditional order 2 is cancelled on the ICX Conditional Order Book

Step 2
Broker A sends Firm Order to buy 50,000 shares @ 50.02 referencing Conditional Order 1. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 30 seconds after the invitation to firm up was sent, or when Broker B responds, if sooner.

Broker B sends Firm Order to sell 25,000 shares @ 50.01 referencing Conditional Order 2. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 30 seconds after the invitation to firm up was sent, or when Broker A responds, if sooner.

Step 3
Broker A gets a partial fill for 25,000 shares @ 50.015 and the 25,000 share balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders and contra side Conditional Orders until canceled or expired.

Broker B gets a fill for 25,000 shares @ 50.015.

Example 6: Manual to Manual Conditional interaction; Algorithmic Conditional Order responses, no fall down.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Manual
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	Manual

Step 1
Conditional Order 1 is invited to Firm Up; Conditional order 1 is cancelled on the ICX Conditional Order Book

Conditional Order 2 is invited to Firm Up; Conditional order 2 is cancelled on the ICX Conditional Order Book

Step 2
Broker A sends Algorithmic Conditional Order (Conditional Order 3) to buy 50,000 shares @ 50.02 referencing Conditional Order 1. This Conditional order is eligible to interact immediately with a contra side Conditional Order or Firm Order related to the Conditional Order 2 but is ineligible to interact with unrelated contra side Firm or Conditional Orders for 30 seconds after the initial invitation to Firm Up, or when Broker B responds, if sooner. (9:32:05 AM)

Broker B sends Algorithmic Conditional Order (Conditional Order 4) to sell 25,000 shares @ 50.01 referencing Conditional Order 2. This Conditional order is eligible to interact immediately with a contra side Conditional Order or Firm Order related to the Conditional Order 1 but is ineligible to interact with unrelated contra side Firm or Conditional Orders for 30 seconds after the initial invitation to Firm Up, or when Broker A responds, if sooner. (9:32:10 AM)

Step 3
Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book (9:32:10 AM)

Conditional Order 4 is invited to Firm Up; Conditional Order 4 is cancelled on the ICX Conditional Order Book (9:32:10 AM)

Step 4
Broker A sends Firm Order to buy 50,000 shares @ 50.02 referencing Conditional Order 3. This order is eligible to interact immediately with a contra side Firm Order but is ineligible to interact with unrelated contra side Conditional Orders for 5 seconds after the second invitation to Firm Up, or when Broker B responds, if sooner. (9:32:11 AM)

Broker B sends Firm Order to sell 25,000 shares @ 50.01 referencing Conditional Order 4. This order is eligible to interact immediately with a contra side Firm Order but is ineligible to interact with unrelated contra side Conditional Orders for 5 seconds after the second invitation to Firm Up, or when Broker A responds, if sooner. (9:32:12 AM)

Step 5
Broker A gets a partial fill for 25,000 shares @ 50.015 and the 25,000 share balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders and contra side Conditional Orders until canceled or expired.

Broker C gets a fill for 25,000 shares @ 50.015.

Example 7: Algo to Manual Conditional interaction; Algo Conditional Order response from the Manual Conditional Order, no fall down.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Algo
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	Manual

Step 1
Conditional Order 2 is invited to Firm Up; Conditional Order 2 is cancelled on the ICX Conditional Order Book

Step 2
Broker B sends an Algorithmic Conditional Order (Conditional Order 3) to sell 25,000 shares @ 50.01 referencing Conditional Order 2. This order is eligible to interact immediately with a contra side Conditional Order or Firm Order related to the Conditional Order 1 but is ineligible to interact with unrelated contra side Firm or Conditional Orders for 5 seconds after the initial invitation to Firm Up, or when Broker A responds, if sooner.

Step 3
Conditional Order 1 is invited to Firm Up; Conditional Order 1 is cancelled on the ICX Conditional Order Book

Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book

Step 4
Broker A sends Firm Order to buy 50,000 shares @ 50.02 referencing Conditional Order 1. This order is eligible to interact immediately with a contra side Firm Order but is ineligible to interact with unrelated contra side Conditional Orders for 5 seconds after the invitation to Firm Up, or when Broker B responds, if sooner.

Broker B sends Firm Order to sell 25,000 shares @ 50.01 referencing Conditional Order 3. This order is eligible to interact immediately with a contra side Firm Order but is ineligible to interact with unrelated contra side Conditional Orders for 5 seconds after the second invitation to Firm Up or when Broker A responds, if sooner.

Step 5
Broker A gets a partial fill for 25,000 shares @ 50.015 and the balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders and contra side Conditional Orders until canceled or expired.

Broker B gets a fill for 25,000 shares @ 50.015.

Example 8: Algo to Manual Conditional interaction; fall down by Manual Conditional Order.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Algo
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	Manual

Step 1
Conditional Order 2 is invited to Firm Up; Conditional Order 2 is cancelled on the ICX Conditional Order Book

Step 2
Broker B does not send either an Algorithmic Conditional Order or a Firm Order in response.

Conditional Order 1 remains open on the ICX Conditional Order Book

Example 9: Algorithmic Conditional Order to Firm Order (with elected Match Instruction), no fall down.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	MatchInstruction	Manual / Algorithmic / Firm
Firm Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Interact with Conditional Orders (7098=B)	Firm
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	N/A	Algo

Step 1
Conditional Order 2 is invited to Firm Up; Conditional Order 2 is cancelled on the ICX Conditional Order Book

Step 2

Broker B sends Firm Order 3 to sell 25,000 shares @ 50.01 referencing Conditional Order 2.

Step 3
Broker A gets a partial fill for 25,000 shares @ 50.015 and the balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders until canceled or expired.

Broker B gets a fill for 25,000 shares @ 50.015.

Example 10: Algorithmic Conditional Order to Firm Order (without elected Match Instruction).

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	MatchInstruction	Manual / Algorithmic / Firm
Firm Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	None specified	Firm
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	N/A	Algo

Step 1
There is no match because the Firm order is ineligible to match with the Conditional Order

Example 11: Manual Conditional Order to Firm Order (with elected Match Instruction), no fall down.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	MatchInstruction	Manual / Algorithmic / Firm
Firm Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Interact with Conditional Orders (7098=B)	Firm
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	N/A	Manual

Step 1
Conditional Order 2 is invited to Firm Up; Conditional Order 2 is cancelled on the ICX Conditional Order Book

Step 2
Broker B sends Firm Order 3 to sell 25,000 shares @ 50.01 referencing Conditional Order 2.

Step 3
Broker A gets a partial fill for 25,000 shares @ 50.015 and the balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders until canceled or expired.

Broker B gets a fill for 25,000 shares @ 50.015.

Example 12: Manual Conditional Order to Firm Order (with elected Match Instruction), Algo Conditional Response, no fall down.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	MatchInstruction	Manual / Algorithmic / Firm
Firm Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Interact with Conditional Orders (7098=B)	Firm
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	N/A	Manual

Step 1
Conditional Order 2 is invited to Firm Up; Conditional Order 2 is cancelled on the ICX Conditional Order Book

Step 2
Broker B sends Algo Conditional Order 3 to sell 25,000 shares @ 50.01 referencing Conditional Order 2

Step 3
Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book

Step 4
Broker B sends Firm Order 4 to sell 25,000 shares @ 50.01 referencing Conditional Order 3

Step 5
Broker A gets a partial fill for 25,000 shares @ 50.015 and the balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders until canceled or expired.

Broker B gets a fill for 25,000 shares @ 50.015.

Example 13: Manual to Manual Conditional interaction; Firm Order responses, no fall down; residual Firm Order then interacts with another Conditional Order.

CBBO: 50.01 by 50.02

Order	Quantity	Side	Type	Price	Time	Broker	Manual / Algorithmic / Firm
Conditional Order 1	50,000	Buy	MidPeg	50.02	9:31 AM	Broker A	Manual
Conditional Order 2	25,000	Sell	MidPeg	50.01	9:32 AM	Broker B	Manual
Conditional Order 3	25,000	Sell	MidPeg	50.01	9:32 AM	Broker C	Manual

Step 1
Conditional Order 1 is invited to Firm Up; Conditional order 1 is cancelled on the ICX Conditional Order Book at 9:32:00.

Conditional Order 2 is invited to Firm Up; Conditional order 2 is cancelled on the ICX Conditional Order Book at 9:32:00.

Step 2
Broker A sends Firm Order to buy 50,000 shares @ 50.02 referencing Conditional Order 1. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 30 seconds after the invitation to firm up was sent, or when Broker B responds, if sooner.

Broker B sends Firm Order to sell 25,000 shares @ 50.01 referencing Conditional Order 2. This order is immediately eligible to interact with any resting Firm orders in ICX but is ineligible to interact with contra side conditional orders for 30 seconds after the invitation to firm up was sent, or when Broker A responds, if sooner.

Step 3
Broker A gets a partial fill for 25,000 shares @ 50.015 and the 25,000 share balance of their Firm order rests in the ICX order book and is eligible to interact with other ICX orders and contra side Conditional Orders until canceled or expired.

Broker B gets a fill for 25,000 shares @ 50.015.

Step 4
Conditional Order 3 is invited to Firm Up; Conditional Order 3 is cancelled on the ICX Conditional Order Book.

Step 5
Broker C sends Firm Order to sell 25,000 shares @ 50.01 referencing
Conditional Order 3.

Step 6
Broker A gets a fill for 25,000 shares @ 50.015.

Broker C gets a fill for 25,000 shares @ 50.015.

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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.