The Ontario Securities Commission

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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 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
December 7, 2022

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

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

A copy of the Reasons for Decision dated December 6, 2022 is available at capitalmarketstribunal.ca.

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A.2.2 Michael Paul Kraft and Michael Brian Stein

FOR IMMEDIATE RELEASE
December 7, 2022

MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN,
File No. 2021-32

TORONTO – Take notice of the merits hearing time change on December 8, 2022 in the above named matter. The hearing on December 8, 2022 scheduled to commence at 10:00 a.m. will instead commence at 9:00 a.m.

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A.2.3 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
December 8, 2022

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

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

A copy of the Order dated December 8, 2022 is available at capitalmarketstribunal.ca.

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A.2.4 Michael Paul Kraft and Michael Brian Stein

FOR IMMEDIATE RELEASE
December 9, 2022

MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN,
File No. 2021-32

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

A copy of the Order dated December 9, 2022 is available at capitalmarketstribunal.ca.

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A.2.5 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
December 9, 2022

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

TORONTO – Take notice that the motion hearing in the above named matter scheduled to be heard on December 15, 2022 at 10:00 a.m. will instead be heard on January 19, 2023 at 1:30 p.m.

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A.3
Orders

A.3.1 Xiao Hua (Edward) Gong

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

File No. 2022-14

Adjudicators: Russell Juriansz (chair of the panel)
Tim Moseley

December 8, 2022

ORDER

WHEREAS on December 8, 2022, the Capital Markets Tribunal held a hearing by videoconference;

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

IT IS ORDERED THAT:

1. by 4:30 p.m. on December 23, 2022, Staff shall serve and file responding materials on the respondent's motion regarding the use of certain materials in Staff's possession (the **Materials Motion**);

2. by 4:30 p.m. on January 10, 2023, the respondent shall serve and file reply materials, if any, on the Materials Motion;

3. the Materials Motion is scheduled to be heard on January 26, 2023 at 11:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Russell Juriansz"

"Tim Moseley"

A.3.2 Michael Paul Kraft and Michael Brian Stein

IN THE MATTER OF
MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN

File No. 2021-32

Adjudicators: Andrea Burke (chair of the panel)
M. Cecilia Williams
Sandra Blake

December 9, 2022

ORDER

WHEREAS on December 9, 2022, the Capital Markets Tribunal concluded the evidentiary portion of the merits hearing in this proceeding;

AND WHEREAS Michael Paul Kraft has indicated he intends to advance a conditional constitutional argument (**Charter Argument**) as part of his closing submissions on the merits;

ON HEARING the submissions of the representatives for Staff of the Ontario Securities Commission (**Staff**) and the representatives for each of Michael Paul Kraft and Michael Brian Stein;

IT IS ORDERED THAT:

1. by 4:30 p.m. on January 17, 2023, Staff shall serve and file its written closing submissions on the merits;
2. by 4:30 p.m. on January 31, 2023:
    a. the respondents shall serve and file their responding written closing submissions on the merits; and
    b. Kraft shall serve and file his written submissions on the Charter Argument;
3. by 4:30 p.m. on February 7, 2023:
    a. Staff shall serve and file its written reply closing submissions on the merits, if any; and
    b. Staff shall serve and file its written responding submissions on the Charter Argument;
4. by 4:30 p.m. on February 10, 2023, Kraft shall serve and file his written reply submissions on the Charter Argument, if any;
5. the merits hearing date scheduled for December 19, 2022 is vacated; and
6. oral closing submissions on the merits and Charter Argument shall be heard on February 14, 2023, at 9:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

“Andrea Burke”

“M. Cecilia Williams”

“Sandra Blake”

A.4
Reasons and Decisions

A.4.1 Bridging Finance Inc. et al. – s. 25.0.1 of the Statutory Powers Procedure Act

Citation: *Bridging Finance Inc (Re),* 2022 ONCMT 37
Date: 2022-12-06
File No. 2022-9

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

REASONS FOR DECISION
(Section 25.0.1 of the *Statutory Powers Procedure Act,* RSO 1990, c S.22)

Adjudicators:	Timothy Moseley (chair of the panel) Sandra Blake Dale R. Ponder	
Hearing:	By videoconference, November 28, 2022; written submissions received November 30, 2022	
Appearances:	Mark Bailey Johanna Braden	For Staff of the Ontario Securities Commission
	Erin Pleet	For the receiver of Bridging Finance Inc.
	Melissa MacKewn Naomi Lutes Alexandra Grishanova	For David Sharpe
	Lawrence E. Thacker	For Natasha Sharpe
	Jonathan Wansbrough	For Andrew Mushore

REASONS FOR DECISION

1. OVERVIEW

[1] On November 28, 2022, the parties to this enforcement proceeding attended a hearing to address various scheduling issues. On December 2, 2022, we issued an order, for reasons to follow, providing that:

a. motions brought by the respondents David Sharpe and Natasha Sharpe seeking disclosure will be heard on January 30, 2023, with a schedule for the exchange of materials in advance of that hearing;

b. motions brought by David Sharpe and Natasha Sharpe to stay this proceeding will be heard on May 23, 2023; and

c. the merits hearing in this proceeding is scheduled to begin on June 26, 2023, and proceed intermittently for a total of 35 days, ending in mid-December 2023.

[2] In making that order, we:

a. accepted the Sharpes' submission that the stay motions should be heard before the merits hearing, because the efficiencies in doing so outweigh the risk of duplicated or wasted effort; and

b. rejected the Sharpes' submission that the hearing of the stay motions should await the final determination of a judicial review application brought by David Sharpe with respect to a decision of this Tribunal in another proceeding, because the issues in that application are insufficiently connected to this proceeding, and acceding to the Sharpes' request would risk significantly delaying this proceeding.

2. BACKGROUND

[3] The factual background to this proceeding, and to other proceedings arising out of the same facts, is set out in greater detail in this Tribunal's recent reasons and decision in Tribunal file number 2021-15 (the **temporary cease trade proceeding**).[1] The following summary highlights the most relevant facts for the purposes of these reasons.

[4] On April 30, 2021, the Ontario Securities Commission ordered[2] that trading cease in securities of nine entities related to Bridging Finance Inc., which is a respondent in this proceeding. That same day, the Commission obtained an order from the Superior Court of Ontario, appointing a receiver over the various Bridging entities. Included in Staff's court application record was material that Staff obtained during its investigation using powers of compulsion pursuant to an order issued under s. 11 of the *Securities Act*.[3]

[5] This Tribunal has, a number of times, extended the cease trade portion of the Commission's April 30 order. In support of Staff's first request to extend the order in May 2021, Staff filed an extensive record, which also includes the compelled material referred to above that was included in the court file.

[6] On July 5, 2022, the Tribunal dismissed David Sharpe's request in the temporary cease trade proceeding that certain portions of the adjudicative record and written submissions in that proceeding be kept confidential.[4] The Tribunal also dismissed David Sharpe's subsequent request to stay that July 5 decision.[5]

[7] David Sharpe has applied to Divisional Court for judicial review of the Tribunal's July 5 decision dismissing his confidentiality request. That application is currently scheduled to be heard on February 16, 2023.

[8] This proceeding was commenced on March 31, 2022, by Staff filing a Statement of Allegations. Three motions or sets of motions are pending in this proceeding:

a. David Sharpe and Natasha Sharpe have moved to stay this proceeding entirely, based on their assertion of abuse of process, which we explain in more detail below;

b. David Sharpe and Natasha Sharpe have moved for an order requiring Staff to make further disclosure that they submit would be relevant to the stay motions or to any alternative measures that might be adopted for the merits hearing; and

c. Mushore has moved for an expedited hearing of the allegations against him, a motion that is scheduled to be heard on December 15, 2022.

[9] At the November 28 hearing giving rise to these reasons, we addressed three principal questions:

a. whether the Sharpes' stay motions should be heard before the commencement of the merits hearing (as the Sharpes suggested) or at the conclusion of the evidentiary portion of the merits hearing (as Staff suggested);

b. if the Sharpes' stay motions were to be heard before the merits hearing, then whether those motions should be heard as soon as reasonably possible (as Staff suggested) or following determination of David Sharpe's judicial review application (as the Sharpes suggested); and

c. when the hearing on the merits of the Statement of Allegations should take place.

[10] Near the end of the November 28 hearing, we asked counsel for all parties to provide to the Registrar their availability from February 2023 to February 2024, so that we could schedule the stay motions and the merits hearing. All counsel responded.

3. ANALYSIS

3.1 Introduction

[11] The first question to be decided was whether the stay motions should precede the merits hearing. The other elements of our order (apart from the agreed-upon schedule for the disclosure motions that would proceed in January 2023 in any event) would flow from how that question was resolved.

1 *Bridging Finance Inc (Re)*, 2022 ONCMT 35
2 *Bridging Finance Inc (Re)*, (2021) 44 OSCB 3781
3 RSO 1990, c S.5
4 *Sharpe (Re),* 2022 ONCMT 18
5 *Bridging Finance Inc. (Re)*, 2022 ONCMT 35

[12] We decided that the stay motions should precede the merits hearing. We therefore had to consider next whether those motions should await determination of David Sharpe's judicial review application. We decided that they should not.

3.2 Should the stay motions precede the merits hearing?

3.2.1 Nature of the Sharpes' stay motions

[13] We begin our analysis of when the Sharpes' stay motions should be heard with a review of the grounds for those motions.

[14] The Sharpes refer to these motions as "abuse of process" motions. They point to the Tribunal's finding[6] that the Commission ought to have obtained an order from the Tribunal under s. 17 of the *Securities Act* before the Commission included the compelled material in its application record in court. They also note that six of the witnesses on Staff's list for the merits hearing in this proceeding were interviewed by Staff after the date on which the compelled material was published.

[15] The Sharpes say that the Tribunal ought to stay this proceeding because:

a. a stay would be an appropriate denunciation of the Commission's failure to obtain a s. 17 order; and

b. it is impossible for the Sharpes to have a fair hearing, because Staff's intended witnesses at that hearing had an opportunity to review the compelled evidence before they gave their own evidence as part of the investigation, thereby tainting their own testimony during the investigation and that they might give at the merits hearing.

[16] We emphasize that at this stage we neither have nor need any evidence about whether any of the witnesses have in fact reviewed any of the compelled evidence.

[17] Bearing in mind the framework of the Sharpes' motions, we now review the parties' positions about when the stay motions should be heard.

3,2.2 Analysis about whether the stay motions should precede the merits hearing

[18] The Tribunal has previously held[7] that in considering at what stage motions of this kind should be heard, it is useful to ask three questions. If the answer to one or more of these questions is "yes", that suggests that the motions should be heard before the merits hearing.

[19] The first of the three questions disposes of this matter: Can the issues raised by the motions be fairly, properly or completely resolved without regard to evidence to be presented at the merits hearing? This question, which we answer "yes", strikes at the heart of the disagreement between Staff and the Sharpes.

[20] Staff submits that the Sharpes do not raise a discrete issue of misconduct that can properly be severed from the conduct of the hearing. The Sharpes respond that they are indeed raising a discrete issue of misconduct; namely, the Commission's failure to obtain a s. 17 order, leading to what the Sharpes claim is the consequent improper availability of the compelled evidence.

[21] We agree with the Sharpes that in the stay motions, they raise a discrete issue. We disagree with Staff's contention that the merits hearing panel will need to hear the testimony at that hearing in order to assess whether the unfairness that the Sharpes allege exists at all, and if so, whether it is sufficient to justify the extraordinary remedy of halting the entire proceeding.

[22] In this case, the stay motions present two main issues; namely, whether any alleged unfairness arising from the Commission's failure to obtain a s. 17 order is sufficient to:

a. justify halting the proceeding as a denunciation of that conduct; or

b. conclude that the Sharpes cannot possibly obtain a fair merits hearing.

[23] We conclude, as did the panel in *Azeff (Re)*,[8] that the Tribunal will be able to resolve, before the merits hearing begins, the two issues that the stay motions present. For both of those issues, the conduct complained of is complete, not continuing. There is no apparent overlap between the issues to be addressed at the merits hearing (as defined by the Statement of Allegations) and the issues raised by the stay motions. The two evidentiary records will be different and distinct.

6 *Sharpe (Re)*, 2022 ONSEC 3 at para 5

7 *Mega-C Power Corporation (Re)*, 2007 ONSEC 4 at paras 34-35

8 2012 ONSEC 16 at paras 385-386

[24] The first of the two issues is completely unrelated to how the testimony at the merits hearing would unfold. The second of the two issues does suggest a connection to the testimony to come, but the issue is framed as a binary and absolute question – the alleged misconduct either is or is not sufficient to determine now that no fair hearing would be possible at all.

[25] Our decision must also consider the implications on the efficiency of the proceeding. Staff correctly points out that if the Tribunal hears the stay motions before the merits hearing and resolves the motions in Staff's favour, then the respondents might still ask, during and after the merits hearing, that consequences flow from the alleged misconduct. For example, the Sharpes might ask that the panel attach lesser weight to the testimony of one or more witnesses.

[26] That is a possibility, but it would happen only if the panel hearing the stay motions:

a. rejects the Sharpes' denunciation request (because if the panel grants the denunciation request, that ends this proceeding);

b. but determines as a threshold matter that the potential availability of the compelled evidence to some of Staff's witnesses may at least be problematic (because that leaves open the question of what should flow from that);

c. but determines that the circumstances are insufficient to conclude that it is impossible to hold a fair hearing at all.

[27] If that eventuality results, then there will have been some additional consumption of time and resources by the parties to prepare for and argue the motions, but the work done in connection with the motions, and the Tribunal's decision on those motions, will continue to be relevant as the issues arise during the merits hearing.

[28] We therefore conclude that while there is some risk of wasted effort in connection with the stay motions, the extent of that risk is small. In contrast, if the stay motions are heard before the beginning of the merits hearing, and the Sharpes are successful, either because there should be a denunciation or because the Sharpes cannot obtain a fair merits hearing, then all parties and this Tribunal will avoid a lengthy and costly hearing, including significant preparation time. The savings in time and resources greatly outweigh the potential loss of time and resources associated with the opposite result, as described above. Further, hearing the stay motions before the merits hearing affords the parties an opportunity to make submissions about possible alternative measures that should apply in the merits hearing if the stay motions are dismissed.

[29] It would therefore be more consistent with the objectives of an efficient, expeditious and fair hearing to have the stay motions heard before the merits hearing. We return to discuss scheduling of these motions below, after we consider the appropriate timing of the stay motions in light of the judicial review application.

3.3 Should the stay motions await the determination of the judicial review application?

[30] Staff submits that the stay motions should not await the determination of David Sharpe's judicial review application. We agree.

[31] That judicial review application asks the court to review a decision of this Tribunal from a different proceeding. The central question in the judicial review application is whether the adjudicative record in that other Tribunal proceeding should be kept confidential. This Tribunal has already decided that the answer to that question is "no".

[32] We recognize the risk that the Divisional Court will grant the judicial review application, and either send the matter back for reconsideration by this Tribunal, or make a finding that could have consequences in this proceeding. In our view, that risk is too indirect and too hypothetical at this stage. We weigh that risk against the risk that the Divisional Court's determination takes some considerable time following the hearing, and that if the court dismisses the application, David Sharpe appeals that decision. It is in the public interest for this proceeding to continue as expeditiously as reasonably possible, and for it not to be suspended for an indeterminate time that could extend to many months and possibly a year or more.

[33] We also note that following the oral portion of the hearing before us, and while we were awaiting written submissions from counsel about their availability for various stages in this proceeding, the Tribunal received from David Sharpe a motion within the judicial review application, seeking a stay of the Tribunal's July 5 decision relating to the confidentiality of the adjudicative record in the temporary cease trade proceeding.

[34] Taking all of these facts together, we see no compelling reason to await the determination of the judicial review application before the stay motions are heard. Before the currently scheduled hearing date of those motions, there may or may not be other developments in the judicial review application that will influence the motions' hearing date or the outcome of the motions, but even if not, the public interest in moving ahead with this proceeding outweighs any contrary interests.

3.4 Scheduling of the disclosure and stay motions

[35] The Sharpes' disclosure motions are a preliminary step towards the stay motions. By agreement of all parties, the disclosure motions are to adhere to the following schedule:

a. Natasha Sharpe is to deliver her motion record by December 2, 2022 (David Sharpe has already delivered his motion record);

b. Staff is to deliver its responding motion record (if any) by December 16, 2022;

c. the Sharpes are to deliver their reply records (if any) and submissions by January 6, 2023;

d. Staff is to deliver its submissions by January 18, 2023;

e. the Sharpes are to deliver their reply submissions (if any) by January 24, 2023; and

f. the motions are to be heard on January 30, 2023.

[36] As for the stay motions that would follow the disclosure motions, David Sharpe has asked us to accommodate the schedule of some of the lawyers who act for him in this proceeding. He has retained two law firms to represent him – the firm of Crawley MacKewn Brush (the **Crawley firm**) has primary carriage of this proceeding, and the firm of Greenspan Humphrey Weinstein (the **Greenspan firm**) has also been retained. We have been repeatedly advised during this proceeding that the Greenspan firm's focus is the judicial review application, the stay motions, and any *Charter* issues that may arise.

[37] Based on the Greenspan firm's availability, the earliest that the stay motions can be heard is May 23, 2023. In our view, that date leaves more time than desirable between the hearing of the disclosure motions and the hearing of the stay motions. The objective described above, of potentially saving significant time and resources if the stay motions are successful, will not be as fully realized as it should be with almost a four-month lag between the two sets of motions.

[38] Having said that, on the basis of material presented to us from counsel, we are not prepared at this time to force the stay motions on for an earlier date. We therefore ordered that the stay motions be heard on May 23. However, recognizing that litigators' commitments change frequently, we have done so provisionally, and we urge counsel to confer among themselves to determine whether a solution can be found so that the motions can be heard earlier. If counsel are unable to agree on an earlier date, the matter may be spoken to upon request by any party to the Registrar, failing which it will be addressed at the January 30 hearing of the disclosure motions, at which time the stay motions may be scheduled for an earlier date.

[39] We also note that of the two lawyers with carriage of this matter on behalf of Mushore, one advises that he is unavailable throughout May. Delaying the stay motions further in order to accommodate both of Mushore's lawyers would defer the hearing of the stay motions for another two months, until June 26, 2023. It would be contrary to the public interest to do so, and given Mushore's tangential connection to the Sharpes' stay motions, we cannot accommodate the conflict.

[40] We turn now to the final matter that was the subject of our December 2 order, *i.e.*, the timing of the merits hearing in this proceeding.

3.5 Timing of the merits hearing

[41] The parties estimate that the merits hearing will take somewhere between 25 and 45 hearing days. Staff is generally available beginning in early spring of 2023. The Crawley firm is not available until May 23, 2023. The Greenspan firm has no availability before mid-May 2023, and very limited availability throughout the rest of 2023.

[42] At the hearing leading to this decision, David Sharpe's counsel expressed a preference for the merits hearing to be scheduled at a time when the Greenspan firm could be available for "the first few weeks". We cannot quite accommodate that request. Doing so, taking into account the availability of all other parties and a Tribunal panel, would result in the merits hearing extending well into 2024, almost two years after this proceeding was commenced. That is too long, and it is not reasonable to expect that a significant portion of a long hearing will accommodate the schedules of at least four lawyers at two firms, all acting for one respondent.

[43] The dates we have selected for the merits hearing accommodate the schedules of all counsel, with two constraints:

a. only the first ten (not fifteen) hearing days fall within windows provided by the Greenspan firm; and

b. the first five days of the hearing are during a vacation of one of the two counsel who has appeared for the receiver during this proceeding, a situation that is unfortunate but that we do not consider will cause unfairness to the receiver.

[44] In our view, the above is appropriate under the circumstances, and necessary given the many date conflicts counsel have identified. Parties are free, of course, to seek specific adjustments to the schedule now that the dates have been ordered. Counsel are requested to confer with all other parties before any such requests are made.

[45] Taking all the above considerations into account, the merits hearing will proceed by videoconference on the following dates (all in 2023), each day beginning at 10:00 a.m., and all subject to further order of the Tribunal:

a. June 26, 27, 28 and 29;

b. July 24, 25, 26, 27, 28 and 31;

c. September 12, 13, 14, 26, 27, 28 and 29;

d. October 2, 3, 4, 5, 23, 24, 25 and 26; and

e. December 4, 5, 6, 7, 8, 11, 12, 13, 14 and 15.

4. CONCLUSION

[46] For the above reasons, we issued an order on December 2, 2022, providing that:

a. the disclosure motions will be heard on January 30, 2023, with the schedule for the exchange of materials as set out in paragraph [35] above;

b. the stay motions will be heard on May 23, 2023; and

c. the merits hearing will commence on June 26, 2023, and continue on the dates set out in paragraph [45] above.

[47] Finally, we note that there are some matters normally addressed at the attendance from which this decision results (as contemplated by the Tribunal's *Practice Guideline*) that were not addressed, given the uncertainties associated with the overall schedule, and given this pending decision. We ask that counsel now confer with each other and attempt to arrive at an agreed-upon schedule for those matters, in light of our order. If counsel are unable to agree, a further attendance may be arranged through the Registrar at the request of any party. Failing a resolution by January 30, 2023, the outstanding matters will be addressed at the hearing that day, and counsel are expected to be fully prepared to speak to any outstanding scheduling issues.

Dated at Toronto this 6th day of December, 2022

"Timothy Moseley"

"Sandra Blake"

"Dale R. Ponder"

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 81-335 – Investment Fund Settlement Cycles

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 81-335
Investment Fund Settlement Cycles

December 15, 2022

Executive Summary

Canadian Securities Administrators staff (**CSA staff** or **we**) are publishing this notice to set out our views about amending securities laws to require settlement one day after the date of the trade (**T+1**) for mutual funds. Concurrent with this Notice, the CSA are publishing for comment proposed amendments (the **NI 24-101 Amendments**) to National Instrument 24-101 *Institutional Trade Matching and Settlements* (**NI 24-101**). Among other things, the NI 24-101 Amendments focus on facilitating the shortening of the standard settlement cycle for equity and long-term debt market trades in Canada from two days after the date of a trade (**T+2**) to T+1.

The move to a T+1 settlement cycle is expected to occur at the same time as the markets in the United States move to a T+1 settlement cycle. The NI 24-101 Amendments focus on facilitating procedures and processes to allow for alignment with the U.S. settlement cycle. Following the changeover, it is expected that secondary market trading in exchange-listed investment funds will also settle on T+1.

We are not proposing to amend sections 9.4 and 10.4 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) at this time to shorten the settlement cycle for primary distributions and redemptions of mutual fund securities. If the standard settlement cycle for listed securities moves from two days to one day in Canada, we are of the view that, where practicable, mutual funds should settle primary distributions and redemptions of their securities on T+1 voluntarily. We think it is important, however, to enable each mutual fund to have flexibility to determine whether a T+1 settlement cycle can work for them. Requiring a T+1 settlement cycle in NI 81-102 would not allow for such flexibility.

Substance and Purpose

Moving the settlement of trades in mutual fund securities to T+1 requires consideration of different factors, as the settlement mechanics for mutual fund primary distributions and redemptions differs from those for equity and long-term debt. For example, the purchase or redemption of securities directly with a fund can raise issues related to the fund's liquidity and directly impact the portfolio management of the fund since portfolio assets may need to be purchased or sold. Mutual funds with significant holdings of securities in jurisdictions with longer settlement cycles (e.g., Europe and Asia) may experience a settlement mismatch if T+1 settlement were to be mandated for all mutual fund securities in Canada.

CSA staff are of the view that many Canadian mutual funds would be able to settle primary distributions and redemptions of their securities on T+1 if the standard settlement for portfolio assets held by the fund move to T+1 in Canada. In our view, moving to T+1 would allow the mutual fund industry to improve investor and dealer cashflow management, align with U.S. settlement cycles, and allow mutual funds to remain competitive from a settlement perspective.

However, we recognize that moving to T+1 settlement would present operational difficulties for funds that have a significant portion of their portfolio assets that settle at T+2 or longer and so the CSA is not proposing amendments to sections 9.4 and 10.4 of NI 81-102 to mandate a T+1 settlement cycle for all mutual fund securities at this time.

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission
Noreen Bent
Chief, Corporate Finance Legal Services
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Alberta Securities Commission
Chad Conrad
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403 297 4295
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Financial and Consumer Affairs Authority of Saskatchewan
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Manitoba Securities Commission
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Ontario Securities Commission
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B.2
Orders

B.2.1 Avcorp Industries Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – issuer deemed to be no longer 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).

December 9, 2022

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

AND

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

AND

IN THE MATTER OF
AVCORP INDUSTRIES INC.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

1. the Filer exists under the *Canada Business Corporations Act* and its head office is located in Delta, British Columbia;

2. the Filer is a reporting issuer in all jurisdictions of Canada;

3. the Filer's share capital consists of an unlimited number of common shares;

4. on May 4, 2022, Avcorp Industries Inc. (Old Avcorp) and Latécoère S.A. entered into an arrangement agreement (the Arrangement Agreement) that contemplated the implementation of a court-approved plan of arrangement (the Arrangement) under which Latécoère S.A. would acquire all of the issued and outstanding common shares of Old Avcorp (each, an Avcorp Share) for cash consideration of $0.11 per Avcorp Share and each outstanding option to acquire an Avcorp Shares (each, an Avcorp Option) would automatically vest and be cancelled in exchange for a cash payment equal to the amount (if any) by which $0.11 exceeded the exercise price of such Avcorp Option;

5. on June 24, 2022, Latécoère S.A. (i) assigned, transferred and conveyed to Albatross Bidco Inc. (the Purchaser), a wholly-owned subsidiary of Latécoère S.A., all of its rights, title and interest in and to, and all benefits of Latécoère S.A. under, the Arrangement Agreement, and (ii) delegated to the Purchaser all of its

obligations and liabilities under the Arrangement Agreement;

6. the Arrangement was approved by shareholders and optionholders of Old Avcorp at an annual general and special meeting of securityholders of the Filer held on June 30, 2022**;**

7. the final order of the British Columbia Supreme Court to Approve the Arrangement was issued on July 5, 2022, with the closing of the Arrangement being the effective date of the Arrangement;

8. on November 7, 2022, the Arrangement closed and the Purchaser amalgamated with the Old Avcorp to form the Filer;

9. following the Arrangement, Latécoère S.A. is the only shareholder and securityholder of the Filer;

10. the Avcorp Shares were delisted from the Toronto Stock Exchange (the TSX) as of the close of trading on November 9, 2022;

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

12. 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;

13. 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;

14. 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;

15. the Filer has no intention to seek public financing by way of an offering of securities;

16. the Filer is not in default of securities legislation in any jurisdiction other than its obligations to file on or before November 14, 2022 its interim financial statements and related management's discussion and analysis for the interim period ended September 30, 2022, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (collectively, the Filings);

17. the requirement to file the Filings did not arise until after both the completion of the Arrangement and the delisting of the Avcorp Shares from the TSX;

18. the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (NP 11-206) as it is in default for failure to file the Filings; and

19. but for the fact that the Filer failed to file the Filings, the Filer would be eligible for the simplified procedure under NP 11-206.

Order

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

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

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2022/0511

B.3
Reasons and Decisions

B.3.1 TD Asset Management Inc. and the Top Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from self-dealing provisions in subsection 111(2) of the Securities Act (Ontario) and subsection 13.5(2)(a) of NI 31-103 to permit non-reporting issuer mutual funds to invest in securities of related underlying investment entities – relief also revokes and replaces similar prior relief granted to the filer – relief subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(2)(b) and (c), 111(4), 113, and 144.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(a), 15.1.

November 11, 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
TD ASSET MANAGEMENT INC.
(TDAM)

AND

IN THE MATTER OF
THE TOP FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from TDAM on its behalf and on behalf of the Top Funds, as defined below, for a decision under the securities legislation of the Jurisdiction:

1. exempting the Top Funds from the restriction in the Legislation (the **Related Issuer Restriction**) that prohibits:

   (a) an investment fund from knowingly making an investment in a person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder; and

   (b) an investment fund from knowingly making an investment in an issuer in which:

      (i) any officer or director of the investment fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the investment fund, its management company or its distribution company,

has a significant interest; and

(c) an investment fund, its management company or its distribution company from knowingly holding an investment described in paragraph (a) or (b) above (collectively, the **Related Issuer Relief**); and

2. exempting TDAM and its affiliates, with respect to the Top Funds, from the restriction in the Legislation (the **Consent Requirement**) that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as adviser, to invest in securities of any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless the fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase (the **Consent Requirement Relief** and, together with the Related Issuer Relief, the **Exemptions Sought**);

3. revoking the 2019 Decision (as defined below) in its entirety and replacing it with this decision (the **2019 Decision Revocation**); and

4. amending the 2018 Decision (as defined below), such that the portion of the 2018 Decision granting the Non-Investment Fund Related Issuer Relief and the Non-Investment Fund Consent Requirement Relief (each as defined in the 2018 Decision) is revoked and replaced by this decision (the **2018 Decision Partial Revocation**, and, together with the Exemptions Sought and the 2019 Decision Revocation, the **Requested Relief**).

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

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

(b) TDAM has provided notice under section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) that

(i) the Related Issuer Relief is to be relied upon by TDAM in Alberta and Saskatchewan; and

(ii) the Consent Requirement Relief is to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

2018 Decision means a decision of the Financial and Consumer Affairs Authority of Saskatchewan dated October 19, 2018 that granted relief to Greystone Managed Investments Inc. and the 2018 Top Funds to, among other things, invest in the Existing Underlying Funds;

2018 Top Funds means each of TD Greystone 2025 Target Date Plus Fund, TD Greystone 2030 Target Date Plus Fund, TD Greystone 2035 Target Date Plus Fund, TD Greystone 2040 Target Date Plus Fund, TD Greystone 2045 Target Date Plus Fund, TD Greystone 2050 Target Date Plus Fund, TD Greystone 2055 Target Date Plus Fund, TD Greystone 2060 Target Date Plus Fund, TD Greystone Retirement Plus Fund and certain other mutual funds managed by TDAM (as successor to Greystone Managed Investments Inc.) or its affiliates, each of which is a mutual fund that is not a reporting issuer;

2019 Decision means a decision of the Ontario Securities Commission dated February 26, 2019 that granted relief to TDAM and the 2019 Top Funds to invest in the Existing Underlying Funds;

2019 Top Funds means each of TD Greystone Real Asset Pooled Fund Trust, TD Greystone Mortgage and Short Bond Pooled Fund Trust and certain other mutual funds managed by TDAM or an affiliate of TDAM, each of which is a mutual fund that is not a reporting issuer;

Existing Top Funds means each of the 2018 Top Funds, the 2019 Top Funds and any other current mutual fund that is not a reporting issuer and that is managed by TDAM or one of its affiliates;

Existing Underlying Funds means each of the Mortgage Fund, the Real Estate Fund and the Infrastructure Fund;

Future Top Funds means any future mutual fund that will not be a reporting issuer and that will be managed by TDAM or one of its affiliates;

Global Real Estate Fund means TD Greystone Global Real Estate Fund (Canada Feeder) L.P.;

Infrastructure Fund means TD Greystone Infrastructure Fund (Canada) L.P. II;

Mortgage Fund means TD Greystone Mortgage Fund;

Real Estate Fund means TD Greystone Real Estate LP Fund;

Top Funds means each of the Existing Top Funds and the Future Top Funds;

Underlying Funds means each of the Existing Underlying Funds and the Global Real Estate Fund.

Representations

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

TDAM

1. TDAM is a corporation amalgamated under the *Business Corporations Act* (Ontario).

2. TDAM is a wholly-owned subsidiary of The Toronto-Dominion Bank, a Schedule 1 Canadian chartered bank. TDAM's head office is located in Toronto, Ontario.

3. TDAM is registered in each of the Jurisdictions as an adviser in the category of portfolio manager (**PM**) and as a dealer in the category of exempt market dealer. TDAM is registered in Ontario, Québec, Newfoundland and Labrador and Saskatchewan in the category of investment fund manager (**IFM**). TDAM is also registered in Ontario in the category of commodity trading manager and in Québec in the category of derivatives trading manager.

4. TDAM is, or will be, the IFM and PM of the Top Funds and TDAM or an affiliate of TDAM is the IFM and PM for the Underlying Funds.

5. TDAM or its affiliates therefore are, or will be, "responsible persons" of the Top Funds and the Underlying Funds, as that term is defined in NI 31-103.

6. An officer and/or director of TDAM or an affiliate of TDAM may have a "significant interest" (as such term is defined in the Legislation) in an Underlying Fund from time to time. A person or company who is a substantial security holder of a Top Fund, TDAM, or an affiliate of TDAM may also have a significant interest in an Underlying Fund from time to time.

7. TDAM is not in default of the securities law of any jurisdiction with respect to the subject matter of this application. However, TDAM has applied for routine exemptive relief to permit certain related party investments made by affiliates or associates of the TDAM that are not directly related to the investments described in this Decision.

The Top Funds

8. Each of the Existing Top Funds is a mutual fund established under the laws of the Province of Ontario and is an investment trust established by TDAM. The Existing Top Funds are investment funds as defined in the Legislation. TDAM is the trustee of the 2018 Top Funds and the Canada Trust Company is the trustee of the 2019 Top Funds.

9. Each of the Future Top Funds will be a mutual fund organized as an investment trust, limited partnership, or class of shares of a mutual fund corporation established under the laws of the Province of Ontario or one of the Jurisdictions. Either TDAM, an affiliate of TDAM or the Canada Trust Company, may be the trustee of a Future Top Fund organized as a trust or the general partner of a Future Top Fund organized as a limited partnership.

10. The Top Funds are not, or will not be, reporting issuers in any of the Jurisdictions. The securities of the Top Funds are, or will be, sold solely to accredited investors pursuant to exemptions from the prospectus requirements in accordance with National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

11. Each Top Fund is, or will be, permitted to invest in the Underlying Funds in order to achieve its investment objectives and strategies.

The Underlying Funds

Mortgage Fund

12. The Mortgage Fund is an investment trust established under the laws of Ontario. The Mortgage Fund is a "mutual fund" as defined in the Legislation. The Mortgage Fund is administered by TDAM, as manager, its assets are managed by a

portfolio manager and the trustee of the Mortgage Fund calculates a net asset value (**NAV**) that is used for purposes of determining the purchase and redemption price of the units of the Mortgage Fund.

13. The investment objective of the Mortgage Fund is to provide a vehicle to invest in Canadian commercial real estate mortgages and to achieve superior long-term total returns while maintaining long-term stability of capital. Under its investment strategy, the Mortgage Fund invests in a diversified portfolio of Canadian commercial real estate mortgages and other permissible investments, including first and subsequent priority mortgages, equity investments in Canadian real estate in very limited circumstances, closed or open ended pooled mortgage funds, and securities or bonds where the asset underlying the securities or bonds is a mortgage or other debt security secured by a real property mortgage or charge.

14. The Mortgage Fund is not a reporting issuer in any of the Jurisdictions. Units of the Mortgage Fund are sold solely to accredited investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106. Each such investor is responsible for making its own investment decisions regarding its purchases and/or redemptions of units of the Mortgage Fund.

15. The Mortgage Fund is not in default of the securities legislation of any of the Jurisdictions.

The Real Estate Fund

16. The Real Estate Fund is an investment product established as a limited partnership under the laws of Ontario. The General Partner of the Real Estate Fund is GMI Real Estate Inc., which is an affiliate of TDAM.

17. The Real Estate Fund is not considered to be an investment fund under the Legislation. Nevertheless, the Real Estate Fund is operated in a manner similar to how TDAM operates its investment funds. The Real Estate Fund is administered by TDAM, as manager, its assets are managed by a portfolio manager and the custodian of the Real Estate Fund calculates a NAV that is used for purposes of determining the purchase and redemption price of its units.

18. The investment objective of the Real Estate Fund is to seek superior long-term total returns by investing in a diversified Canadian real estate portfolio. Under its investment strategy, the Real Estate Fund may invest in equity interests in, and mortgages of, Canadian real estate, securities or bonds where the underlying asset is a mortgage or real estate equity, cash and short-term investments.

19. The Real Estate Fund is not a reporting issuer in any of the Jurisdictions. Units of the Real Estate Fund are sold solely to accredited investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106. Each such investor is responsible for making its own investment decisions regarding its purchases and/or redemptions of units of the Real Estate Fund.

20. The Real Estate Fund is not in default of the securities legislation of any of the Jurisdictions.

The Infrastructure Fund

21. The Infrastructure Fund is an investment product established as a limited partnership under the laws of Ontario. The General Partner of the Infrastructure Fund is Greystone Infrastructure Fund (Canada) Inc., which is an affiliate of TDAM.

22. The investment objective of the Infrastructure Fund is to provide sustainable long term returns from infrastructure assets by investing in units of Greystone Infrastructure Fund (Global Master) L.P. (the "**Master Infrastructure Fund**"), a limited partnership formed under the laws of the Cayman Islands, or such other jurisdiction as TDAM may in the future determine. The investment strategy of the Master Infrastructure Fund is to invest in and to earn income directly or indirectly from infrastructure assets, specifically:

    (a) transportation, including roads, rail, ports and airports;

    (b) contracted generation;

    (c) power transmission and distribution;

    (d) renewable energy, including wind, hydro, solar and waste-to-energy;

    (e) pipelines, including oil, gas and refined products;

    (f) utilities, including water, wastewater and energy;

    (g) telecommunications;

    (h) social infrastructure, including hospitals, prisons and schools;

(i) rolling stock and parking; and

(j) other assets that are expected to generate predictable cash flows over the long-term and exhibit sustainable competitive advantages.

23. The Infrastructure Fund and the Master Infrastructure Fund have substantially similar investment objectives, in that they both seek sustainable long term returns from infrastructure assets.

24. The Infrastructure Fund and the Master Infrastructure Fund are not considered to be investment funds under the Legislation. Nevertheless, the Infrastructure Fund and the Master Infrastructure Fund are operated in a manner similar to how TDAM operates its investment funds. The Infrastructure Fund and the Master Infrastructure Fund are administered by TDAM, as manager, their assets are managed by a portfolio manager and the custodian of the Infrastructure Fund and the Master Infrastructure Fund calculates a NAV that is used for purposes of determining the purchase and redemption price of the units of the Infrastructure Fund and the Master Infrastructure Fund, as the case may be.

25. The Infrastructure Fund is not a reporting issuer in any of the Jurisdictions. Units of the Infrastructure Fund are sold solely to investment funds managed by TDAM and to the Top Funds, in each case pursuant to an exemption from the prospectus requirements in accordance with NI 45-106. Other investors who wish to obtain exposure to the assets of the Master Infrastructure Fund purchase units of another Canadian infrastructure limited partnership managed by TDAM that has an investment mandate similar to the investment mandate of the Master Infrastructure Fund pursuant to exemptions from the prospectus requirements in accordance with NI 45-106.

26. The Infrastructure Fund is not in default of the securities legislation of any of the Jurisdictions.

The Global Real Estate Fund

27. The Global Real Estate Fund is an investment product established as a limited partnership under the laws of Ontario. The General Partner of the Global Real Estate Fund is TD Greystone Global Real Estate Fund (Canada Feeder) GP Inc, which is not an affiliate of TDAM.

28. The investment objective of the Global Real Estate Fund is to seek consistent long-term total returns by investing in a diversified global real estate portfolio. It seeks to achieve its investment objective by investing in units of the TD Greystone Global Real Estate Fund L.P. (the **Master Global Real Estate Fund**), a limited partnership formed and existing under the laws of the province of Ontario, or such other jurisdiction as TDAM may in the future determine.

29. The investment objective of the Master Global Real Estate Fund is to seek consistent long-term total returns by investing in a diversified global real estate portfolio that follows the risk controls set forth in its offering circular.

30. The Global Real Estate Fund and the Master Global Real Estate Fund have the same investment objectives; however, the Global Real Estate Fund will seek to achieve its investment objective by investing 100% of its capital (less amounts reserved for expenses) in the Master Global Real Estate Fund, whereas the Master Global Real Estate Fund will seek to achieve its investment objective by investing directly or indirectly in real estate assets, including by investing substantially more than 10% of its assets in other real estate investment products.

31. The Global Real Estate Fund and the Master Global Real Estate Fund are not considered to be investment funds under the Legislation. Nevertheless, the Global Real Estate Fund and the Master Global Real Estate Fund are operated in a manner similar to how TDAM operates its investment funds. The Global Real Estate Fund and the Master Global Real Estate Fund are administered by TDAM, as investment fund manager, their assets are managed by TDAM as portfolio manager and the custodian of the Global Real Estate Fund and the Master Global Real Estate Fund calculates a NAV that is used for purposes of determining the purchase and redemption price of the units of the Global Real Estate Fund and the Master Global Real Estate Fund, as the case may be.

32. The Global Real Estate Fund is not a reporting issuer in any of the Jurisdictions. Units of the Global Real Estate Fund are sold solely to accredited investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106. Each such investor is responsible for making its own investment decisions regarding its purchases and/or redemptions of units in the Global Real Estate Fund.

33. The Global Real Estate Fund is not in default of the securities legislation of any of the Jurisdictions.

Fund-on-Underlying Funds Structure

34. An investment by a Top Fund in one or more of the Underlying Funds will be compatible with the investment objectives of the Top Fund and will allow the Top Fund to obtain exposure to securities in which the Top Fund may otherwise invest directly (the **Fund-on-Underlying Funds Structure**). TDAM believes that the Fund-on-Underlying Funds Structure provides, or will provide, each Top Fund with an efficient and cost-effective manner of pursuing portfolio diversification

instead of purchasing securities directly. The Fund-on-Underlying Funds Structure also provides, or will provide, each Top Fund with access to the investment expertise of the portfolio advisers of one or more Underlying Funds.

35. Investments by a Top Fund in one or more of the Underlying Funds is, or will be, effected at an objective price. According to TDAM's policies and procedures, an objective price, for this purpose, is the NAV of each Underlying Fund.

Top Funds Liquidity

36. The Top Funds are or will be valued and redeemable daily, monthly or quarterly.

37. At least 50% of the assets held by each Top Fund are, or will be, redeemable at least as frequently as units of the Top Fund are redeemable; the balance of the assets may have more limited liquidity.

Underlying Funds Liquidity

Mortgage Fund Liquidity

38. The investments of the Mortgage Fund, which consist primarily of commercial mortgages, are primarily illiquid.

39. The Mortgage Fund is priced daily and valued and redeemable monthly.

40. The value of the portfolio assets of the Mortgage Fund is independently determined by a party that is arm's length to TDAM or an affiliate of TDAM, each Underlying Fund and all other investment funds or vehicles managed by TDAM (the **MF Independent Valuator**) on at least a monthly basis. The Mortgage Fund's auditor will not act as an MF Independent Valuator. The Mortgage Fund's NAV is based on the valuation of the portfolio assets determined by the MF Independent Valuator. The valuation process is audited annually by an independent accounting firm.

41. A Top Fund will not invest in units of the Mortgage Fund unless, at the time of purchase, at least 20% of the units of the Mortgage Fund are held by unitholders that are not affiliated or associated with TDAM.

Real Estate Fund Liquidity

42. The investments of the Real Estate Fund, which consist primarily of interests in real estate, are primarily illiquid.

43. The Real Estate Fund is valued and redeemable monthly, although "significant" redemptions (a redemption request that is for greater than $1,000,000 and 10% of the Real Estate Fund's liquidity available for investment) may only be made on a quarterly basis.

44. The value of the portfolio assets of the Real Estate Fund is independently determined by one or more accounting firms and/or appraisal firms accredited through the Appraisal Institute of Canada that is arm's length to TDAM or an affiliate of TDAM, each Underlying Fund and all other investment funds or vehicles managed by TDAM (the **RE Independent Appraiser**) on a quarterly basis, which quarterly valuation may be refreshed by the RE Independent Appraiser if TDAM determines that a significant valuation event has occurred. The Real Estate Fund's auditor will not act as a RE Independent Appraiser. The Real Estate Fund's NAV is based on the valuation of the portfolio assets determined by the RE Independent Appraiser(s).

45. To the extent feasible and practicable, each RE Independent Appraiser will be rotated on three-year intervals.

46. A Top Fund will not invest in units of the Real Estate Fund unless, at the time of purchase, at least 20% of the units of the Real Estate Fund are held by unitholders that are not affiliated or associated with TDAM.

Infrastructure Fund Liquidity

47. The investments of the Infrastructure Fund consist primarily of units of the Master Infrastructure Fund. The investments of the Master Infrastructure Fund, which consist primarily of infrastructure assets, are primarily illiquid, and the units of both the Infrastructure Fund and the Master Infrastructure Fund have limited liquidity.

48. The Infrastructure Fund is valued monthly and redeemable quarterly.

49. The Master Infrastructure Fund is valued monthly and redeemable quarterly.

50. The value of the portfolio assets of the Master Infrastructure Fund is independently determined by one or more internationally recognized accounting firms and/or appraisal firms that is arm's length to TDAM or an affiliate of TDAM, each Underlying Fund and all other investment funds or vehicles managed by TDAM (the **IF Independent Appraiser**) who independently values such portfolio assets on a quarterly basis. A quarterly valuation of one or more of such assets may be refreshed by an IF Independent Appraiser during an interim period if the portfolio adviser of the Master

Infrastructure Fund determines that a significant valuation event has occurred. Neither the Infrastructure Fund's auditor nor the Master Infrastructure Fund's auditor will act as an IF Independent Appraiser. The Infrastructure Fund invests in the Master Infrastructure Fund at the NAV of the Master Infrastructure Fund, which is based on the valuation prepared by the IF Independent Appraiser.

51. To the extent feasible and practicable, the IF Independent Appraiser will be rotated on three-year intervals.

52. A Top Fund will not invest in the Infrastructure Fund unless the PM of the Top Fund believes that the liquidity of the Top Fund's portfolio is adequately managed through other strategies. As part of such strategies, a Top Fund will not invest more than 50% of its NAV, at the time of purchase, in units of the Infrastructure Fund.

53. In addition, a Top Fund will not invest in the Infrastructure Fund unless, at the time of purchase, at least 20% of the units of the Master Infrastructure Fund are directly or indirectly held by unitholders that are not affiliated or associated with TDAM (not including any holdings made through the Top Fund).

Global Real Estate Fund Liquidity

54. The investments of the Global Real Estate Fund consist primarily of units of the Master Global Real Estate Fund. The investments of the Master Global Real Estate Fund, which consist primarily of direct and indirect interests in real estate, are primarily illiquid, and the units of both the Global Real Estate Fund and the Master Global Real Estate Fund have limited liquidity.

55. Each of the Global Real Estate Fund and the Master Global Real Estate Fund is valued daily; though the underlying investments of the Master Global Real Estate Fund may be valued less frequently. Redemptions can be made quarterly and are subject to TDAM's right to defer redemptions.

56. The portfolio of assets held by the Master Global Real Estate Fund may consist of both indirect and direct real estate portfolio assets. The value of any direct real estate portfolio assets of the Master Global Real Estate Fund will be independently determined by one or more internationally recognized accounting firms and/or appraisal firms that are arm's length to TDAM or an affiliate of TDAM, each Underlying Fund and all other investment funds or vehicles managed by TDAM (the **GRE Independent Appraiser**) on a quarterly basis, which quarterly valuation may be refreshed by the GRE Independent Appraiser if TDAM determines that a significant valuation event has occurred. The Global Real Estate Fund's auditor will not act as a GRE Independent Appraiser.

57. The value of the indirect real estate portfolio assets of the Master Global Real Estate Fund is recorded by the independent custodian for the Master Global Real Estate Fund, as received from the respective managers of the underlying funds in which the Master Global Real Estate Fund invests. Indirect real estate portfolio assets are generally valued quarterly, though some indirect real estate investments may be valued monthly. The Global Real Estate Fund invests in the Master Global Real Estate Fund at the NAV of the Master Global Real Estate Fund, which is based on the valuation prepared by the GRE Independent Appraiser in respect of the direct real estate portfolio assets and the valuations received from the managers of the underlying funds in respect of the indirect real estate portfolio assets.

58. To the extent feasible and practicable, the GRE Independent Appraiser will be rotated on three-year intervals.

59. A Top Fund will not invest in units of the Global Real Estate Fund unless, at the time of purchase, at least 20% of the units of the Global Real Estate Fund are held by unitholders that are not affiliated or associated with TDAM.

Necessity for the Exemptions Sought

60. The amount invested from time to time in an Underlying Fund by a Top Fund, either alone or together with one or more other Top Funds, may exceed 20% of the outstanding voting securities of such Underlying Fund. As a result, a Top Fund could, either alone or together with one or more other Top Funds, become a substantial security holder of an Underlying Fund. The Top Funds are "related investment funds", as such term is defined in the Legislation.

61. In addition, the Fund-on-Underlying Funds Structure may result in a Top Fund investing in an Underlying Fund in which an officer or director of TDAM or an affiliate of TDAM has a significant interest and/or a Top Fund investing in an Underlying Fund in which a person or company who is a substantial security holder of the Top Fund, TDAM or an affiliate of TDAM has a significant interest.

62. The Fund-on-Underlying Funds Structure may also result in a Top Fund investing in an Underlying Fund in which a responsible person or an associate of a responsible person is a partner, officer or director, or performs a similar function or occupies a similar position.

63. In the absence of the Related Issuer Relief, each Top Fund would be precluded from purchasing and holding securities of an Underlying Fund due to the investment restrictions contained in the Legislation.

64. In the absence of the Consent Requirement Relief, TDAM would be precluded from causing a Top Fund to invest in an Underlying Fund without the consent of each investor in the Top Fund. Requiring TDAM to do so would impose significant and unreasonable burdens of cost and time needed to obtain a written consent to the fund-on-fund structure from each of its clients.

The 2019 Decision Revocation and the 2018 Decision Partial Revocation

65. The 2018 Decision among other things, granted relief from the Related Issuer Requirement (the **Non-Investment Fund Related Issuer Relief**) and the Consent Requirement (the **Non-Investment Fund Consent Relief** and together with the Non-Investment Fund Related Issuer Relief, the **Existing Underlying Fund Relief**) to permit Greystone Managed Investments Inc. (which is now amalgamated into TDAM) to cause the 2018 Top Funds to invest only in the Existing Underlying Funds, and does not apply to investments in Global Real Estate Fund.

66. The 2019 Decision granted relief from the Related Issuer Restriction and the Consent Requirement to permit TDAM to cause the 2019 Top Funds to invest only in the Existing Underlying Funds and does not apply to investments in Global Real Estate Fund.

67. If the Related Issuer Relief and the Consent Requirement Relief is granted, it would also duplicate and supersede the Existing Underlying Fund Relief granted in the 2018 Decision, and the relief granted in the 2019 Decision, making that prior relief redundant.

68. The 2019 Decision Revocation and the 2018 Decision Partial Revocation will eliminate this redundancy.

Generally

69. None of the Top Funds actively participates or will participate in the business or operations of an Underlying Fund.

70. A Top Fund's investment in an Underlying Fund represents, or will represent, the business judgment of a responsible person uninfluenced by considerations other than the best interests of the Top Fund concerned.

Decision

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

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

(a) the securities of the Top Funds and the Underlying Funds are distributed in Canada solely to accredited investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106;

(b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;

(c) at the time of the purchase of securities of an Underlying Fund, a Top Fund will not purchase or hold securities of an Underlying Fund, unless either the Underlying Fund holds no more than 10% of its NAV in securities of other investment funds or the Underlying Fund:

    (i) has adopted a fundamental investment objective to track the performance of another investment fund or similar investment product;

    (ii) purchases or holds securities of investment funds that are "money market funds" (as such term is defined in NI 81-102); or

    (iii) purchases or holds securities that are "index participation units" (as such term is defined in NI 81-102) issued by an investment fund;

(d) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;

(e) no sales fees or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund;

(f) the securities of an Underlying Fund held by a Top Fund will not be voted at any meeting of the security holders of the Underlying Fund, except that the Top Fund may arrange for the securities of the Underlying Fund it holds to be voted by the beneficial holders of securities of the Top Fund;

(g) a Top Fund will not invest in units of the Mortgage Fund, the Global Real Estate Fund, the Real Estate Fund or the Infrastructure Fund unless, at the time of purchase, at least 20% of the units of the Mortgage Fund, the Master Global Real Estate Fund, the Real Estate Fund or the Master Infrastructure Fund, as applicable, are held by unitholders that are not affiliated or associated with TDAM (not including any holdings made through the Top Fund);

(h) a Top Fund will not invest more than 50% of its NAV, at the time of purchase, in units of the Infrastructure Fund;

(i) a Top Fund will invest in units of each Underlying Fund at the NAV of the applicable Underlying Fund based on the valuation of the applicable portfolio assets by the MF Independent Valuator, the RE Independent Appraiser, the IF Independent Appraiser or the GRE Independent Appraiser, as applicable.

(j) the statement of investment policies and procedures or other similar document provided or made available to each investor in a Top Fund will disclose

  (i) that the Top Fund will purchase securities of one or more Underlying Funds;

  (ii) that TDAM is the IFM and PM of the Top Fund and that TDAM or an affiliate of TDAM is the PM of each of the Underlying Funds;

  (iii) the approximate or maximum percentage of the NAV of the Top Fund that it is intended be invested in securities of each Underlying Fund;

  (iv) the process or criteria used to select the Underlying Funds, if applicable;

  (v) that one or more officers, directors or substantial securityholders of TDAM, an affiliate of TDAM or of the Top Fund may have a significant interest in an Underlying Fund, and the potential conflicts of interest which may arise from such relationships;

  (vi) the fees and expenses payable by the Underlying Funds that the Top Fund may invest in, including any incentive fee; and

  (vii) that securityholders of the Top Fund are entitled to receive from TDAM or an affiliate of TDAM, on request and free of charge, a copy of the offering memorandum or other disclosure document, if any, and the annual and interim financial statements of the Underlying Funds in which the Top Fund invests.

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

Application File #: 2020/0503

B.3.2 BMO Nesbitt Burns Inc. and BMO Nesbitt Burns Securities Ltd.

Headnote

Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for their representatives, within a designated class, to be registered with both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition. Due to the broader scope of this relief, the decision subject to a sunset clause to permit evaluation of the implementation of the dual registration of individuals.

Applicable Legislative Provisions

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

November 3, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO (the Jurisdiction)

AND

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

AND

IN THE MATTER OF
BMO NESBITT BURNS INC.
(NBI)

AND

BMO NESBITT BURNS SECURITIES LTD.
(NBSL, and together with NBI, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the restriction under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (such restriction, the **Dual-Registration Restriction**), pursuant to section 15.1 of NI 31-103, to permit the individuals identified in Schedule "A" to the Application and any future advising, associate advising, and/or dealing representatives (collectively, the **Representatives**) to be registered as an advising representative or associate advising representative of NBSL, as the case may be, and as a dealing representative of NBI (the **Relief Sought**).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and Yukon (collectively 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 Filers:

1. NBI is a corporation incorporated under the federal laws of Canada. Its head office is located in Toronto, Ontario.

2. NBI carries on business in all of the Jurisdictions with offices located in all of the provinces of Canada.

3. NBI is registered (i) as an investment dealer in each of the Jurisdictions and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**); (ii) as a dealer (futures commission merchant) in Manitoba; (iii) as a futures commission merchant in Ontario; (iv) as a derivatives dealer in Québec; and (v) as an investment fund manager in Newfoundland & Labrador, Ontario and Québec.

4. NBI provides the full range of dealer services that IIROC member firms are authorized to provide to retail and institutional clients across Canada.

5. NBI is not registered under U.S. federal securities law or any other applicable U.S. securities law to (and does not) carry on the business of a registered broker-dealer or registered investment adviser in the U.S. NBI does not trade (or provide advice with respect to trading) in securities to, with, or on behalf of clients resident in the U.S. (other than in respect of Canadian tax-advantaged retirement savings plans held by clients resident in the U.S. who were formerly resident in Canada and who have moved to the U.S. with tax-advantaged retirement savings plans). NBI conducts this activity in reliance on an U.S. Securities and Exchange Commission (**SEC**) registration exemption.

6. NBSL is a direct, wholly-owned subsidiary of NBI. Both NBSL and NBI are wholly-owned indirect subsidiaries of the Bank of Montreal. As such, each of NBSL and NBI are affiliates of the other.

7. NBSL is incorporated under the federal laws of Canada with its head office in Toronto, Ontario.

8. The Filers operate their businesses out of the same premises in all of the provinces of Canada. Wherever NBSL has an office in Canada, NBSL operates out of the same premises as NBI.

9. NBSL is registered with the SEC as an investment adviser under the U.S. *Investment Advisers Act of 1940*. NBSL is also registered as a broker-dealer under *The Securities Exchange Act of 1934* and is a member of the Financial Industry Regulatory Authority (**FINRA**).

10. NBSL provides discretionary advisory and financial planning services, as well as broker-dealer services, to U.S. clients that are individuals, trusts, non-profits and corporations (the **NBSL U.S. Clients**). NBSL provides these services to NBSL U.S. Clients from Ontario pursuant to exemptions from the dealer and adviser registration requirements available in OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*. NBSL provides these services to NBSL U.S. Clients from Jurisdictions other than Ontario pursuant to relief granted by the British Columbia Securities Commission on November 3, 2022.

11. In Canada, NBSL has provided advisory and broker dealer services to clients who have moved to Canada or are temporarily in Canada (the **NBSL Canadian Clients**) under exemptive relief pursuant to a decision document dated June 2, 2017 and extended on June 2, 2022 (the **Prior Decision**). Amongst other relief, the Prior Decision provides NBSL with relief from the adviser registration requirement.

12. NBSL will no longer rely on the relief from the adviser registration requirement granted in the Prior Decision. Instead, NBSL has applied for registration as an adviser in the category of portfolio manager in each of Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island Québec, Saskatchewan and Yukon in order to permit NBSL to continue to provide portfolio management services to the NBSL Canadian Clients who have moved to Canada. NBSL has been granted relief from the dealer registration requirement pursuant to a decision of the Commission dated November 3, 2022 in order to provide broker-dealer services to NBSL U.S. Clients who are temporarily in Canada.

13. Each Representative will be registered as an advising representative or associate advising representative of NBSL and as a dealing representative of NBI who is authorized under applicable IIROC Rules to provide portfolio management services on behalf of NBI.

14. The Filers have policies and procedures in place that set out under what circumstances an NBI dealing representative can become dually registered with NBSL.

15. On behalf of NBI, the Representatives provide the full range of dealer services that IIROC member firms are authorized to provide to retail and institutional clients across Canada, including acting as portfolio manager to client accounts.

16. On behalf of NBSL with respect to the NBSL U.S. Clients, the Representatives provide discretionary advisory and financial planning services, as well as broker-dealer services, to individuals, trusts, non-profits and corporations. On behalf of NBSL with respect to NBSL Canadian Clients, the Representatives principally provide discretionary advisory services to clients residing in Canada but who were previously resident in the United States in respect of their U.S. tax-advantaged retirement accounts.

17. Each Representative will be registered at both Filers so that clients may continue their established relationship with their Representative as they move between the U.S. and Canada. For this reason, the Filers will from time to time share some clients.

18. Each current Representative is listed in Schedule "A". It is anticipated that any future Representatives that are located in Canada would have similar duties at NBI and NBSL in respect of clients to those described above for the current Representatives.

19. NBI and NBSL have operated their respective businesses relying on individuals acting on behalf of both firms since 2012. Relief from the Dual-Registration Restriction was not required because NBSL was not registered in Canada.

20. The Filers are affiliates and both are indirectly wholly-owned by Bank of Montreal. Accordingly, the dual registration of the Representatives will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned in conjunction with the services provided to their respective clients and therefore the potential for conflicts of interest arising from the dual registration is mitigated.

21. Each Representative is or will be subject to supervision by each of the Filers and come under the applicable compliance requirements of both Filers.

22. Since each NBSL Representative is also an NBI Representative, NBSL has policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representatives and will be able to deal appropriately with any such conflicts, should they arise. The Representatives are subject to, and aware of, these policies and procedures. These policies include controls with respect to disclosure to clients in client facing communication, shared clients and compensation practices and internal outside activity reporting and approvals. Representatives also receive education and training regarding the responsibilities of a fiduciary, including the need for having a reasonable and independent basis for the investment advice provided to clients, without regard to a client's relationship with a Filer's affiliate.

23. NBSL also has policies and procedures in place to:

    a. mitigate or eliminate any client confusion that may result from the dual registration of the Representatives;

    b. ascertain the responsible Filer in respect of the supervision of each Representative;

    c. ensure that the appropriate records are kept for each Filer for its respective services to its clients; and

    d. ensure necessary and timely interaction between the compliance personnel of each Filer to resolve any matters in respect of the dual registration of the Representatives.

24. The respective compliance teams of the Filers are equipped to:

    a. manage and address the complexity and size of the Filers and their respective businesses;

    b. adequately communicate amongst each other;

    c. manage any conflicts of interest that may arise specific to large affiliated registered firms and organizations;

    d. mitigate any client confusion stemming from the dual registration of the Representatives within a large affiliated organization;

    e. supervise a large number of registered individuals across affiliated registrants; and

    f. provide adequate compliance for each Filer's business lines.

25. The Filers are confident that each Representative will have sufficient time to adequately serve both firms.

26. Each of the Filers' respective Ultimate Designated Persons will provide sufficient supervision and promote a culture of compliance such that a Representative has sufficient time and resources to adequately serve each Filer. Each of the Filers' respective Chief Compliance Officers will ensure that each Filer has adequate policies and compliance systems

in place to monitor and assess whether a Representative has sufficient time and resources to adequately serve each Filer and its clients.

27. Disclosure regarding the dual registration of a Representative will be disclosed in writing to the shared clients of NBI and NBSL who deal with a Representative, as applicable.

28. Each Representative will act in the best interest of all clients of each Filer and will deal fairly, honestly and in good faith with these clients.

29. The Filers are not in default of any requirement of securities legislation in any of the Jurisdictions.

30. In the absence of the Relief Sought, the Filers would be prohibited by the Dual-Registration Restriction from permitting a Representative to be registered as an advising representative or associate advising representative of NBSL while the individual is registered as a dealing representative of NBI, even though the Filers are affiliates and have controls and compliance procedures in place to deal with such advising, associate advising and/or dealing activities.

Decision

i. The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision. The decision of the principal regulator under the Legislation is that the Relief Sought is granted, for a period of seven years from the date of this decision, on the following conditions:

ii. The Representatives are subject to supervision by, and the applicable compliance requirements of, both Filers;

iii. The Filers ensure that the Representatives have sufficient time and resources to adequately serve each Filer and its respective clients;

iv. The Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representatives and deal appropriately with any such conflicts; and

v. The relationship between the Filers, and the fact that the Representatives are dually registered with them, is disclosed in writing to shared clients of NBI and NBSL that deal with a Representative.

“Debra Foubert”
Director, Compliance and Registrant Regulation
Ontario Securities Commission

Application File #: 2020/0559

Schedule "A"

List of Representatives as at October 21, 2022

Name	
Alexandra Kathleen Weaver	John Gordon Ridd
Andrew Clarkson Sharp	Jonathan Michael Batch
Andrew Michael McManus	Joseph Martin Quinn
Barbara Blima Schwartz- Zukor	Justin Darryl Cohen
Barbara Elaine Rigney	Kathlene Deana Evanski
Bradley Ian Steinmetz	Kyle Thomas Kootstra
Bradley George Carter	Linas Algirdas Pilypaitis
Brent William Livingstone Retter	Mark Walenty Cylwa
Byron Lesley Gayfeer	Matthew Graham Sitka
Camillo La Civita	Michael Ryan Wilson
Christopher John Thiessen	Michael Timothy Anderson
Christopher Michael Clark	Michael Dorfman
Christopher Wentworth LLewellyn Davies	Nicholas Palahnuk
Daniel Joseph Gruchala	Pascal Nicholas Leonard Di Tomasso
David Richard Boyd	Paul Kenneth Hamilton
Derek Glenn Graham	Richard Belley
Fredrik Christian Bruun	Richard John Lawrence
Gabriel Robert Atkinson Martin	Robert Chalanchuk
Geoffrey Gordon William Cardy	Roderick Kirk Major
Geoffrey Thomas Marshall	Ross Edward Hallett
George Jennings Rogers	Sebastien Blais
Glen Philip Leader	Stuart Campbell George Wigmore
Gordon Brian Gibbons	Syed Faisal Hassan
Hudson Hak-Shun Ma	Sylvain Claude Brisebois
Ian Charles Peebles	Terri Ann Szego
Jean-Francois Papillon	Victor Thomas Yeates
Joel Andrew Widmeyer	Warren James Wood
Joey Brian Goverde	William Jeffrey Charles Simpson

B.3.3 BMO Nesbitt Burns Securities Ltd.

Headnote

Application for relief from subsections 25(1), 25(2) and section 53 of the Securities Act (Ontario) to allow a registered U.S. dealer and investment adviser, also registered as a portfolio manager in the Jurisdictions, to trade securities to, with and on behalf of U.S. client temporarily in Canada without registration as a dealer. Application for relief, by a registered portfolio manager, from certain record keeping, account statement and client reporting requirements, subject to certain conditions, with respect to the U.S. tax-advantaged retirement accounts of Canadian clients.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 25(2), 53 and 74(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 11.5, 14.11.1, 14.14.1, 14.17 14.19 and 15.1(2).

November 3, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
BMO NESBITT BURNS SECURITIES LTD.
(NBSL or the Filer)

DECISION

Background

Although NBSL is based in Ontario, the principal focus of its business is to provide advisory and brokerage services primarily to clients resident in the United States of America (the **U.S.**) (each a **NBSL U.S. Client**). From time to time, NBSL U.S. Clients move from the U.S. to Canada or are temporarily in Canada. For clients who move to Canada, NBSL provides advisory services only in relation to their U.S. tax-advantaged retirement accounts (**U.S. Plans**). NBSL U.S. Clients that move to Canada are required to close all other advisory accounts and any U.S. brokerage accounts with NBSL. Those clients who are temporarily in Canada are able to maintain their advisory accounts and U.S. brokerage accounts.

NBSL was previously granted relief from adviser and dealer registration requirements in a decision *In the Matter of BMO Nesbitt Burns Securities Ltd. and BMO Nesbitt Burns Inc.* dated June 2, 2017 (the **2017 Decision**) to provide services to clients who move to Canada and to clients who are temporarily in Canada. NBSL has applied to be registered as a portfolio manager to provide advisory services in relation to the U.S. Plans of clients who have moved from the U.S. to Canada. The 2017 Decision was extended for a period of six months on June 2, 2022 (the **Extension Decision**) in order for NBSL to complete the individual applications related to its registration application. The Extension Decision expired on November 2, 2022 and NBSL is now seeking the Requested Relief.

Requested Relief

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

Dealer registration, underwriter registration and prospectus relief

a) pursuant to subsection 74(1) of the *Securities Act* (Ontario) (**OSA**) for:

(i) an exemption from the dealer registration requirement (the **Dealer Registration Relief**) for NBSL to trade to, with or on behalf of an individual who is ordinarily resident in the United States, but who is

temporarily in Canada and with whom NBSL provided brokerage services prior to the individual became temporarily resident in Canada (each a **U.S. Client Temporarily in Canada**); and

(ii) an exemption from the prospectus requirement and underwriter registration requirement applicable to a distribution of a foreign security made by NBSL when acting on behalf of a U.S. Client Temporarily in Canada and an NBSL Canadian Client (as defined below) with respect to their U.S. Plans (the **Distribution Relief**);

Relief related to NBSL's registration as a portfolio manager

a) pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) for an exemption from:

(i) the requirement for NBSL to maintain certain books and records for NBSL Canadian Clients' investment positions and trades pertaining to the U.S. Plans under paragraphs (f), (g), (h), (i) and (j) of subsection 11.5(2) of NI 31-103 (the **Books and Records Relief**);

(ii) the requirement for NBSL to determine market value under section 14.11.1 of NI 31-103 for purposes of client account statements and client account reporting pertaining to the U.S. Plans (the **Market Value Relief**);

(iii) the requirement in paragraph 14.14.1(2)(h) of NI 31-103 for NBSL to identify which of the securities in the statement might be subject to a deferred sales charge if they are sold in relation to the U.S. Plans (the **DSC Account Statement Relief**);

(iv) with respect to each annual investment performance report provided by NBSL to its NBSL Canadian Clients with U.S. Plans, the requirement in paragraph 14.19(1)(j) of NI 31-103 to provide the definition of "total percentage return" and a notification and information related to "total percentage return"; and

(v) the requirement for NBSL to provide NBSL Canadian Clients with U.S. Plans with an annual report on charges and other compensation pursuant to section 14.17 of NI 31-103 ((iv) and (v) together, the **Client Reporting Relief**).

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

a) the Ontario Securities Commission (the **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 Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon (collectively 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. NBSL is incorporated under the federal laws of Canada with its head office in Toronto, Ontario.

2. NBSL is a direct, wholly-owned subsidiary of BMO Nesbitt Burns Inc. (**NBI**). Both NBSL and NBI are wholly-owned indirect subsidiaries of the Bank of Montreal. Each of NBSL and NBI are affiliates of the other.

3. NBSL is registered with the Securities and Exchange Commission (**SEC**) as an investment adviser under the U.S. *Investment Advisers Act of 1940* (the **1940 Act**). NBSL is also registered as a broker-dealer under the U.S. *Securities Exchange Act of 1934* (the **1934 Act**) and is a member of the Financial Industry Regulatory Authority (**FINRA**).

4. NBSL provides discretionary advisory and financial planning services, as well as broker-dealer services, to NBSL U.S. Clients that are individuals, trusts, non-profits and corporations.

5. NBSL provides these services to NBSL U.S. Clients from Ontario pursuant to exemptions from the dealer and adviser registration requirements available in OSC Rule 32-505 *Conditional Exemption from Registration for United States*

Broker-Dealers and Advisers Servicing U.S. Clients from Ontario. NBSL provides these services to NBSL U.S. Clients from Jurisdictions other than Ontario pursuant to relief granted by the British Columbia Securities Commission.

6. NBSL provides discretionary advisory services to clients:

   a. residing in Canada but who were previously resident in the United States, if such services are in respect of the client's U.S. Plan where:

      i. the U.S. Plan is located in the U.S.;

      ii. the client is a holder of or contributor to the U.S. Plan; and

      iii. the client was previously resident in the U.S.; or

   b. residing in Canada, if such services are in respect of a U.S. Plan that such client received as a result of a testamentary disposition from an NBSL client (together with subparagraph (a), the **NBSL Canadian Clients)**.

7. NBSL previously operated the business described in paragraph 6(a) in the Jurisdictions in reliance on exemptions from the adviser and dealer registration requirements, among other relief, granted in the 2017 Decision and the Extension Decision.

8. NBSL will no longer rely on the relief from the adviser registration requirement granted in the 2017 Decision and the Extension Decision. Instead, because the business described in paragraph 6(a) has grown, NBSL has applied for registration as an adviser in the category of portfolio manager in each of Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon in order to continue to provide advisory services to NBSL Canadian Clients.

9. If a NBSL U.S. Client or a U.S. Client Temporarily in Canada intends to become a resident of Canada, such client must close any brokerage accounts and any non-U.S. Plan held at NBSL. NBSL will continue to act as discretionary adviser to the U.S. Plans of such client under its adviser registration in Canada.

10. NBI is registered (i) as an investment dealer in each of the Jurisdictions and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**); (ii) as a dealer (futures commission merchant) in Manitoba; (iii) as a futures commission merchant in Ontario; (iv) as a derivatives dealer in Québec; and (v) as an investment fund manager in Newfoundland & Labrador, Ontario and Québec.

11. NBI provides the full range of dealer services that IIROC member firms are authorized to provide to retail and institutional clients across Canada.

12. NBI is not registered under U.S. federal securities law or any other applicable U.S. securities law to (and does not) carry on the business of a registered broker-dealer or registered investment adviser in the U.S. NBI does not trade (or provide advice with respect to trading) in securities to, with, or on behalf of clients resident in the U.S. (other than in respect of Canadian tax-advantaged retirement savings plans held by clients resident in the U.S. who were formerly resident in Canada and who have moved to the U.S. with tax-advantaged retirement savings plans, pursuant to SEC rule 237 under the *Securities Act of 1933*, rule 7d-2 under the 1940 Act and rule 12g3-2 under the 1934 Act.

13. Wherever NBSL has an office in Canada, NBSL operates out of the same premises as NBI.

14. NBSL is not in default of securities legislation in any of the Jurisdictions. NBSL is in compliance in all material respects with U.S. securities law.

15. NBSL has complied with, and is currently in compliance with, all of the terms and conditions of the Extension Decision.

U.S. Clients Temporarily in Canada

16. As NBSL is not registered as a dealer in Canada, absent the Dealer Registration Relief, NBSL may not trade to, with or on behalf of U.S. Clients Temporarily in Canada. NBSL is not able to rely on the exemptions contained in National Instrument 35-101 *Conditional Exemption from Registration for United States Broker-Dealers and Agents* (**NI 35-101**) with respect to such clients. It is a condition of the exemption for U.S. broker-dealers in paragraph 2.1(a) of NI 35-101, and for their agents in paragraph 3.1(b) of NI 35-101, that the broker-dealer and their agents have no office or other physical presence in any jurisdiction in Canada. NBSL and its agents are located in Canada. NBSL previously provided these services from the Jurisdictions pursuant to dealer registration relief provided for in the 2017 Decision and the Extension Decision.

17. The Dealer Registration Relief is being sought to permit NBSL to continue to provide services to the existing U.S. brokerage accounts of U.S. Clients Temporarily in Canada.

18. NBSL's brokerage account services with respect to U.S. Clients Temporarily in Canada are discrete and intended as an accommodation to NBSL U.S. Clients, who are the primary and principal focus of the firm's business. Furthermore, NBSL U.S. Clients Temporarily in Canada with brokerage accounts represent a small percentage of NBSL's U.S. business.

19. The Dealer Registration Relief is intended to permit U.S. Clients Temporarily in Canada to continue to access their existing U.S. brokerage accounts while in Canada for a limited time period.

20. NBSL does not advertise or solicit for new brokerage clients in Canada and the firm is not seeking to increase or grow its offering of broker-dealer activities in Canada.

21. Where NBSL trades to, with or on behalf of U.S. Clients Temporarily in Canada, they will comply with all U.S. federal securities law and any other applicable U.S. securities law, including all applicable U.S. federal securities laws and state securities legislation in the U.S. applicable to distributions and trading of securities.

22. All U.S. Clients Temporarily in Canada were located in the United States at the time of opening their brokerage accounts and executing their customer agreements and associated account-opening documentation with NBSL and had a broker-dealer client relationship with NBSL before the individual became temporarily resident in Canada. NBSL remains subject to SEC and FINRA oversight requirements applicable to such accounts.

Distribution Relief

23. NBSL was previously granted an exemption from the prospectus requirement and underwriter registration requirement applicable to the distribution of a foreign securities, when acting on behalf of certain clients, in the 2017 Decision and the Extension Decision.

24. The Distribution Relief is being sought to permit NBSL to continue to distribute foreign securities to U.S. Plans in accordance with all applicable U.S. federal securities laws and state securities legislation in the U.S.

25. NBSL will make sure a prospectus complying with U.S. securities laws is delivered to both U.S. Clients Temporarily in Canada and NBSL Canadian Clients prior to the completion of the sale of securities to that client, as required under US securities laws.

26. U.S. Clients Temporarily in Canada and NBSL Canadian Clients will have the same protections as a U.S. purchaser of the securities.

27. NBSL has the full support of its U.S. legal and compliance team, which also supports other U.S. Bank of Montreal registered entities and affiliates. This team, which has approximately 30 compliance and legal professionals, has expertise in U.S. federal securities laws and state securities legislation. This team is dedicated to compliance and monitoring matters with respect to U.S. federal securities laws and state securities legislation.

28. NBSL has policies and procedures as required by its registration with FINRA and the SEC, which includes policies, procedures and controls to ensure that U.S. federal securities laws and state securities legislation are complied with, for instance that any prospectus that is the subject of a U.S. registration statement is delivered to clients, as required.

NBSL Account Statements, Market Value and Performance Reporting as an Adviser under NI 31-103

29. NBSL is an introducing broker-dealer subject to FINRA regulatory oversight.

30. NBSL has engaged National Financial Services LLC (**NFS**), for trading, custody, clearing and settlement services pursuant to the terms of a clearing agreement dated October 17, 2015, as amended from time to time (the **Clearing Agreement**).

31. NFS is registered with the SEC as an investment adviser under the 1940 Act. NFS is also registered as a broker-dealer under the 1934 Act and is a member of FINRA.

32. NFS is not registered in Canada and relies upon the exemption from the dealer registration requirement of the securities laws of each Jurisdiction under Section 8.18 of NI 31-103 (the **international dealer exemption**) in connection with, *inter alia*, trades in "foreign securities" with a "permitted client" (each as defined in NI 31-103). NFS cannot rely on the international dealer exemption to trade in securities on behalf of the NBSL clients that are not permitted clients. NFS obtained exemptive relief in the Jurisdictions pursuant to a decision document dated March 2, 2012 from, *inter alia*, the dealer registration requirement, to permit NFS to trade in securities for "Qualified Accounts" as defined in the NFS Relief.

33. In accordance with the provisions of the Clearing Agreement, NFS provides trading, custody, clearing and settlement services for all NBSL clients, including NBSL U.S. Clients (which includes U.S. Clients Temporarily in Canada) and NBSL Canadian Clients.

34. Each of NBSL's clients enter into a custody agreement directly with NFS pursuant to which NFS acts the custodian of the client's account.

35. Pursuant to such custody agreement, each NBSL client receives account statements from NFS.

36. NBSL U.S. Clients, including U.S. Clients Temporarily in Canada, will continue to receive account statements from NFS and other applicable account reporting in accordance with applicable SEC and FINRA rules and requirements.

37. NBSL clients that are NBSL Canadian Clients will receive account statements from NFS that comply with sections 14.14 and 14.14.1 of NI 31-103, with the exception of the information contained in the Market Value Relief and the DSC Account Statement Relief.

38. NBSL clients that are NBSL Canadian Clients will also receive account reporting from NBSL that complies with section 14.18 to 14.20 of NI 31-103, with the exception of the items contemplated in the Client Reporting Relief.

Market Value Relief and DSC Account Statement Relief

39. As a broker-dealer and member of FINRA, NFS has significant experience providing account statement reporting to clients in accordance with applicable requirements of U.S. law and accepted industry practices.

40. NFS provides account statements for the U.S. Plans in accordance with SEC requirements and standard industry practice in the U.S. NBSL U.S. Clients are familiar with the account statements, and the contents of the account statements, that they currently receive from NFS.

41. Requiring NBSL to modify such statements for the U.S. Plans when the client becomes a NBSL Canadian Client, including with respect to the presentation of market value information and deferred sales charge information, which is not required information to be presented under U.S. securities law, may lead to client confusion.

Books and Records Relief

42. With respect to the arrangement between NBSL and NFS:

    a. NBSL and NFS have a written agreement, the Clearing Agreement, which includes the key terms and the roles and responsibilities of each firm;

    b. NBSL provides written disclosure to its NBSL Canadian Clients with respect to the role of NFS;

    c. NBSL does not hold any investments for clients and all of the investments for NBSL Canadian Clients for which NBSL is authorized to trade are held by NFS; and

    d. NBSL oversees NFS to ensure that the account statement reporting provided by NFS is complete, accurate and delivered on a timely basis.

43. In accordance with SEC and FINRA requirements, the Clearing Agreement and standard industry practice in the U.S., NBSL relies on NFS to maintain books and records for its clients' investment positions and trades, such as records:

    a. with respect to the identification and segregation of client cash, securities, and other property;

    b. identifying transactions conducted by NBSL on behalf of each of its clients, including:

        i. records of the parties to the transaction and the terms of the purchase or sale;

        ii. records of the actions leading to trade execution, settlement and clearance, such as trades on exchanges, alternative trading systems, over the counter markets, debt markets, and distributions and trades in the prospectus exempt market;

        iii. trade confirmations, tax information related to investment positions and statements;

        iv. summary information about account activity;

    c. with respect to transactions resulting from securities a client holds, such as dividends or interest paid, or dividend reinvestment program activity;

    d. with respect to the generation of account transaction activity reports for clients; and

    e. with respect to securities pricing held in client accounts.

44. NBSL has established, maintains and enforces a supervisory system and written supervisory procedures designed to oversee the recordkeeping activities of NFS. In addition, NBSL periodically reviews and updates its recordkeeping written supervisory procedures and has appropriate written supervisory control procedures in place to test and verify that those recordkeeping supervisory procedures comply with applicable SEC and FINRA requirements.

45. Pursuant to such procedures, NBSL oversees and monitors NFS to ensure that NFS maintains such books and records in accordance with FINRA requirements, the Clearing Agreement and standard industry practice in the U.S. NBSL has access at all times to such books and records and periodically tests and verifies that NFS is maintaining the books and records in a complete, accurate and timely manner. NFS is also required to maintain reports with respect to books and records as requested by NBSL. Such oversight function may also be conducted in a centralized manner through Bank of Montreal's Supplier Management program.

46. Pursuant to FINRA requirements and the Clearing Agreement, NFS is required, upon request of NBSL, to provide the applicable books and records that it maintains for NBSL to any regulatory authority overseeing NBSL. The Commission will have such access to the books and records maintained by NFS.

NBSL Canadian Client - Client Reporting Relief

47. NBSL provides account reporting for the U.S. Plans in accordance with SEC requirements and standard industry practice in the U.S. Clients of NBSL with U.S. Plans are familiar with the account reporting, and the contents of the account reporting, that they currently receive from NBSL.

48. While the account reporting provided by NBSL to NBSL Canadian Clients does not include a definition of "total percentage return" or a notification and information related to "total percentage return" required pursuant to paragraph 14.19(1)(j) of NI 31-103, such reporting provides clients with a percentage rate of return (both including and net of fees) and includes information describing to clients what "rate of return" means. Further, rate of return is calculated using a money-weighted rate of return calculation method. As a result, NBSL Canadian Clients will receive substantially similar information and reporting as they would receive if "total percentage return" information was included.

49. U.S. securities laws and SEC rules do not require NBSL to provide clients with an annual report on charges and other compensation. Absent this relief, NBSL would be required to create two records systems – one for the NBSL U.S. Clients and one for the NBSL Canadian Clients. Further, the account statements that clients currently receive for their U.S. Plans include information about the taxes, fees and expenses applicable to the account. As a result, clients receive certain of the information that they would receive in a report on charges and other compensation.

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:

1. the Dealer Registration Relief is granted, provided that:

    a. NBSL will only trade securities to, with or on behalf of a U.S. Client Temporarily in Canada;

    b. NBSL remains registered as a broker-dealer under the 1934 Act;

    c. NBSL remains a FINRA member;

    d. each trade identified or recommended by NBSL for a U.S. Client Temporarily in Canada will be conducted by a representative of NBSL who is registered under U.S. federal securities laws;

    e. NBSL remains registered under the Legislation as an adviser in the category of portfolio manager;

    f. NBSL establishes, applies and maintains reasonable policies and procedures to estimate the approximate proportion of NBSL U.S. Clients who may be or is a U.S. Client Temporarily in Canada; and

    g. NBSL, in the course of its dealings with U.S. Clients Temporarily in Canada, acts fairly, honestly and in good faith.

2. the Distribution Relief is granted, provided that the relevant distribution of foreign securities:

    a. is made by NBSL pursuant to the Dealer Registration Relief, if applicable; and

    b. is made in compliance with all applicable

        i. U.S. federal securities laws, and

ii. state securities legislation in the U.S;

3. the Books and Records Relief is granted, provided that NBSL's U.S. service provider maintains such books and records in accordance with applicable SEC and FINRA requirements and provides access to such books and records to NBSL and, upon request, to the Commission;

4. the Market Value Relief and DSC Account Statement Relief is granted, provided that market value is calculated in accordance with applicable SEC requirements and account statements are otherwise prepared in accordance with NI 31-103;

5. the Client Reporting Relief is granted, provided that NBSL provides NBSL Canadian Clients account reporting that complies with applicable SEC requirements; and

6. this decision will terminate on the earlier of:

   a. five years after the date of this decision; and

   b. the coming into force of a change in the Legislation that exempts NBSL from the registration requirement in the Legislation in connection with the trading activity it provides to an U.S. Client Temporarily in Canada on terms and conditions other than those set out in this decision.

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

Application File #: 2021/0729

B.3.4 Dye & Durham Limited

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the extension take up requirements in subsection 2.32(4) of National Instrument 62-104 Take-Over Bids and Issuer Bids – an issuer conducting an issuer bid requires relief from the requirement not to extend its issuer bid if all terms and conditions are met unless the issuer first takes up all securities validly deposited and not withdrawn under the issuer bid – requested relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, ss. 2.32(4) and 6.1.

December 12, 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
DYE & DURHAM LIMITED (the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the **Common Shares**) pursuant to an issuer bid commenced on November 11, 2022 (the **Offer**), the Filer be exempt from the requirement set out in subsection 2.32(4) of National Instrument 62-104 – *Take-Over Bids and Issuer Bids* (**NI 62-104**) that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the Filer first takes up all of the Common Shares deposited under the Offer and not withdrawn (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Nunavut and the Yukon Territory.

Interpretation

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

Representations

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

1. The Filer is a corporation validly existing under the *Business Corporations Act* (Ontario) and is in good standing.

2. The registered office and the principal executive office of the Filer is located in Toronto, Ontario.

3. The Filer is a reporting issuer in the Province of Ontario and is not in default of any requirement of the securities legislation in any jurisdiction in which it is a reporting issuer.

4. The authorized share capital of the Filer consists of an unlimited number of Common Shares. As at November 10, 2022, 66,440,150 Common Shares were issued and outstanding.

5. On November 10, 2022, the date of the announcement of the Offer, the closing price of the Common Shares on the TSX was $12.15 per Common Share. Based on such closing price, the Common Shares had an aggregate market value of approximately $800 million on such date.

6. The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "DND".

7. The board of directors of the Filer (the **Board**) believes that the purchase of Common Shares pursuant to the Offer constitutes an efficient means of providing value to the holders of Common Shares (each a **Shareholder**, collectively the **Shareholders**) and is in the best interests of the Filer and its Shareholders. The Board believes that the Offer is a prudent use of the Company's financial resources given its business profile and assets, the current market price of the Common Shares, the excess capital position of the Company and its cash requirements and borrowing costs. The Offer allows the Filer an opportunity to return up to $150,000,000 of capital to Shareholders who elect to tender their Common Shares to the Offer while at the same time increasing the equity ownership of Shareholders who elect not to tender.

8. The Filer commenced the Offer on November 11, 2022. The issuer bid circular dated November 11, 2022 prepared and filed by the Filer in connection with the Offer (the **Circular**) specifies that the Filer proposes to purchase, by way of a modified "Dutch auction" procedure in the manner described below, up to $150,000,000 of the issued and outstanding Common Shares (the **Maximum Purchase Amount**) at a purchase price of not less than $12.50 and not more than $15.00 per Common Share (the **Price Range**).

9. The Offer is made only for Common Shares and not made for any convertible securities. Pursuant to subsection 2.8(b) of NI 62-104, the Filer also made the Offer to each holder of convertible securities that, before the expiry of the deposit period of the Offer, are convertible into Common Shares. Such convertible securities may, at the option of the holder, be converted for Common Shares in accordance with the terms of such convertible securities prior to the expiry of the deposit period of the Offer. Common Shares issued upon the conversion of the convertible securities may be tendered to the Offer in accordance with the terms of the Offer.

10. The Filer will fund any purchase of Common Shares pursuant to the Offer, together with all related fees and expenses of the Offer, from cash on hand. The Offer is not conditional upon the receipt of any financing.

11. Each Shareholder wishing to tender to the Offer may do so pursuant to:

    (a) auction tenders in which the tendering Shareholders specify the number of Common Shares being tendered at a specified price per Common Share (the **Auction Price**) within the Price Range in increments of $0.10 per Common Share (the **Auction Tenders**); or

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

12. Shareholders may make both Auction Tenders and Purchase Price Tenders, but not in respect of the same Common Shares. Shareholders may also make multiple Auction Tenders at different Auction Prices, but not in respect of the same Common Shares (i.e. Shareholders may tender different Common Shares at different prices, but cannot tender the same Common Shares at different prices). Shareholders who tender Common Shares without making a valid Auction Tender or Purchase Price Tender will be deemed to have made a Purchase Price Tender.

13. If a Shareholder wishes to deposit Common Shares in separate lots at a different price for each lot, that Shareholder must complete a separate Letter of Transmittal (and, if applicable, a Notice of Guaranteed Delivery) for each price at which the Shareholder is depositing Common Shares. A Shareholder may not deposit the same Common Shares pursuant to both an Auction Tender and a Purchase Price Tender, or pursuant to an Auction Tender at more than one price.

14. Any Shareholder who beneficially owns fewer than 100 Common Shares (an **Odd Lot Holder**) and tenders all such Common Shares pursuant to an Auction Tender at a price at or below the Purchase Price, or pursuant to a Purchase Price Tender, will be considered to have made an "Odd Lot Tender".

15. The Filer will determine a single purchase price payable per Share (the **Purchase Price**) promptly after the expiry of the Offer by taking into account the number of Shares deposited pursuant to Auction Tenders and Purchase Price Tenders

and the Auction Prices specified by Shareholders depositing Shares pursuant to Auction Tenders. The Purchase Price will be the lowest price per Common Share that enables the Filer to purchase the maximum number of Common Shares validly deposited and not properly withdrawn pursuant to the Offer having an aggregate purchase price not exceeding the Maximum Purchase Amount. For the purposes of determining the Purchase Price, Common Shares deposited pursuant to a Purchase Price Tender will be deemed to have been deposited at a price of $12.50 per Common Share (which is the minimum price per Common Share under the Offer).

16. If the aggregate Purchase Price for the Common Shares validly deposited and not withdrawn pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders would result in an aggregate Purchase Price in excess of the Maximum Purchase Amount, then such deposited Common Shares will be purchased as follows:

    (a) first, the Filer will purchase all Common Shares tendered at or below the Purchase Price by Odd Lot Holders at the Purchase Price; and

    (b) second, the Filer will purchase Common Shares at the Purchase Price on a *pro rata* basis according to the number of Common Shares deposited or deemed to be deposited at a price equal to or less than the Purchase Price by the depositing Shareholders, for an aggregate purchase price of the Maximum Purchase Amount less the aggregate purchase price of the Common Shares purchased from Odd Lot Holders. All Auction Tenders and Purchase Price Tenders will be subject to adjustment to avoid the purchase of fractional Common Shares (with fractions rounded down to the nearest whole Common Share).

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

18. All Common Shares purchased by the Filer pursuant to the Offer (including Auction Tenders tendered at a price below the Purchase Price) will be purchased at the Purchase Price, payable in cash. All payments to Shareholders will be subject to deduction of applicable withholding taxes.

19. Common Shares validly deposited by a Shareholder pursuant to an Auction Tender will not be purchased by the Filer pursuant to the Offer if the Auction Price per Common Share specified by the Shareholder is greater than the Purchase Price.

20. Certificates for all Common Shares not purchased under the Offer (including Common Shares deposited pursuant to an Auction Tender at prices greater than the Purchase Price, Common Shares not purchased because of pro-ration, improper tenders, or Common Shares not taken up due to the termination of the Offer), or properly withdrawn before the Expiration Time (as defined below), will be returned (in the case of certificates representing Common Shares all of which are not purchased) or replaced with new certificates representing the balance of Common Shares not purchased (in the case of certificates representing Common Shares of which less than all are purchased), promptly after the Expiration Time or termination of the Offer or the date of withdrawal of the Common Shares, without expense to the Shareholder. In the case of Common Shares tendered through book-entry transfer into the account of Computershare Trust Company of Canada at Depository Trust Company (**DTC**) or CDS Clearing and Depository Services Inc. (**CDS**), the Common Shares will be credited to the appropriate account maintained by the tendering Shareholder at DTC or CDS, as applicable, without expense to the Shareholder.

21. Shareholders who do not accept the Offer will continue to hold the same number of Common Shares held before the Offer and their proportionate ownership of Common Shares will increase following completion of the Offer, subject to the number of Common Shares purchased under the Offer.

22. As of November 10, 2022, there were 66,440,150 Common Shares issued and outstanding. If the Purchase Price is determined to be $12.50 (being the minimum Purchase Price under the Offer), the maximum number of Common Shares that the Filer is offering to purchase pursuant to the Offer represents approximately 18.06% of the outstanding Common Shares as at November 10, 2022. If the Purchase Price is determined to be $15.00 (being the maximum Purchase Price under the Offer), the maximum number of Common Shares that the Filer is offering to purchase pursuant to the Offer represents approximately 15.05% of the outstanding Common Shares as at November 10, 2022.

23. Mawer Investment Management Ltd. (**Mawer**) exercises control or direction over 10,834,246 Common Shares (approximately 16.31% of the total number of Common Shares outstanding as at November 10, 2022). As at November 10, 2022, to the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, Mawer will not be tendering any of its Common Shares to the Offer. If the Purchase Price is determined to be $12.50 (being the minimum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, Mawer will exercise control or direction over 10,834,246 Common Shares, representing approximately 19.90% of the then outstanding Common Shares immediately following the Offer. If the Purchase Price is determined to be $15.00 (being the maximum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, Mawer

will exercise control or direction over 10,834,246 Common Shares, representing approximately 19.20% of the then outstanding Common Shares immediately following the Offer.

24. Plantro Ltd. (**Plantro**) exercises control or direction over 7,969,310 Common Shares (approximately 11.99% of the total number of Common Shares outstanding as at November 10, 2022). As at November 10, 2022, to the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, Plantro will not be tendering any of its Common Shares to the Offer. If the Purchase Price is determined to be $12.50 (being the minimum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, Plantro will exercise control or direction over 7,969,310 Common Shares, representing approximately 14.64% of the then outstanding Common Shares immediately following the Offer. If the Purchase Price is determined to be $15.00 (being the maximum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, Plantro will exercise control or direction over 7,969,310 Common Shares, representing approximately 14.12% of the then outstanding Common Shares immediately following the Offer.

25. Capital International Investors (**CII**) exercises control or direction over 7,664,137 Common Shares (approximately 11.54% of the total number of Common Shares outstanding as at November 10, 2022). As at November 10, 2022, to the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, CII will not be tendering any of its Common Shares to the Offer. If the Purchase Price is determined to be $12.50 (being the minimum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, CII will exercise control or direction over 7,664,137 Common Shares, representing approximately 14.08% of the then outstanding Common Shares immediately following the Offer. If the Purchase Price is determined to be $15.00 (being the maximum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, CII will exercise control or direction over 7,664,137 Common Shares, representing approximately 13.58% of the then outstanding Common Shares immediately following the Offer.

26. Invesco Canada Ltd. (**Invesco**) exercises control or direction over 7,188,320 Common Shares (approximately 10.82% of the total number of Common Shares outstanding as at November 10, 2022). As at November 10, 2022, to the knowledge of the Filer, and to the knowledge of its directors and officers, after reasonable inquiry, Invesco will not be tendering any of its Common Shares to the Offer. If the Purchase Price is determined to be $12.50 (being the minimum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, Invesco will exercise control or direction over 7,188,320 Common Shares, representing approximately 13.20% of the then outstanding Common Shares immediately following the Offer. If the Purchase Price is determined to be $15.00 (being the maximum Purchase Price under the Offer) and the maximum number of Common Shares are repurchased, Invesco will exercise control or direction over 7,188,320 Common Shares, representing approximately 12.74% of the then outstanding Common Shares immediately following the Offer.

27. To the knowledge of the Filer, after reasonable inquiry, no person or company other than Mawer, Plantro, CII and Invesco beneficially owns, or exercises control or direction over, more than 10% of the voting rights attached to all of the Filer's outstanding Common Shares.

28. As of November 10, 2022, to the knowledge of the Filer and its directors and officers after reasonable inquiry, no director or officer of the Filer, no insider of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's or company's Common Shares pursuant to the Offer.

29. The Offer is scheduled to expire at 5:00 p.m. (Eastern time) on December 16, 2022 (the **Expiration Time**).

30. If all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time but the aggregate Purchase Price of the Common Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is less than the Maximum Purchase Amount, the Filer may wish to extend the Offer. The Filer will not extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Time and the aggregate Purchase Price of the Common Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is equal to or greater than the Maximum Purchase Amount.

31. Pursuant to subsection 2.32(4) of NI 62-104, an issuer may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all securities deposited under the issuer bid and not withdrawn.

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

regarding the Purchase Price, taking into account all Common Shares tendered prior to the Expiration Time and those tendered during any extension period.

33. Common Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Time, may be withdrawn by the Shareholder at any time prior to the expiration of any extension period in respect of the Offer.

34. The Filer is relying on the "liquid market exemption" set out in subsection 3.4(b) of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) from the formal valuation requirements applicable to issuer bids under MI 61-101 (the **Liquid Market Exemption**).

35. There is a "liquid market" for the Common Shares, as such term is defined in MI 61-101, as of the date the Offer was publicly announced because, in accordance with section 1.2 of MI 61-101:

    (a) there is a published market for the Common Shares (i.e. the TSX); and

        (i) during the 12-month period before November 10, 2022 (the date the Offer was publicly announced):

        (ii) the number of issued and outstanding Common Shares was at all times at least 5,000,000 (excluding Common Shares beneficially owned, or over which control or direction was exercised, by related parties), all of which Common Shares are freely tradeable;

        (iii) the aggregate trading volume of Common Shares on the TSX was at least 1,000,000 Common Shares;

        (iv) there were at least 1,000 trades in the Common Shares on the TSX; and

    (b) the aggregate value of the trades in the Common Shares on the TSX was at least $15,000,000; and

    (c) the market value of the Common Shares on the TSX, as determined in accordance with MI 61-101, was at least $75,000,000 for October 2022 (the calendar month preceding the calendar month in which the Offer was publicly announced).

36. Based on the maximum number of Common Shares that may be purchased under the Offer, the Board determined that it is reasonable to conclude that, following completion of the Offer, there will be a market for holders of Common Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.

37. The Board has determined that the Offer is in the best interests of the Filer and Shareholders, and that the Offer is an advisable use of the Filer's financial resources and that, after giving effect to the Offer, the Filer will continue to have sufficient financial resources and working capital to conduct its ongoing operations and that the Offer will not preclude the Filer from pursuing its foreseeable business opportunities or the future growth of the Filer's business.

38. The Circular:

    (a) discloses the mechanics for the take up of, and payment for, deposited Common Shares;

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

    (c) discloses that the Filer has applied for the Exemption Sought;

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

    (e) discloses that Common Shares deposited pursuant to the Offer may be withdrawn any time prior to the expiration of any extension period in respect of the Offer;

    (f) discloses the facts supporting the Filer's reliance on the Liquid Market Exemption; and

    (g) contains the disclosure prescribed by the Legislation for issuer bids.

Decision

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

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

(a) Common Shares validly deposited under the Offer and not withdrawn are taken up and paid for, or dealt with, in the manner set out in the Circular and described above;

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

(c) The Filer will issue and file a press release announcing receipt of the Exemption Sought promptly, and in any case, no later than one (1) business day following receipt of the Exemption Sought.

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

OSC File #: 2022/0498

B.3.5 Fiduciary Trust Company of Canada

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the dealer registration requirement, the know-your-client, trusted contact person and suitability requirements, and the requirements to deliver account statements and investment performance reports granted to a portfolio manager in respect of investors in a model portfolio service offered through affiliated and unaffiliated mutual fund dealers.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
Securities Act, Ontario, ss. 25, 74(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.2, 13.2.01, 13.3, 14.14, 14.14.1, 14.18 and 15.1(2).

December 13, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
FIDUCIARY TRUST COMPANY OF CANADA
(the Filer)

DECISION

Background

The principal regulator (**Principal Regulator**) in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (**Legislation**) exempting the Filer from the following requirements with respect to clients invested in Model Portfolios (as defined below):

(a) the requirement (**Dealer Registration Requirement**) in the Legislation that the Filer be registered as a dealer in order to effect Rebalancing Trades, Fee Redemption Trades and Weighting Change Trades (all as defined below), executed with respect to a Model Portfolio (**Dealer Registration Exemption**);

(b) the requirement (the **Know Your Client Requirement**) in the Legislation that the Filer take reasonable steps to:

(i) establish the identity of a client and, if the Filer has cause for concern, make reasonable inquiries as to the reputation of the client;

(ii) establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded;

(iii) ensure that the Filer has sufficient information regarding the client's investment needs, objectives, financial circumstances, and risk profile, among other information, to enable the Filer to meet its obligations under the Legislation to make a determination with respect to the Suitability Requirement (as defined below);

(collectively, the **Know Your Client Exemption**);

(c) the requirement (the **Trusted Contact Person Requirement**) in the Legislation that the Filer take reasonable steps to:

(i) obtain from the client the name and contact information of a trusted contact person, and the written consent of the client for the Filer to contact the trusted contact person to confirm or make inquiries about any of the following:

a. the Filer's concerns about possible financial exploitation of the client;

b. the Filer's concerns about the client's mental capacity as it relates to the ability of the client to make decisions involving financial matters;

c. the name and contact information of a legal representative of the client, if any;

d. the client's contact information; and

(ii) keep the information described above current

(collectively, the **Trusted Contact Person Exemption**);

(d) the requirement in the Legislation (**Suitability Requirement**) that the Filer take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a client to buy or sell a security or makes a purchase or sale of a security for a client's account, or upon the occurrence of any other required suitability assessment event, such action is suitable for the client (the **Suitability Exemption**); and

(e) the requirement (the **Statement Delivery Requirement**) in the Legislation that the Filer deliver account statements and investment performance reports to clients who have invested in the Model Portfolios (the **Statement Delivery Exemption**).

The Dealer Registration Exemption, Know Your Client Exemption, Trusted Contact Person Exemption, Suitability Exemption, and the Statement Delivery Exemption are collectively referred to as the **Exemption Sought**.

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and Yukon Territory (the **Other Jurisdictions**, and together with the Jurisdiction, the **Canadian 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.

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

Representations

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

The Filer

1. The Filer is a federally-regulated trust company, with its head office located in Toronto, Ontario.

2. The Filer is registered as a portfolio manager in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Yukon Territory, and as a commodity trading manager in Ontario. The Filer provides portfolio management services primarily to high net worth individuals and families through separately managed accounts, pooled funds, and mutual funds.

3. The Filer is a member of the Franklin Templeton group of companies and is a subsidiary of Franklin Templeton Investments Corp. (**FTIC**). FTIC is registered as a portfolio manager, exempt market dealer and mutual fund dealer in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Yukon Territory. FTIC is also registered as an investment fund manager

in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, and Québec and as a commodity trading manager in Ontario.

4. The Filer and FTIC are both indirect wholly-owned subsidiaries of Franklin Resources, Inc.

5. As described in more detail below, the Filer, in its role as portfolio manager, will create and manage model portfolios (the **Services**), comprising investment funds managed by the Filer, FTIC, another affiliate of the Filer or third-party unaffiliated investment fund managers (collectively, the **Funds**).

6. Each Fund is or will be an open-ended mutual fund, including an exchange-traded fund, established under the laws of Ontario or another Jurisdiction.

7. Each Fund is or will be a reporting issuer in one or more of the Canadian Jurisdictions and is or will be subject to the provisions of National Instrument 81-102 *Investment Funds*.

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

The Services

9. The Filer will provide the Services, which will be available to clients of investment dealers and mutual fund dealers that are both affiliated and unaffiliated with the Filer (the **Dealers**). The Dealers are members of the Investment and Industry Regulatory Organization of Canada or any successor thereto (**IIROC**), as well as members of the Mutual Fund Dealers Association of Canada or any successor thereto (**MFDA**).

10. The Services will allow investors to match their risk profile and investment objectives to a model portfolio of Funds (each, a **Model Portfolio**) and have the Filer rebalance such investments on a pre-determined basis.

11. The Filer will design the asset mix and select securities, as well as direct trades in the Model Portfolios. Each Model Portfolio will comprise a selection of Funds and will have its own unique allocation of investment funds that are exposed to different asset classes (the **Asset Classes**).

12. Exposure to the different Asset Classes in a Model Portfolio will be achieved using the Funds. Each Fund will have a percentage target weight within an Asset Class (the **Target Weight**), which may, due to changes in the market value of the Fund, increase or decrease within an upper and lower range (the **Permitted Range**). From time to time, the Filer may decide to change the Target Weight or Permitted Range of the Funds in the Model Portfolio or may replace a Fund with one or more alternative Funds (the **Model Re-allocation**).

13. The applicable Dealer will collect all of the required know-your-client (**KYC**), trusted contact person (**TCP**) and suitability information (including the client's personal circumstances, financial circumstances, investment knowledge, investment needs and objectives, investment time horizon and risk profile) for each client who wishes to participate in the Services. A registered dealing representative of the Dealer (a **Registered Representative**) will perform a KYC analysis to determine which Model Portfolio is suitable for each client. Based on the KYC analysis, a detailed investment policy statement or similar document (the **Investment Policy Statement**) will be created for the client of the Dealer and a recommended Model Portfolio will be generated through the Service.

14. The client will discuss the recommended Model Portfolio and the recommended specific Funds with their Registered Representative. The Registered Representative will communicate with the client in accordance with the Dealer's usual processes and in accordance with securities legislation, which may include face-to-face meetings (in person or on-line) and/or via telephone or email or other written correspondence. However, the client ultimately chooses the Model Portfolio**.** The client has no ability to select funds within a Model Portfolio.

15. The Investment Policy Statement or other similar document will reflect the composition of the Model Portfolio and the Funds in the Model Portfolio, the percentage allocation among the Asset Classes and the Permitted Range to be invested in for each Fund.

16. Once the client confirms the final Investment Policy Statement, the client will sign an acknowledgement form or similar document that describes the fees and provides for the payment of the fees to the Dealer and the Filer and the terms of Service (the **Client Acknowledgement Form**), approving the final Investment Policy Statement and the Model Portfolio, and authorizing the Filer to implement and maintain the Model Portfolio.

17. When, due to changes in the relative market value of each Fund or additional investments by a client, one or more Funds or Asset Classes in an investor's Model Portfolio exceed the Permitted Range, the Filer will execute appropriate trades, within a reasonable time, so that each Fund is returned to a relative weight that is within the Permitted Range (the **Account Rebalance**). The client will authorize the Filer to undertake Account Rebalances in the Client Acknowledgement Form.

18. Clients will have no direct contact with the Filer in connection with the Filer's management of the Model Portfolios. Clients will interact solely with the applicable Dealer and Registered Representatives of the Dealer in connection with the Filer's management of the Model Portfolios and the Dealer's administration of the Dealer's accounts.

19. Each Dealer and their Registered Representatives do not purport to offer managed accounts to their clients – their recommendation is limited to recommending that a client participate in the Service, through which the client will invest in a Model Portfolio. Although the Filer develops the Model Portfolios, each Dealer and each Registered Representative must determine whether or not investing in the constituent Funds pursuant to the Model Portfolio is suitable for that client. The Filer is responsible for developing the Model Portfolios and managing them, but does not refer to any specific client's circumstances in doing so.

20. A client may terminate the Services at any time by contacting their Dealer.

Client Agreement and Client Reporting

21. If the prospective client decides to proceed with investing in a Model Portfolio, an agreement by way of the Client Acknowledgment Form (the **Agreement**) in respect of the Service is entered into between the client, the Dealer, and the Filer, which will set out, among other matters, the following:

    (a) Model Portfolio – The client will authorize the Filer to manage the client's investment on a discretionary basis with a view to ensuring that the client's account is managed in accordance with the agreed upon Model Portfolio and within the Permitted Ranges indicated in the Agreement, which may be adjusted in the discretion of the Filer, but provides that the Filer is not responsible for taking into consideration the client's financial circumstances or risk profile in the management of the account(s);

    (b) No changes to another Model Portfolio – In the event that changes in the client's financial circumstances or risk profile are communicated by the client to the applicable Dealer, which results in a different Model Portfolio being more suitable for the client, the Registered Representative of the Dealer will need to undertake the analysis described in paragraphs 14 and 14 above and enter into a new Agreement before the client's investments are changed to reflect the new Model Portfolio;

    (c) KYC, TCP and suitability – The client will acknowledge that the Know Your Client Requirement, the Trusted Contact Person Requirement, and the Suitability Requirement is not the responsibility of the Filer, but instead will be that of the Dealer who will gather and periodically update the KYC and TCP information concerning the client and confirm, on at least an annual basis, the suitability of the selected Model Portfolio for the client;

    (d) Weighting Change Trades – The client will authorize the Filer to use its discretion, from time to time, to make decisions regarding certain changes to the Permitted Ranges of a Model Portfolio (**Weighting Changes**) and trades in connection with such Weighting Changes, including authorizing the Filer to use its discretion to change and update the Permitted Range within the Model Portfolio by purchasing and redeeming securities of the Funds in the Model Portfolio (the **Weighting Change Trades**);

    (e) Rebalancing Trades – The client will authorize the Filer to rebalance holdings in the Funds from time to time within the Permitted Ranges in a manner that seeks to reduce the tax impact of holding such Funds across all account types for which the client is the beneficial owner and use its discretion to effect a Model Re-allocation or an Account Rebalance (the **Rebalancing Trades**);

    (f) Fee Redemption Trades – The client will authorize the Filer to redeem units of the Funds to pay fees owed by the client pursuant to the Agreement (the **Fee Redemption Trades**);

    (g) The Filer will be responsible to the client for ensuring that the selected Model Portfolio is managed in accordance with the terms agreed upon by the client; and

    (h) No discretionary authority for the Dealers – The client will acknowledge that the Dealer will not have discretionary authority to participate in the management of the Model Portfolio or to effect Weighting Change Trades, Rebalancing Trades or Fee Redemption Trades.

22. In addition to the Agreement, the client will also be provided:

    (a) with the final Investment Policy Statement prior to or concurrently with the execution of the Agreement which sets out the composition of the Model Portfolio, the Target Weight of the Funds, the method by which the Permitted Range is determined, the fees payable to the Dealer and the Filer as well as the rules governing the investment and management of the Model Portfolio;

(b) within two days of trades being implemented for the Model Portfolio, with the Fund Facts or other document, as may be required by applicable securities laws, in respect of the Funds included in the Model Portfolio. In the event that, as part of the Rebalancing Trades, a new replacement Fund is incorporated as part of the Model Portfolio, the client will similarly be provided with the Fund Facts for the replacement Fund, subject to any applicable exemption available to the Dealer; and

(c) with trade confirmations by the Dealer for the initial allocation trades when the client first invests in a Model Portfolio.

23. Where the Dealer determines that a Model Portfolio is no longer appropriate for the client or that a different Model Portfolio would be more appropriate for the client, this will be communicated to the Filer and the client by the Dealer, and the Dealer will take appropriate action. A change to a different Model Portfolio will not be made without the client entering into a new Agreement in respect of the new Model Portfolio.

24. The Dealer is responsible for arranging for the execution of the Agreement and related materials by the client. Trade confirmations for the initial allocation trades will be provided by the Dealer. The Dealer will not act on behalf of the client when the Filer effects a Weighting Change Trade, Rebalancing Trade or Fee Redemption Trade for the client. Accordingly, the Dealer will not be required by the Legislation to deliver trade confirmations to the client for Weighting Change Trades, Rebalancing Trades or Fee Redemption Trades. The documentation executed by the client in connection with establishing the Services will disclose that the client will not receive trade confirmations for Weighting Change Trades, Rebalancing Trades or Fee Redemption Trades.

25. The Dealer will reflect all Weighting Change Trades, Rebalancing Trades or Fee Redemption Trades in the client's account in accordance with the Legislation.

26. Each Dealer will be responsible for providing clients with account statements, trade confirmations, performance reports and any other reports or statements required by the Legislation.

27. Account opening documents relating to the Services will explain the different responsibilities of the Dealer and the Filer with respect to the client and the client's Model Portfolio. This will include disclosure that the Filer is responsible for managing the Model Portfolio without reference to the client's circumstances and only in accordance with the Model Portfolio selected by the client, and the Dealer alone will have the responsibility to determine that the selected Model Portfolio is and remains suitable for the client.

28. The Funds that will comprise each Model Portfolio will be held directly by each client in their own account with the Dealer and if the client has not already opened an account with the Dealer, the client will complete an account application.

29. Each Dealer will send clients statements of account in accordance with applicable securities legislation, including the requirements of IIROC and MFDA, as applicable. Such statements of account will be sent monthly if any transactions have occurred in the Service during the month, otherwise the statement of account will be sent quarterly or more frequently if the client has requested to receive monthly statements. Such statements of account will identify the assets being managed on behalf of the client through the Services and will include for each Rebalancing Trade, Fee Redemption Trade or Weighting Change Trade, the information that the Dealer would otherwise have been required to include in a trade confirmation in accordance with the Legislation. Such statements of account also will reconfirm that the client will not receive trade confirmations for these trades.

30. Clients will be able to access their accounts in the manner each Dealer makes its accounts available for its clients.

31. An investment performance report will be sent to each client in the Service by the applicable Dealer on an annual basis.

32. The Dealer will also provide the client with an annual tax reporting package.

33. The fees and expenses charged by the Dealer and the Filer will be disclosed in the Agreement and/or applicable Fund prospectus and Fund Facts.

34. There will be no duplication of any fees or charges for the same services as a result of a client's decision to use the Services. No sales charges, redemption fees, switch fees or early trading fees will be charged in connection with any of the trades effected under the Service.

Oversight and Monitoring

35. The following monitoring and oversight procedures will be carried out in connection with each client's account in the Services:

    (a) An annual portfolio review will be conducted by the relevant Registered Representative to determine whether there have been any changes to the client's circumstances that would warrant the selection of another Model Portfolio; and

    (b) Ongoing oversight of each Model Portfolio by the Filer's advising representatives, including the selection of recommended Funds within each Asset Class, to determine whether the composition of the Model Portfolio remains suitable for the risk profile of the model or whether any changes to the Asset Classes or selection of Funds within the model would be appropriate.

36. As part of the Service, provided that the client's Registered Representative of the Dealer is given at least 60 days' advance written notice (the **Written Notice**) and the Model Portfolio remains consistent with its stated investment objective at all times, the Filer may also, from time to time, use its discretion to make Weighting Changes.

37. The Written Notice will describe the proposed Weighting Change and will provide sufficient detail for the Registered Representative to determine whether the Model Portfolios, after the implementation of the proposed change, would continue to be appropriate for their clients. The Written Notice will specify that if the Registered Representative does not provide an objection on behalf of their client to the proposed Weighting Change by a specified date, such non-objection will be deemed to be consent for the changes on the effective date.

Exemption Sought

38. In the absence of the Exemption Sought, the Filer would be required:

    (a) to register as a mutual fund dealer under the Legislation and become a member of the MFDA in order to effect the Rebalancing Trades, Fee Redemption Trades or Weighting Change Trades;

    (b) to gather and update the information contemplated by the Know Your Client Requirement in section 13.2 of NI 31-103 for each client in the Service in order to fulfil its obligations as a registered adviser;

    (c) to gather and update the information contemplated by the Trusted Contact Person Requirement in section 13.2.01 of NI 31-103 for each client in the Service in order to fulfil its obligations as a registered adviser;

    (d) by the Suitability Requirement in section 13.3 of NI 31-103, to ensure that each Rebalancing Trade, Fee Redemption Trade or Weighting Change Trade is suitable for each client in the Service, rather than invested in accordance with the terms of the client's Agreement; and

    (e) by the Statement Delivery Requirement in subsections 14.14 or 14.14.1 and 14.18 of NI 31-103, to deliver account statements and investment performance reports to each client in the Service.

39. The Dealers do not require an exemption from the adviser registration requirement under the Legislation as a result of their involvement with the Service, as they will not be engaged in providing discretionary management advice to clients in connection with the management of the Model Portfolios and will not be effecting the Rebalancing Trades, Fee Redemption Trades or Weighting Change Trades.

40. The Dealers do not require an exemption from the trade confirmation requirement under the Legislation as they will send trade confirmations after the initial allocation trades and thereafter, they will not act on behalf of a client in the Services to effect any Rebalancing Trades, Fee Redemption Trades or Weighting Change Trades.

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 on the following conditions:

    (a) the Filer is, at the time of any Rebalancing Trade, Fee Redemption Trade or Weighting Change Trade, registered under the Legislation as an adviser in the category of portfolio manager;

    (b) each Rebalancing Trade, Fee Redemption Trade and Weighting Change Trade is made in accordance with the terms of the selected Model Portfolio;

(c) Each client in the Service is informed in writing in the Agreement or otherwise:

(i) of the roles, duties and responsibilities of the Filer and each Dealer, including that:

a. the Filer will manage the Model Portfolios without reference to the client's circumstances and only in accordance with the terms of the Model Portfolio selected by the client;

b. each Dealer will be solely responsible for gathering and periodically updating KYC and TCP information concerning the client and reviewing, on at least an annual basis, the suitability of the selected Model Portfolio for the client;

(ii) that the client will receive account statements and performance reports from each Dealer, and will not receive account statements and performance reports from the Filer;

(d) the Filer will adopt, maintain, and apply oversight policies and procedures designed to provide reasonable assurance that each Dealer complies with its KYC, TCP, and suitability obligations with respect to each client in the Service, including requiring that:

(i) each Dealer not market and sell the Model Portfolios through an order-execution-only, suitability-exempt channel;

(ii) each Dealer notify the Filer of each instance where a Model Portfolio is sold to a client on the basis of a client-directed trade as contemplated in section 13.3 of NI 31-103 and similar provisions under IIROC or MFDA rules;

(iii) each Dealer be responsible for gathering and periodically updating KYC and TCP information concerning the client and confirming, on at least an annual basis, the suitability of the selected Model Portfolio for each client; and

(iv) each Dealer, on an annual basis, no later than 30 days after the end of the calendar year, provide a certificate to the Filer that each Dealer has complied with its KYC, TCP, and suitability obligations with respect to each client in the Service;

(e) the Filer will adopt, maintain, and apply oversight policies and procedures designed to provide reasonable assurance that each Dealer complies with the client reporting obligations under the rules of NI 31-103, the MFDA or IIROC, as applicable, in respect of clients in the Service, including requiring that the Dealer, on an annual basis, no later than 30 days after the end of the calendar year, provide a certificate to the Filer that:

(i) the Dealer has complied with its client reporting obligations under the rules of NI 31-103, the MFDA or IIROC, as applicable, and

(ii) the Dealer has undertaken steps in accordance with its policies and procedures to provide reasonable assurance that account statements and investment performance reports delivered to clients are complete, accurate and delivered on a timely basis in a format that is compliant with the rules of NI 31-103, the MFDA or IIROC, as applicable;

(f) the Filer will adopt and maintain oversight policies and procedures designed to provide reasonable assurance that each Dealer complies with its obligations in respect of all trading for clients in connection with the Service, including requiring that each Dealer, on an annual basis, no later than 30 days after the end of the calendar year, provide a certificate to the Filer that each Dealer has effected all trades for clients in connection with the Service, but not including Rebalancing Trades, Fee Redemption Trades and Weighting Change Trades, in accordance with the selected Model Portfolios.

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

OSC File #: 2022/0318

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
HMH China Investments Limited	December 5, 2022	December 6, 2022
SugarBud Craft Growers Corp	December 6, 2022	

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

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

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Gatos Silver, Inc.	April 1, 2022	
Gatos Silver, Inc.	April 12, 2022	
Sproutly Canada, Inc.	June 30, 2022	
Gatos Silver, Inc.	July 7, 2022	
PlantX Life Inc.	August 4, 2022	
iMining Technologies Inc.	September 30, 2022	
PNG Copper Inc.	November 30, 2022	

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B.6
Request for Comments

B.6.1 CSA Notice and Request for Comment – Proposed Amendments to National Instrument 24-101 Institutional Trade Matching and Settlement and Proposed Changes to Companion Policy 24-101 Institutional Trade Matching and Settlement

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment:

Proposed Amendments to
National Instrument 24-101
Institutional Trade Matching and Settlement

and

Proposed Changes to
Companion Policy 24-101
Institutional Trade Matching and Settlement

December 15, 2022

Part I. Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment proposed amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* (**NI 24-101** or **the Instrument**) and proposed changes to Companion Policy 24-101 *Institutional Trade Matching and Settlement* (**NI 24-101 CP** or **the CP**). Collectively, the proposed rule amendments (**Proposed Amendments**) and companion policy changes will be referred to as the **Proposed Revisions**.

Some of the Proposed Revisions amend the Instrument and change the CP in anticipation of shortening the standard settlement cycle for equity and long-term debt market trades in Canada from two days after the date of a trade (**T+2**) to one day after the date of a trade (**T+1**). The move to a T+1 settlement cycle is expected to occur in 2024, at the same time as the markets in the United States move to a T+1 settlement cycle.

The Proposed Revisions would also repeal the exception reporting requirements in Part 4 of the NI 24-101, including the requirement to file NI Form 24-101F1 *Registered Firm Exception Reporting of DAP/RAP Trade Reporting and Matching* (**Form 24-101F1**) and make related changes to the NI 24-101 CP. Other Proposed Revisions are more housekeeping in nature as they are intended to clarify and update existing requirements. A blackline of the Proposed Revisions to the current versions of the Instrument and CP follows after this Notice in Annexes C and D, and will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.asc.ca
www.bcsc.bc.ca
https://nssc.novascotia.ca
https://fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

We are publishing this Notice and the Proposed Revisions for comment for 90 days. The comment period will expire March 17, 2023. See below under "Comment process" in Part V.

This Notice includes the following Annexes:

- Annex A: the proposed amendments to NI 24-101;
- Annex B: the proposed changes to 24-101CP;
- Annex C: Blackline version of NI 24-101 reflecting the proposed amendments to the Instrument;
- Annex D: Blackline version of NI 24-101CP reflecting the proposed changes to the CP; and
- Annex E: Local Matters (where applicable).

Part II. Purpose of Proposed Revisions

1. Background – History of NI 24-101

NI 24-101 came into force in 2007 and was intended to encourage more efficient and timely pre-settlement confirmation, affirmation, trade allocation and settlement instructions processes for institutional trades in Canada. This process is known as institutional trade matching (**ITM**).

Registered dealers and advisers trading on a DAP/RAP[1] basis for or with an institutional investor must have ITM policies and procedures designed to match a DAP/RAP trade as soon as practical after the trade is executed, but currently by noon on T+1 (**ITM deadline**). In addition, registered firms must complete and file a Form 24-101F1 for every calendar quarter where they do not meet the ITM threshold of matching 90 percent of trades by value and volume before the ITM deadline (**Exception Reporting Requirement**).[2] We note that this requirement is currently subject to a moratorium, discussed below.

The Instrument also requires clearing agencies (in particular, CDS Clearing and Depository Services Inc.) and matching service utilities to submit quarterly data on the matching of institutional equity and debt trades of their participants or users.

For more background information on NI 24-101, including its history and regulatory objective, please see the Consultation Paper that was published with the 2016 Notice and Request for Comment.[3]

2. Migration to T+1 settlement cycle

The Canadian securities industry is preparing for the migration to a standard T+1 settlement cycle in 2024 at the same time as the industry in the United States is moving to T+1.[4] While NI 24-101 does not expressly mandate a T+2 settlement cycle, and would not currently prevent the T+1 migration, there are a few provisions that require revision to facilitate the move to a T+1 settlement cycle and promote uniformity of settlement times across the industry.

We are therefore proposing to repeal "T+2" in the Instrument's definitions section, and to amend subsections 3.1(1) and 3.3(1) of Part 3 Trade Matching Requirements to require registered dealers and registered advisers to have policies and procedures in place designed to achieve institutional trade matching by **9 p.m. Eastern Time** on the date of a trade (**T**), as opposed to the current requirement of 12 p.m. (noon) Eastern Time on T+1. We are also proposing amendments to Form 24-101F2 *Clearing Agency Quarterly Operations Report of Institutional Trade Reporting and Matching* and Form 24-101F5 *Matching Service Utility Quarterly Operations Report of Institutional Trade Reporting and Matching* that would change the ITM data reporting requirements to **T at 12 p.m., T at 9 p.m., T+1 at 12 p.m., T+1 at 3 p.m., T+1 at 11:59 p.m., and after T+1**. These amendments are intended not only to support the upcoming move to settlement on T+1, but also the potential move to settlement on T.[5]

For a successful migration to T+1 settlement, registered firms and other capital market stakeholders will need to review and change, as required, their current clearing and settlement procedures and internal operations and processes. In addition, marketplaces and clearing agencies may need to update various rules and procedures that specifically mandate a particular

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1 See subsections 3.1(1) and 3.3(1) of the Instrument. A DAP/RAP trade is a trade in a security executed for a client account that permits settlement on a *delivery against payment* or *receipt against payment* basis through the facilities of a clearing agency, and for which settlement is completed on behalf of the client by a custodian other than the dealer that executed the trade. See the definition "DAP/RAP trade" in section 1.1 of the Instrument.

2 See section 4.1 of the Instrument.

3 See: https://www.osc.ca/en/securities-law/instruments-rules-policies/2/24-101/proposed-amendments-ni-24-101-institutional-trade-matching-and-settlement-changes-companion-policy, specifically Annex E to the Notice and Request for Comment.

4 For more information about the US move to T+1 please see: https://www.dtcc.com/ust1. For more information about Canada's move to T+1 please see: http://ccma-acmc.ca/en/t1-resources/.

5 The SEC has indicated in its T+1 rule proposals that it would like industry to begin considering and preparing for a move to a settlement date of T: https://www.sec.gov/news/press-release/2022-2.1

settlement cycle, that are keyed to the settlement date and require pre-settlement actions, or that generally facilitate the clearance and settlement of trades.

3. Repealing the Exception Reporting Requirement

We are proposing to repeal the Exception Reporting Requirement in Part 4 of the Instrument. This change will codify and replace the current reporting moratorium provided by blanket orders and a local rule in Ontario.

4. Other amendments to update and clarify NI 24-101

While our primary focus is to support the move to T+1 and reduce regulatory burden by eliminating the Exception Reporting Requirement, we have also proposed amendments to update and clarify NI 24-101.

Part III. Summary of the Proposed Revisions

Section 1 of this Part explains our Proposed Revisions in anticipation of the transition to a T+1 settlement cycle, including our proposal to amend the ITM deadline from noon on T+1 to 9 p.m. on T. Section 2 of this Part explains our Proposed Revisions relating to the repeal of the Exception Reporting Requirement. Section 3 describes the modernizing and clarifying amendments to NI 24-101 including Form 24-101F2 and Form 24-101F5. Section 4 describes proposed changes to the CP.

We welcome comments from stakeholders on all aspects of these amendments.

1. Proposed Revisions as a result of T+1 migration

a) References to "T+2"

NI 24-101 contains a number of references to T+2. They can be found in the definitions section of the Instrument (section 1.1), Forms 24-101F2 and F5, and Part 5 of the CP. We propose to remove these references or replace them with "T+1" as applicable.

b) Amending the ITM3 deadline

We are proposing to amend the ITM deadline from noon on T+1 to 9 p.m. on T. As noted above, in February 2022 the U.S. Securities and Exchange Commission (**SEC**) published for comment a number of proposed rule changes mandating a move to T+1 settlement. While the U.S. rule changes are not yet final at the time of drafting this Notice, and certain aspects – including their implementation date – may be adjusted in response to industry feedback, there appears to be little doubt that the United States financial sector will move to T+1 settlement.

Given the close ties between the Canadian and American markets, in particular the large number of inter-listed securities, in our view it is critical that CSA jurisdictions move to T+1 in concert with the U.S.

It is also our view that the current ITM deadline is no longer appropriate in a standard T+1 settlement environment. Permitting matching to occur until noon on T+1 leaves insufficient time to resolve issues with trade processing (technological and otherwise) and avoid failed trades. For this reason, we have proposed an ITM matching deadline of 9 p.m. on T. This deadline reflects input from industry, including the Canadian Capital Markets Association, which has struck several T+1 working groups in response to the SEC rule proposals.[6]

We welcome stakeholder feedback on whether 9 p.m. is an appropriate ITM deadline.

2. Repealing the Exception Reporting Requirement

In 2020, the CSA provided a three-year moratorium on the applicability of the Exception Reporting Requirement.[7] Specifically, registered firms are not required to deliver Form 24-101F1 to the CSA for so long as the moratorium is in effect, from July 1, 2020 to July 1, 2023.

Under the Exception Reporting Requirement, registered firms are required to deliver Form 24-101F1 to the CSA if less than 90% of trades executed by or for the registered firm during the quarter matched within the time required by NI 24-101. Form 24-101F1

[6] The proposed deadline also reflects the timing constraints imposed by the U.S. T+1 conversion date, which will likely not allow for a second CSA comment period. For this reason we have opted to propose what we understand to be the earliest viable deadline, on the basis that any public comments on the Proposed Revisions that the deadline is too early could be accommodated by moving the deadline to a later time in the final amendments to NI 24-102 *Clearing Agency Requirements*. By contrast, industry feedback requesting an earlier deadline would likely require a material change to the Proposed Revisions, triggering a second comment period that would jeopardize our ability to align the Canadian and American changeovers to T+1.

[7] In Ontario, the Minister approved a local rule providing for the three-year moratorium. The other Canadian CSA jurisdictions imposed a three-year moratorium through blanket orders.

requires registered firms, among other things, to explain why they did not meet the exception reporting thresholds and the steps they have taken to address the delay.[8]

CSA Staff have had discussions with stakeholders who confirmed that the Exception Reporting Requirement is burdensome and has limited utility. CSA Staff agree with these comments and have identified the revocation of the Exception Reporting Requirement as a means of permanently removing unnecessary regulatory burden. Given that the applicable information can be obtained from clearing agencies and matching service utilities, CSA Staff are of the view that the Exception Reporting Requirement no longer meaningfully contributes to the CSA's oversight.

Our proposed amendment would permanently repeal the Exception Reporting Requirement. We note, however, that the amendment would not relieve registered firms from complying with other requirements in NI 24-101 such as establishing, maintaining, and enforcing policies and procedures to achieve the matching threshold for institutional trades.

CSA Staff recognize that the reporting moratorium is set to expire prior to the proposed implementation date for the Proposed Amendments. We anticipate that the moratorium will be extended in all CSA jurisdictions until such time as the proposed amendment, if approved, comes into effect.

3. Other proposed amendments to NI 24-101

While our primary focus is to support the move to T+1 and reduce regulatory burden by eliminating the Exception Reporting Requirement, we have also proposed the following amendments to update and clarify NI 24-101:

- Adding a reference to cyber-resilience to the system requirements in s. 6.5a(iv) of Part 6 to reflect the increasing importance of cybersecurity to the core system requirements of matching service utilities;
- Updating the instructions for Exhibit N of Form F3 to remove the reference to …"during normal business hours; and
- Housekeeping amendments in the form of changing references to months in the various Form instructions from "MMM" to "MM" and correcting minor typographical punctuation errors.

4. Proposed changes to NI 24-101CP

In support of the above-noted rule amendment proposals, we propose the following changes to NI 24-101CP:

- Changing the references to the time of trade matching deadlines in s. 2.2;
- Clarifying the language of s. 2.3(1)(c) by changing "The Instrument does not provide" to "The Instrument does not prescribe";
- Removing the guidance associated with the Exception Reporting Requirement in Part 3;
- Updating the guidance on capacity, integrity, and security system requirements by removing the words "during normal business hours" from s. 4.5(3);
- Changing a reference to a T+2 settlement system to refer instead to a T+1 settlement system in s. 5.1;
- Updating references to IIROC Rules in the footnotes; and
- Housekeeping amendments such as minor typographical changes and updating the table of contents.

Part IV. Other matters

1. Authority for Instrument

In those jurisdictions in which amendments to the Instrument will be adopted, securities legislation provides the securities regulatory authority with authority in respect of the subject matter of the Instrument.

2. Alternatives considered to the Proposed Revisions

The alternative to the Proposed Revisions would be not to proceed with making amendments to the Instrument or changes to the CP to facilitate the move to T+1 settlement or to repeal the Exception Reporting Requirement, or to clarify and update provisions in the Instrument that are unclear or outdated. Not proceeding with the T+1-related Proposed Revisions would be inconsistent

[8] For more information about the three-year moratorium relating to the Exception Reporting Requirement, please see: https://www.osc.ca/en/securities-law/instruments-rules-policies/2/24-101/notice-amendment-national-instrument-24-101-institutional-trade-matching-and-settlement

with the desire to facilitate the move to T+1 and could lead to confusion in the markets with respect to settlement that could put investors at risk.

In addition, without the proposed amendments related to repealing the Exception Reporting Requirement, registered firms would be required to deliver Form 24-101F1, a form that the CSA has determined no longer meaningfully contributes to the CSA's daily oversight, resulting in undue regulatory burden.

3. Unpublished materials

In proposing revisions to the Instrument and the CP, we have not relied on any significant unpublished study, report, or other material.

4. Effective date for Proposed Revisions

If the Proposed Revisions are made following the comment process, all the Proposed Revisions will be brought into force or, in respect of the Companion Policy, be adopted at a date to be determined, to align with the transition in the United States.

Part V. Request for Comments

1. Questions

We welcome your comments on the Proposed Revisions. In addition to any general comments you may have, we also invite comments on the following specific questions:

a. In a T+1 settlement system, is an ITM deadline of 9 p.m. on T appropriate? Why or why not?

b. Are the data reporting requirements in Form 24-101F2 *Clearing Agency Quarterly Operations Report of Institutional Trade Reporting and Matching* and Form 24-101F5 *Matching Service Utility Quarterly Operations Report of Institutional Trade Reporting and Matching* of T at 12 p.m., T at 9 p.m., T+1 at 12 p.m., T+1 at 3 p.m., T+1 at 11:59 p.m., and after T+1 appropriate in a T+1 settlement system? Why or why not?

2. Comment process

Please submit your comments in writing on or before **March 17, 2023**. Please address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission. Questions with respect to this Notice and the Proposed Revisions may be referred to:

Aaron Ferguson
Manager, Market Regulation
Ontario Securities Commission
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Email: david.shore@fcnb.ca

ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 24-101 *INSTITUTIONAL TRADE MATCHING AND SETTLEMENT*

AMENDING INSTRUMENT

1. National Instrument 24-101 Institutional Trade Matching and Settlement is amended by this Instrument.

2. Paragraph (b) of the definition "trade-matching party***" in section 1.1. is amended by adding ","" before "***unless the institutional investor is***".***

3. The definition "T+2***" in section 1.1 is repealed.***

4. Subsection 3.1(1) is amended by replacing "12 p.m. (noon) Eastern Time on T+1***" with "***9 p.m. Eastern Time on T***"***

5. Subsection 3.3(1) is amended by replacing "12 p.m. (noon) Eastern Time on T+1***" with "***9 p.m. Eastern Time on T***"***

6. Section 4.1 is repealed.

7. In Ontario, section 4.1.1 is deleted.

8. Subparagraph 6.5(a)(iv) is amended by adding "adequacy of cyber resilience and the***" before "***vulnerability of***"***

9. Form 24-101F1 Registered Firm Exception Report of DAP/RAP Trade Reporting and Matching is repealed.

10. Form 24-101F2 Clearing Agency Quarterly Operations Report of Institutional Trade Reporting and Matching is amended by

i. replacing "MMM***" with "***MM***", and***

ii. replacing the portion of the Form after the heading "Table 1 – Equity trades:***" and before the word "***Legend***" with the following:***

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T – 9 p.m.								
T + 1 – noon								
T + 1 – 3 p.m.								
T + 1 – 11:59 p.m.								
> T + 1								
Total								

Table 2 – Debt trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T – 9 p.m.								
T + 1 – noon								
T + 1 – 3 p.m.								
T + 1 – 11:59 p.m.								
> T + 1								
Total								

11. Form 24-101F3 Matching Service Utility Notice of Operations is amended by

i. replacing "MMM***" with "***MM***" wherever it occurs, and***

ii. deleting the words "during normal business hours***" in the instructions for Exhibit N – Material systems failures.***

12. Form 24-101F4 Matching Service Utility Notice of Cessation of Operations is amended by replacing "MMM***" with "***MM***".***

13. Form 24-101F5 Matching Service Utility Quarterly Operations Report of Institutional Trade Reporting and Matching is amended by

i. replacing "MMM***" with "***MM***", and***

ii. replacing the portion of the Form after the heading "Table 1 – Equity trades:***" and before the word "***Legend***" with the following:***

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T – 9 p.m.								
T + 1 – noon								
T + 1 – 3 p.m.								
T + 1 – 11:59 p.m.								
> T + 1								
Total								

Table 2 – Debt trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T – 9 p.m.								
T + 1 – noon								
T + 1 – 3 p.m.								
T + 1 – 11:59 p.m.								
> T + 1								
Total								

14. This instrument comes into force on •.

ANNEX B

PROPOSED CHANGES TO
COMPANION POLICY 24-101CP TO
NATIONAL INSTRUMENT 24-101 *INSTITUTIONAL TRADE MATCHING AND SETTLEMENT*

CHANGING DOCUMENT

1. ***Companion Policy 24-101CP to National Instrument 24-101 Institutional Trade Matching and Settlement is changed by this Document.***

2. ***Footnote 3 in subsection 1.2(2) is changed by replacing "***Member Rule 800.49" ***with "***Rules, such as section 4753 of the IIROC Rules***".***

3. ***Footnote 5 in paragraph 1.2(3)(c) is changed by replacing "***IIROC Member Rule 200.1(h)" ***with "***section 3816 of the IIROC Rules***".***

4. ***Section 2.2 is changed by replacing "***12 p.m. (noon) Eastern Time on T+1***" with "***9 p.m. Eastern Time on T***".***

5. ***Paragraph 2.3(1)(c) is changed by replacing "***provide***" with "***prescribe***".***

6. ***Footnote 8 in subsection 2.4(2) is changed by replacing "***Member Rule 35" ***with "***IIROC Rule 2400 *Acceptable Back Office Arrangements****".***

7. ***Sections 3.1 and 3.2 are deleted.***

8. ***Section 3.3 "***Other Information Reporting Requirements***" is renumbered as section 3.1 and changed to "***Information Reporting Requirements***".***

9. ***Section 3.4 is deleted.***

10. ***Section 3.5 is renumbered as section 3.2 and changed by deleting "***registered firm,***".***

11. ***Subsection 4.5(3) is changed by deleting "***during normal business hours***".***

12. ***Section 5.1 is changed by replacing "***T+2***" with "***T+1***" and, in footnote 11, replacing "***IIROC Member Rule 800.27***" with "***section 4805 of the IIROC Rules***".***

ANNEX C

BLACKLINE TO
NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

Contents

Part 1
Definitions and Interpretation

Definitions

1.1 In this Instrument,

"clearing agency" means~~,~~ a recognized clearing agency that operates as a "securities settlement system" as defined in section 1.1 of National Instrument 24-102 *Clearing Agency Requirements;*

"custodian" means a person or company that holds securities for the benefit of another under a custodial agreement or other custodial arrangement;

"DAP/RAP trade" means a trade in a security

(a) executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and

(b) for which settlement is completed on behalf of the client by a custodian other than the dealer that executed the trade;

"institutional investor" means a client of a dealer that has been granted DAP/RAP trading privileges by the dealer;

"marketplace" has the same meaning as in National Instrument 21-101 *Marketplace Operation;*

"matching service utility" means a person or company that provides centralized facilities for matching, but does not include a clearing agency;

"registered firm" means a person or company registered under securities legislation as a dealer or adviser;

"trade-matching agreement" means, for trades executed with or on behalf of an institutional investor, a written agreement entered into among trade-matching parties setting out the roles and responsibilities of the trade-matching parties in matching those trades and including, without limitation, a term by which the trade-matching parties agree to establish, maintain and enforce policies and procedures designed to achieve matching as soon as practical after a trade is executed;

"trade-matching party" means, for a trade executed with or on behalf of an institutional investor,

(a) a registered adviser acting for the institutional investor in processing the trade,

(b) if a registered adviser is not acting for the institutional investor in processing the trade, the institutional investor~~,~~ unless the institutional investor is

(i) an individual, or

(ii) a person or company with total securities under administration or management not exceeding $10 million,

(c) a registered dealer executing or clearing the trade, or

(d) a custodian of the institutional investor settling the trade;

"trade-matching statement" means, for trades executed with or on behalf of an institutional investor, a signed written statement of a trade-matching party confirming that it has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after a trade is executed;

"T" means the day on which a trade is executed;

"T+1" means the next business day following T;

"T+2" ~~means the second business day following T~~[Repealed].

"T+3" [Repealed September 5, 2017]

Interpretation — trade matching and clearing agency

1.2 (1) In this Instrument, matching is the process by which

(a) the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among the trade-matching parties, and

(b) unless the process is effected through the facilities of a clearing agency, the matched details and settlement instructions are reported to a clearing agency.

(2) For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house and a settlement system within the meaning of the *Securities Act* (Québec).

Part 2
Application

2.1 This Instrument does not apply to

(a) a trade in a security of an issuer that has not been previously issued or for which a prospectus is required to be sent or delivered to the purchaser under securities legislation,

(b) a trade in a security to the issuer of the security,

(c) a trade made in connection with a take-over bid, issuer bid, amalgamation, merger, reorganization, arrangement or similar transaction,

(d) a trade made in accordance with the terms of conversion, exchange or exercise of a security previously issued by an issuer,

(e) a trade that is a securities lending, repurchase, reverse repurchase or similar financing transaction,

(f) a purchase governed by Part 9, or a redemption governed by Part 10, of National Instrument 81-102 *Investment Funds,*

(g) a trade to be settled outside Canada,

(h) a trade in an option, futures contract or similar derivative, or

(i) a trade in a negotiable promissory note, commercial paper or similar short-term debt obligation that, in the normal course, would settle in Canada on T.

Part 3
Trade Matching Requirements

Matching deadlines for registered dealer

3.1 (1) A registered dealer must not execute a DAP/RAP trade with or on behalf of an institutional investor unless the dealer has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 9 p.m. ~~12 p.m. (noon)~~ Eastern Time on T.~~+1.~~

(2) [Repealed]

Pre-DAP/RAP trade execution documentation requirement for dealers

3.2 A registered dealer must not open an account to execute a DAP/RAP trade for an institutional investor or accept an order to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

(a) enter into a trade-matching agreement with the dealer, or

(b) provide a trade-matching statement to the dealer.

Matching deadlines for registered adviser

3.3 (1) A registered adviser must not give an order to a dealer to execute a DAP/RAP trade on behalf of an institutional investor unless the adviser has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 9 p.m.~~12 p.m. (noon)~~ Eastern Time on T.~~+1.~~

(2) [Repealed]

Pre-DAP/RAP trade execution documentation requirement for advisers

3.4 A registered adviser must not open an account to execute a DAP/RAP trade for an institutional investor or give an order to a dealer to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

(a) enter into a trade-matching agreement with the adviser, or

(b) provide a trade-matching statement to the adviser.

Part 4
Reporting by Registered Firms

Exception reporting requirement

4.1 ~~A registered firm must deliver Form 24-101F1 to the securities regulatory authority no later than 45 days after the end of a calendar quarter if~~

~~less than 90 per cent of the DAP/RAP trades executed by or for the registered firm during the quarter matched within the time required in Part 3, or~~

~~the DAP/RAP trades executed by or for the registered firm during the quarter that matched within the time required in Part 3 represent less than 90 per cent of the aggregate value of the securities purchased and sold in those trades.~~ [Repealed]

~~**Moratorium**~~

~~**4.1.1 Moratorium:** In Ontario, despite subsection 2(1) of Ontario Securities Commission Rule 11-501 *Electronic Delivery Of Documents To The Ontario Securities Commission*, section 4.1 does not apply to a registered firm beginning on July 1, 2020 and ending on July 1, 2023.[Lapsed in Ontario]~~

Part 5
Reporting Requirements for Clearing Agencies

5.1 A clearing agency must deliver Form 24-101F2 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

Part 6
Requirements for Matching Service Utilities

Initial information reporting

6.1 (1) A person or company must not carry on business as a matching service utility unless

(a) the person or company has delivered Form 24-101F3 to the securities regulatory authority, and

(b) at least 90 days have passed since the person or company delivered Form 24-101F3.

(2) During the 90 day period referred to in subsection (1), if there is a significant change to the information in the delivered Form 24-101F3, the person or company must inform the securities regulatory authority in writing immediately of that significant change by delivering an amendment to Form 24-101F3 in the manner set out in Form 24-101F3.

Anticipated change to operations

6.2 At least 45 days before implementing a significant change to any item set out in Form 24-101F3, a matching service utility must deliver an amendment to the information in the manner set out in Form 24-101F3.

Ceasing to carry on business as a matching service utility

6.3 (1) If a matching service utility intends to cease carrying on business as a matching service utility, it must deliver a report on Form 24-101F4 to the securities regulatory authority at least 30 days before ceasing to carry on that business.

(2) If a matching service utility involuntarily ceases to carry on business as a matching service utility, it must deliver a report on Form 24-101F4 as soon as practical after it ceases to carry on that business.

Ongoing information reporting and record keeping

6.4 (1) A matching service utility must deliver Form 24-101F5 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

(2) A matching service utility must keep such books, records and other documents as are reasonably necessary to properly record its business.

System requirements

6.5 For all of its core systems supporting trade matching, a matching service utility must

(a) consistent with prudent business practice, on a reasonably frequent basis, and, in any event, at least annually,

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests of those systems to determine the ability of the systems to process transactions in an accurate, timely and efficient manner,

(iii) implement reasonable procedures to review and keep current the testing methodology of those systems,

(iv) review the adequacy of cyber resilience and the vulnerability of those systems and data centre computer operations to internal and external threats, including breaches of security, physical hazards and natural disasters, and

(v) maintain adequate contingency and business continuity plans;

(b) annually cause to be performed an independent review and written report, in accordance with generally accepted auditing standards, of the stated internal control objectives of those systems; and

(c) promptly notify the securities regulatory authority of a material failure of those systems.

Part 7
Trade Settlement

Trade settlement by registered dealer

7.1 (1) A registered dealer must not execute a trade unless the dealer has established, maintains and enforces policies and procedures designed to facilitate settlement of the trade on a date that is no later than the standard settlement date for the type of security traded prescribed by an SRO or the marketplace on which the trade would be executed.

(2) Subsection (1) does not apply to a trade for which terms of settlement have been expressly agreed to by the counterparties to the trade at or before the trade was executed.

Part 8
Requirements of Self-Regulatory Organizations and Others

8.1 A clearing agency or matching service utility must have rules or other instruments or procedures that are consistent with the requirements of Parts 3 and 7.

8.2 A requirement of this Instrument does not apply to a member of an SRO if the member complies with a rule or other instrument of the SRO that deals with the same subject matter as the requirement and that has been approved, non-disapproved, or non-objected to by the securities regulatory authority and published by the SRO.

Part 9
Exemption

Exemption

9.1 (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Part 10
Effective Dates and Transition

Effective dates

10.1 [Lapsed]

Transition

10.2 [Lapsed]

[REPEALED]
Form 24-101F1
Registered Firm Exception Report of
DAP/RAP Trade Reporting and Matching

~~**CALENDAR QUARTER PERIOD COVERED:**~~

~~From: _____ to: _____~~

~~**REGISTERED FIRM IDENTIFICATION AND CONTACT INFORMATION:**~~

~~1. Full name of registered firm (if sole proprietor, last, first and middle name):~~

~~2. Name(s) under which business is conducted, if different from item 1 :~~

~~3a. Address of registered firm's principal place of business:~~

~~3b. Indicate below the jurisdiction of your principal regulator within the meaning of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations:*~~

~~□ Alberta~~

~~□ British Columbia~~

~~□ Manitoba~~

~~□ New Brunswick~~

~~□ Newfoundland & Labrador~~

~~□ Northwest Territories~~

~~□ Nova Scotia~~

~~□ Nunavut~~

~~□ Ontario~~

~~□ Prince Edward Island~~

~~□ Québec~~

~~□ Saskatchewan~~

~~□ Yukon~~

~~3c. Indicate below all jurisdictions in which you are registered:~~

~~□ Alberta~~

~~□ British Columbia~~

~~□ Manitoba~~

~~□ New Brunswick~~

~~□ Newfoundland & Labrador~~

~~□ Northwest Territories~~

~~□ Nova Scotia~~

~~□ Nunavut~~

~~□ Ontario~~

~~□ Prince Edward Island~~

□ Québec

□ Saskatchewan

□ Yukon

4. Mailing address, if different from business address:

5. Type of business: O Dealer O Adviser

6. Category of registration:

7. (a) Registered Firm NRD number:

(b) If the registered firm is a participant of a clearing agency, the registered firm's CUID number:

8. Contact employee name:

Telephone number:

E-mail address:

INSTRUCTIONS:

Deliver this form for both equity and debt DAP/RAP trades together with Exhibits A, B and C pursuant to section 4.1 of the Instrument, covering the calendar quarter indicated above, within 45 days of the end of the calendar quarter if

(a) Less than 90 percent of the equity and/or debt DAP/RAP trades executed by or for you during the quarter matched within the time required in Part 3 of the Instrument, or

(b) The equity and/or debt DAP/RAP trades executed by or for you during the quarter that matched within the time required in Part 3 of the Instrument represent less than 90 percent of the aggregate value of the securities purchased and sold in those trades.

Include DAP/RAP trades in an exchange traded fund (ETF) security in the equity DAP/RAP trades statistics. Exhibit A(1) applies only to trades in equity and ETF securities. Exhibit A(2) applies only to trades in debt and other fixed-income securities.

EXHIBITS:

Exhibit A – DAP/RAP trade statistics for the quarter

If applicable, complete Table 1 or 2, or both, below for each calendar quarter. Deadline means noon Eastern time on T+1.

(1) Equity DAP/RAP trades (includes ETF trades)

Entered into the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by dealers and advisers)*							
# of trades	**%**	**$ value of trades**	**%**	**# of trades matched**	**%**	**$ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	%

(2) Debt DAP/RAP trades

Entered into the clearing agency by deadline (to be completed by dealers only)				Matched (to be completed by dealers and advisers)							
# of trades	**%**	**$ value of trades**	**%**	**# of trades matched**	**%**	**$ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

Legend
"# of Trades" is the total number of transactions in the calendar quarter;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the calendar quarter.

Exhibit B – Reasons for not meeting exception reporting thresholds

Describe the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument. Reasons given could be one or more matters within your control or due to another trade-matching party or service provider. If you have insufficient information to determine the percentages, the reason for this should be provided. See also Companion Policy 24-101 to the Instrument.

Exhibit C – Steps to address delays

Describe what specific steps you are taking to resolve delays in the equity and/or debt DAP/RAP trade reporting and matching process in the future. Indicate when each of these steps is expected to be implemented. The steps being taken could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. If you have insufficient information to determine the percentages, the steps being taken to obtain this information should be provided. See also Companion Policy 24-101 to the Instrument.

CERTIFICATE OF REGISTERED FIRM

The undersigned certifies that the information given in this report on behalf of the registered firm is true and correct.

DATED at _____ this ____ day of _____ 20 ___

_____
(Name of registered firm - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

Form 24-101F2
Clearing Agency
Quarterly Operations Report of
Institutional Trade Reporting and Matching

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of clearing agency:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of clearing agency's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 5.1 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Include client trades in an exchange-traded fund (ETF) security in the equity trades statistics.

Exhibits must be provided in an electronic file, in the following file format: " "CSV"" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

EXHIBITS:

1. DATA REPORTING

Exhibit A – Aggregate matched trade statistics

For client trades, provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report. Provide separate aggregate information for trades that have been reported or entered into your facilities as matched trades by a matching service utility.

Month/Year: _____ (MM~~M~~/YYYY)

Table 1 --- Equity trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T – 9 p.m.								
T+1 – noon								
T + 1 – 3 p.m.								
T+1 – 11:59 p.m.								

~~T+2~~								
>T+1~~2~~								
Total								

Table 2 — Debt trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T – 9 p.m.								
T+1 – noon								
T + 1 – 3 p.m.								
T+1 – 11:59 p.m.								
~~T+2~~								
>T+1~~2~~								
Total								

Legend
"# of Trades" is the total number of transactions in the month;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the month.

Exhibit B – Individual matched trade statistics

Using the same format as Exhibit A above, provide the relevant information for each participant of the clearing agency in respect of client trades during the quarter that have been entered by the participant and matched within the timelines indicated in Exhibit A.

CERTIFICATE OF CLEARING AGENCY

The undersigned certifies that the information given in this report on behalf of the clearing agency is true and correct.

DATED at _____ this ____ day of _____ 20 ___

_____
(Name of clearing agency - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

Form 24-101F3
Matching Service Utility
Notice of Operations

DATE OF COMMENCEMENT INFORMATION:

Effective date of commencement of operations: _____ (DD/MM~~M~~/YYYY)

TYPE OF INFORMATION: O INITIAL SUBMISSION O AMENDMENT

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

6. Legal counsel:

   Firm name:

   Telephone number:

   E-mail address:

GENERAL INFORMATION:

1. Website address:

2. Date of financial year-end:_____ (DD/MM~~M~~/YYYY)

3. Indicate the form of your legal status (e.g., corporation, limited or general partnership), the date of formation, and the jurisdiction under which you were formed:

   Legal status: O CORPORATION O PARTNERSHIP
   O OTHER (SPECIFY):

   (a) Date of formation:_____ (DD/MM~~M~~/YYYY)

   (b) Jurisdiction and manner of formation:

4. Specify the general types of securities for which information is being or will be received and processed by you for transmission of matched trades to a clearing agency (e.g. exchange-traded domestic equity and debt securities, exchange-traded foreign equity and debt securities, equity and debt securities traded over-the-counter).

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.1 of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable must be furnished in lieu of the exhibit. To the extent information requested for an exhibit is identical to the information requested in another form that you have filed or delivered under National Instrument 21-101 *Marketplace Operation,* simply attach a copy of that other form and indicate in this form where such information can be found in that other form.

If you are delivering an amendment to Form 24-101F3 pursuant to section 6.1(2) or 6.2 of the Instrument, and the amended information relates to an exhibit that was delivered with such form, provide a description of the change and complete and deliver an updated exhibit.

EXHIBITS:

1. CORPORATE GOVERNANCE

Exhibit A – Constating documents

Provide a copy of your constating documents, including corporate by-laws and other similar documents, as amended from time to time.

Exhibit B – Ownership

List any person or company that owns 10 per cent or more of your voting securities or that, either directly or indirectly, through agreement or otherwise, may control your management. Provide the full name and address of each person or company and attach a copy of the agreement or, if there is no written agreement, briefly describe the agreement or basis through which the person or company exercises or may exercise control or direction.

Exhibit C – Officials

Provide a list of the partners, officers, directors or persons performing similar functions who presently hold or have held their offices or positions during the current and previous calendar year, indicating the following for each:

1. Name.

2. Title.

3. Dates of commencement and expiry of present term of office or position and length of time the office or position held.

4. Type of business in which each is primarily engaged and current employer.

5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

6. Whether the person is considered to be an independent director.

Exhibit D – Organizational structure

Provide a narrative or graphic description of your organizational structure.

Exhibit E – Affiliated entities

For each person or company affiliated to you, provide the following information:

1. Name and address of affiliated entity.

2. Form of organization (e.g., association, corporation, partnership).

3. Name of jurisdiction and statute under which organized.

4. Date of incorporation in present form.

5. Brief description of nature and extent of affiliation or contractual or other agreement with you.

6. Brief description of business services or functions.

7. If a person or company has ceased to be affiliated with you during the previous year or ceased to have a contractual or other agreement relating to your operations during the previous year, provide a brief statement of the reasons for termination of the relationship.

2. FINANCIAL VIABILITY

Exhibit F – Audited financial statements

Provide your audited financial statements for the latest financial year and a report prepared by an independent auditor.

3. FEES

Exhibit G – Fee list, fee structure

Provide a complete list of all fees and other charges imposed, or to be imposed, by you for use of your services as a matching service utility, including the cost of establishing a connection to your systems.

4. ACCESS

Exhibit H – Users

Provide a list of all users or subscribers for which you provide or propose to provide the services of a matching service utility. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser or other party).

If applicable, for each instance during the past year in which any user or subscriber of your services has been prohibited or limited in respect of access to such services, indicate the name of each such user or subscriber and the reason for the prohibition or limitation.

Exhibit I – User contract

Provide a copy of each form of agreement governing the terms by which users or subscribers may subscribe to your services of a matching service utility.

5. SYSTEMS AND OPERATIONS

Exhibit J – System description

Describe the manner of operation of your systems for performing your services of a matching service utility (including, without limitation, systems that collect and process trade execution details and settlement instructions for matching of trades). This description should include the following:

1. The hours of operation of the systems, including communication with a clearing agency.

2. Locations of operations and systems (e.g., countries and cities where computers are operated, primary and backup).

3. A brief description in narrative form of each service or function performed by you.

6. SYSTEMS COMPLIANCE

Exhibit K – Security

Provide a brief description of the processes and procedures implemented by you to provide for the security of any system used to perform your services of a matching service utility.

Exhibit L – Capacity planning and measurement

1. Provide a brief description of capacity planning/performance measurement techniques and system and stress testing methodologies.

2. Provide a brief description of testing methodologies with users or subscribers. For example, when are user/subscriber tests employed? How extensive are these tests?

Exhibit M – Business continuity

Provide a brief description of your contingency and business continuity plans in the event of a catastrophe.

Exhibit N – Material systems failures

Provide a brief description of policies and procedures in place for reporting to regulators material systems failures. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes ~~during normal business hours~~.

Exhibit O – Independent systems audit

1. Briefly describe your plans to provide an annual independent audit of your systems.

2. If applicable, provide a copy of the last external systems operations audit report.

7. INTEROPERABILITY

Exhibit P – Interoperability agreements

List all other matching service utilities for which you have entered into an *interoperability* agreement. Provide a copy of all such agreements.

8. OUTSOURCING

Exhibit Q – Outsourcing firms

For each person or company (outsourcing firm) with whom or which you have an outsourcing agreement or arrangement relating to your services of a matching service utility, provide the following information:

1. Name and address of the outsourcing firm.

2. Brief description of business services or functions of the outsourcing firm.

3. Brief description of the outsourcing firm's contingency and business continuity plans in the event of a catastrophe.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this _____ day of _____ 20 ___

_____
(Name of matching service utility - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

Form 24-101F4
Matching Service Utility
Notice of Cessation of Operations

DATE OF CESSATION INFORMATION:

Type of information: O VOLUNTARY CESSATION

O INVOLUNTARY CESSATION

Effective date of operations cessation: _____ (DD/MM~~M~~/YYYY)

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Legal counsel:

   Firm name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.3 of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable must be furnished in lieu of the exhibit.

EXHIBITS:

Exhibit A

Provide the reasons for your cessation of business.

Exhibit B

Provide a list of all the users or subscribers for which you provided services during the last 30 days prior to you ceasing business. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser, or other party).

Exhibit C

List all other matching service utilities for which an *interoperability* agreement was in force immediately prior to cessation of business.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this _____ day of _____ 20 ____

_____
(Name of matching service utility - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

Form 24-101F5
Matching Service Utility
Quarterly Operations Report of
Institutional Trade Reporting and Matching

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.4 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics.

Exhibits must be reported in an electronic file, in the following format: "CSV" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

If any information specified is not available, a full statement describing why the information is not available must be separately furnished.

EXHIBITS

1. SYSTEMS REPORTING

Exhibit A – External systems audit

If an external audit report on your core systems was prepared during the quarter, provide a copy of the report.

Exhibit B – Material systems failures reporting

Provide a brief summary of all material systems failures that occurred during the quarter and for which you were required to notify the securities regulatory authority under section 6.5(c) of the Instrument.

2. DATA REPORTING

Exhibit C – Aggregate matched trade statistics

Provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report.

Month/Year: _____ (MM~~M~~/YYYY)

Table 1 — Equity trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T~~+1 - noon~~ – 9 p.m.								
T+1 – noon								
T + 1 – 3 p.m.								
T+1 – 11:59 p.m. ~~T+2~~								
>T+1~~2~~								
Total								

Table 2 — Debt trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T – noon								
T~~+1 - noon~~ – 9 p.m.								
T+1 – noon								
T + 1 – 3 p.m.								
T+1 – 11:59 p.m. ~~T+2~~								
>T+1~~2~~								
Total								

Legend
"# of Trades" is the total number of transactions in the month;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the month.

Exhibit D – Individual matched trade statistics

Using the same format as Exhibit C above, provide the relevant information for each user or subscriber in respect of trades during the quarter that have been entered by the user or subscriber and matched within the timelines indicated in Exhibit C.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this ____ day of _____ 20 ___

_____
(Name of matching service utility- type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

ANNEX D

BLACKLINE TO
COMPANION POLICY 24-101CP *INSTITUTIONAL TRADE MATCHING AND SETTLEMENT*

Contents

PART 1
INTRODUCTION, PURPOSE AND DEFINITIONS[1]

Purpose of Instrument

1.1 National Instrument 24-101—*Institutional Trade Matching and Settlement* (Instrument) provides a framework in provincial securities regulation for more efficient and timely trade settlement processing, particularly institutional trades. The increasing volumes and dollar values of securities traded in Canada and globally by institutional investors mean existing back-office systems and procedures of market participants are challenged to meet post-execution processing demands. New requirements are needed to address the increasing risks. The Instrument is part of a broader initiative in the Canadian securities markets to implement straight-through processing (STP).[2]

General explanation of matching, clearing and settlement

1.2 (1) *Parties to institutional trade* — A typical trade with or on behalf of an institutional investor might involve at least three parties:

- a registered adviser or other *buy-side* manager acting for an institutional investor in the trade—and often acting on behalf of more than one institutional investor in the trade (i.e., multiple underlying institutional client accounts)—who decides what securities to buy or sell and how the assets should be allocated among the client accounts;
- a registered dealer (including an Alternative Trading System registered as a dealer) responsible for executing or clearing the trade; and
- any financial institution or registered dealer (including under a *prime brokerage* arrangement) appointed to hold the institutional investor's assets and settle trades.

(2) *Matching* — A first step in settling a securities trade is to ensure that the buyer and the seller agree on the details of the transaction, a process referred to as trade confirmation and affirmation or trade *matching*[3] A registered dealer who executes trades with or on behalf of others is required to report and confirm trade details, not only with the counterparty to the trade, but also with the client for whom it acted or the client with whom it traded (in which case, the client would be the counterparty). Similarly, a registered adviser or other buy-side manager is required to report trade details and provide settlement instructions to its custodian. The parties must agree on trade details — sometimes referred to as *trade data elements* — as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process.

(3) *Matching process* — Verifying the trade data elements is necessary to *match* a trade executed on behalf of or with an institutional investor. Matching occurs when the relevant parties to the trade have, after verifying the trade data elements, reconciled or agreed to the details of the trade. Matching also requires that any custodian holding the institutional investor's assets be in a position to affirm the trade so that the trade can be ready for the clearing and settlement process through the facilities of the clearing agency. To illustrate, trade matching usually includes these following activities:

(a) The registered dealer notifies the buy-side manager that the trade was executed.

(b) The buy-side manager advises the dealer and any custodian(s) how the securities traded are to be allocated among the underlying institutional client accounts managed by the buy-side manager.[4] For so-called *block*

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1 In this Companion Policy, the terms "CSA", "we", "our" or "us" are used interchangeably and generally mean the same thing as *Canadian securities regulatory authorities* defined in National Instrument 14-101 — *Definitions.*

2 For a discussion of Canadian STP initiatives, see Canadian Securities Administrators' (CSA) Discussion Paper 24-401 on *Straight-through Processing* and Request for Comments, April 16, 2004 (2004) 27 OSCB 3971 to 4031 (Discussion Paper 24-401); and CSA Notice 24-301—*Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement,* February 11, 2005 (2005) 28 OSCB 1509 to 1526.

3 The processes and systems for matching of "non-institutional trades" in Canada have evolved over time and become automated, such as retail trades on an exchange, which are matched or *locked-in* automatically at the exchange, or direct non-exchange trades between two participants of a clearing agency, which are generally matched through the facilities of the clearing agency. Dealer to dealer trades are subject to Investment Industry Regulatory Organization of Canada (IIROC) Rules, such as IIROC Rule 4753~~Member Rule 800.49~~, which provides that trades in non-exchange traded securities (including government debt securities) among dealers must be entered or accepted or rejected through the facilities of an "Acceptable Trade Matching Utility" by no later than 6 pm on the day of the trade.

4 We remind registered advisers of their obligations to ensure fairness in allocating investment opportunities among their clients. An adviser must establish, maintain and apply policies and procedures that provide reasonable assurance that the firm and each individual acting on its behalf fairly allocates investment opportunities among its clients. If the adviser allocates investment opportunities among its clients, the firm's fairness policies should, at a minimum, indicate the method used to allocate the following: (i) price and commission among client orders when trades are bunched or blocked; (ii) block trades and initial public offerings (IPOs) among client accounts, and (iii) block trades and IPOs among client orders that are partially filled, such as on a pro-rata basis. The fairness policies should also address any other situation where investment opportunities must be allocated.
A summary of the fairness policies must be delivered to each client at the time the adviser opens an account for the client, and in a timely manner if there is a significant change to the summary last delivered to the client.
See sections 14.3 and 14.10 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and section 14.10 of the Companion Policy to NI 31-103.

settlement trades, the dealer sometimes receives allocation information from the buy-side manager based only on the number of custodians holding institutional investors' assets instead of on the actual underlying institutional client accounts managed by the buy-side manager.

(c) The dealer reports and confirms the trade details to the buy-side manager and clearing agency. The trade details required to be confirmed for matching, clearing and settlement purposes are generally similar to the information required in the customer trade confirmation delivered pursuant to securities legislation or self-regulatory organization (SRO) rules.[5]

(d) The custodian or custodians of the assets of the institutional investor verify the trade details and settlement instructions against available securities or funds held for the institutional investor. After trade details are agreed, the buy-side manager instructs the custodian(s) to release funds and/or securities to the dealer through the facilities of the clearing agency.

(4) *Clearing and settlement* — The *clearing* of a trade begins after the execution of the trade. After matching is completed, clearing will involve the calculation of the mutual obligations of participants for the exchange of securities and money—a process which generally occurs within the facilities of a clearing agency. The *settlement* of a trade is the moment when the securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money. In the context of settlement of a trade through the facilities of a clearing agency, often acting as central counterparty, settlement will be the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and its participants. Through the operation of novation and set-off in law or by contract, the clearing agency becomes a counterparty to each trade so that the mutual obligation to settle the trade is between the clearing agency and each participant.

Section 1.1 - Definitions and scope

1.3 (1) *Clearing agency* — While the terms "clearing agency" and "recognized clearing agency" are generally defined in securities legislation,[6] we have defined *clearing agency* for the purposes of the Instrument to narrow its scope to a recognized clearing agency that operates as a securities settlement system. The term *securities settlement system* is defined in National Instrument 24-102 *Clearing Agency Requirements* as a system that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules. Today, the definition of *clearing agency* in the Instrument applies to CDS Clearing and Depository Services Inc. **(CDS).** For the purposes of the Instrument, a clearing agency includes, in Québec, a clearing house and settlement system within the meaning of the *Securities Act* (Québec). See subsection 1.2(2).

(2) *Custodian* — While investment assets are sometimes held directly by investors, most are held on behalf of the investor by or through securities accounts maintained with a financial institution or dealer. The definition of *custodian* includes both a financial institution (non-dealer custodian) and a dealer acting as custodian (dealer custodian). Most institutional investors, such as pension and mutual funds, hold their assets through custodians that are prudentially-regulated financial institutions. However, others (like hedge funds) often maintain their investment assets with dealers under so-called *prime-brokerage* arrangements. A financial institution or dealer in Canada need not necessarily have a direct contractual relationship with an institutional investor to be considered a custodian of portfolio assets of the institutional investor for the purposes of the Instrument if it is acting as sub-custodian to a global custodian or international central securities depository.

(3) *Institutional investor* — A client of a dealer that has been granted DAP/RAP trading privileges is an institutional investor. This will likely be the case whenever a client's investment assets are held by or through securities accounts maintained with a custodian instead of the client's dealer that executes its trades. While the expression "institutional trade" is not defined in the Instrument, we use the expression in this Companion Policy to mean broadly any DAP/RAP trade.

(4) *DAP/RAP trade* — The concepts *delivery against payment* and *receipt against payment* are generally understood by the industry. They are also defined terms in the Notes and Instructions (Schedule 4) to IIROC Form 1, Part II. All DAP/RAP trades, whether settled by a non-dealer custodian or a dealer custodian, are subject to the requirements of Part 3 of the Instrument. The definition of DAP/RAP trade excludes a trade for which settlement is made on behalf of a client by a custodian that is also the dealer that executed the trade.

(5) *Trade-matching party* — An institutional investor, whether Canadian or foreign-based, may be a trade-matching party. As such, it, or its adviser that is acting for it in processing a trade, should enter into a trade-matching agreement or provide a trade-matching statement under Part 3 of the Instrument. However, an institutional investor that is an individual or a person or company with total securities under administration or management not exceeding $10 million, is not a trade-matching party. A custodian that settles a trade on behalf of an institutional investor is also a trade-matching party and should enter into a trade-matching agreement or provide a trade-matching statement. However, a foreign global custodian or international central securities depository that holds Canadian portfolio assets through a local Canadian sub-custodian would not normally be considered a trade-matching party if it is not a clearing agency participant or otherwise directly involved in settling the trade in Canada.

[5] See, for example, section 14.12 of NI 31-103 and IIROC ~~Member~~ Rule ~~200.1(h)~~3816 *Trade Confirmations*.
[6] See, for example, s. 1(1) of the *Securities Act* (Ontario).

(6) *Application of Instrument* — Part 2 of the Instrument enumerates certain types of trades that are not subject to the Instrument.

PART 2
TRADE MATCHING REQUIREMENTS

Trade data elements

2.1 Trade data elements that must be verified and agreed to are those identified by the SROs or the best practices and standards for institutional trade processing established and generally adopted by the industry. See section 2.4 of this Companion Policy. To illustrate, trade data elements that should be transmitted, compared and agreed to may include the following:

(a) *Security identification:* standard numeric identifier, currency, issuer, type/class/series, market ID; and

(b) *Order and trade information:* dealer ID, account ID, account type, buy/sell indicator, order status, order type, unit price/face amount, number of securities/quantity, message date/time, trade transaction type, commission, accrued interest (fixed income), broker settlement location, block reference, net amount, settlement type, allocation sender reference, custodian, payment indicator, IM portfolio/account ID, quantity allocated, and settlement conditions.

Trade matching deadlines for registered firms

2.2 The obligation of a registered dealer or registered adviser to establish, maintain and enforce policies and procedures, pursuant to sections 3.1 and 3.3 of the Instrument, will require the dealer or adviser to take reasonable steps to achieve matching as soon as practical after the DAP/RAP trade is executed and in any event no later than ~~12~~ 9 p.m. ~~(noon)~~ Eastern Time on T~~+1~~. The policies and procedures requirement of Part 3 of the Instrument is consistent with the overarching obligation of a registered firm to manage the risks associated with its business in accordance with prudent business practices.[7]

Choice of trade-matching agreement or trade-matching statement

2.3 (1) *Establishing, maintaining and enforcing policies and procedures —*

(a) Under sections 3.2 and 3.4, a registered dealer's or registered adviser's policies and procedures must be designed to encourage trade-matching parties to (i) enter into a trade-matching agreement with the dealer or adviser or (ii) provide or make available a trade-matching statement to the dealer or adviser. The purpose of the trade-matching agreement or trade-matching statement is to ensure that all trade-matching parties have established, maintain, and enforce appropriate policies and procedures designed to achieve matching of a DAP/RAP trade as soon as practical after the trade is executed. If the dealer or adviser is unable to obtain a trade-matching agreement or statement from a trade-matching party, it should document its efforts in accordance with its policies and procedures.

(b) The parties described in paragraphs (a), (b), (c), and (d) of the definition "trade-matching party" in section 1.1 of the Instrument need not necessarily all be involved in a trade for the requirements of sections 3.2 and 3.4 of the Instrument to apply. There is no need for an adviser to be involved in the matching process of an institutional investor's trades for the requirement to apply. In this case, the trade-matching parties that should have appropriate policies and procedures in place would be the institutional investor, the dealer and the custodian.

(c) The Instrument does not ~~provide~~ prescribe the form of a trade-matching agreement or trade-matching statement other than it be in writing. Subsections (2) and (3) below provide some guidance on these documents. A trade-matching agreement or trade-matching statement should be signed by a senior executive officer of the entity to ensure its policies and procedures are given sufficient attention and priority within the entity's senior management. A senior executive officer would include any individual who is (a) the chair of the entity, if that individual performs the functions of the office on a full time basis, (b) a vice-chair of the entity, if that individual performs the functions of the office on a full time basis, (c) the president, chief executive officer or chief operating officer of the entity, and (d) a senior vice-president of the entity in charge of the entity's operations and back-office functions.

(2) *Trade-matching agreement —*

(a) A registered dealer or registered adviser need only enter into one trade-matching agreement with the other trade-matching parties for new or existing DAP/RAP trading accounts of an institutional investor for all future trades in relation to such account. The trade-matching agreement may be a single multi-party agreement among the trade-matching parties, or a network of bilateral agreements. A single trade-matching agreement is also

[7] See s. 11.1 of NI 31-103, which requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with their business in accordance with prudent business practices.

sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. If the dealer or adviser uses a trade-matching agreement, the form of such agreement may be incorporated into the institutional account opening documentation and may be modified from time to time with the consent of the parties.

(b) The agreement must specify the roles and responsibilities of each of the trade-matching parties and should describe the minimum standards and best practices to be incorporated into the policies and procedures that each party has in place. This should include the timelines for accomplishing the various steps and tasks of each trade-matching party for timely matching. For example, the agreement may include, as applicable, provisions dealing with:

For the dealer executing and/or clearing the trade:

- how and when the notice of trade execution (NOE) is to be given to the institutional investor or its adviser, including the format and content of the NOE (e.g., electronic);
- how and when trade details are to be entered into the dealer's internal systems and the clearing agency's systems;
- how and when the dealer is to correct or adjust trade details entered into its internal systems or the clearing agency's systems as may be required to agree to trade details with the institutional investor or its adviser;
- general duties of the dealer to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

For the institutional investor or its adviser:

- how and when to review the NOE's trade details, including identifying any differences from its own records;
- how and when to notify the dealer of trade differences, if any, and resolve such differences;
- how and when to determine and communicate settlement details and account allocations to the dealer and/or custodian(s);
- general duties of the institutional investor or its adviser to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

For the custodian settling the trade at the clearing agency:

- how and when to receive trade details and settlement instructions from institutional investors or their advisers;
- how and when to review and monitor trade details submitted to the clearing agency on an ongoing basis for items entered and awaiting affirmation or challenge;
- how and when to report to institutional investors or their advisers on an ongoing basis changes to the status of a trade and the matching of a trade;
- general duties of the custodian to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

(3) *Trade-matching statement* — A single trade-matching statement is sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. A registered dealer or registered adviser may accept a trade-matching statement signed by a senior executive officer of a trade-matching party without further investigation and may continue to rely upon the statement for all future trades in an account, unless the dealer or adviser has knowledge that any statements or facts set out in the statement are incorrect. Mass mailings or emails of a trade-matching statement, or the posting of a single uniform trade-matching statement on a ~~Website~~website, would be acceptable ways of providing the statement to other trade-matching parties. A registered firm may rely on a trade-matching party's representations that the trade-matching statement was provided to the other trade-matching parties without further investigation.

(4) *Monitoring and enforcement of undertakings in trade-matching documentation* — Registered dealers and advisers should use reasonable efforts to monitor compliance with the terms or undertakings set out in the trade-matching agreements or trade-matching statements in accordance with their policies and procedures.

Registered dealers and advisers should also take active steps to address problems if the policies and procedures of other trade-matching parties appear to be inadequate and are causing delays in the matching process. Such steps might include imposing

monetary incentives (e.g. penalty fees) or requesting a third party review or assessment of the party's policies and procedures. This approach could enhance cooperation among the trade-matching parties leading to the identification of the root causes of failures to match trades on time.

Determination of appropriate policies and procedures

2.4 (1) *Best practices* — We are of the view that, when establishing appropriate policies and procedures, a party should consider the industry's generally adopted best practices and standards for institutional trade processing. It should also include those policies and procedures into its regulatory compliance and risk management programs.

(2) *Different policies and procedures* — We recognize that appropriate policies and procedures may not be the same for all registered dealers, registered advisers and other market participants because of the varying nature, scale and complexity of a market participant's business and risks in the trading process. For example, policies and procedures designed to achieve matching may differ among a registered dealer that acts as an "introducing broker" and one that acts as a "carrying broker".[8] In addition, if a dealer is not a clearing agency participant, the dealer's policies and procedures to expeditiously achieve matching should be integrated with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer. Establishing appropriate policies and procedures may require registered dealers, registered advisers and other market participants to upgrade their systems and enhance their interoperability with others.[9]

Use of matching service utility

2.5 The Instrument does not require the trade-matching parties to use the facilities or services of a matching service utility to accomplish matching of trades within the prescribed timelines. However, if such facilities or services are made available in Canada, the use of such facilities or services may help a trade-matching party's compliance with the Instrument's requirements.

PART 3
INFORMATION REPORTING REQUIREMENTS

~~**Exception reporting for registered firms**~~

~~**3.1**~~

~~(a) Part 4 of the Instrument requires a registered firm to complete and deliver to the securities regulatory authority Form 24-101F1 and related exhibits. Form 24-101F1 need only be delivered if less than 90 percent of the DAP/RAP trades (by volume and value) executed by or for the registered firm in any given calendar quarter have matched within the time required by the Instrument. Tracking of a registered firm's trade matching statistics may be outsourced to a third party service provider, including a clearing agency or custodian. However, despite the outsourcing arrangement, the registered firm retains full legal and regulatory liability and accountability to the Canadian securities regulatory authorities for its exception reporting requirements. If a registered firm has insufficient information to determine whether it has achieved the percentage target of matched DAP/RAP trades in any given calendar quarter, it must explain in Form 24-101F1 the reasons for this and the steps it is taking to obtain this information in the future.~~

~~(b) Form 24-101F1 requires registered firms to provide aggregate quantitative information on their equity and debt DAP/RAP trades.~~

~~DAP/RAP trades in exchange-traded funds are reportable in the equities category of DAP/RAP trades. Form 24-101F1 should only be submitted for DAP/RAP trades for the type of security (equity or debt) that did not meet the 90 percent threshold by the relevant timeline. If a registered firm does not meet the threshold for both equity and debt DAP/RAP trades, then it should submit the Form for both equity and debt DAP/RAP trades (i.e., by completing both tables in Exhibit A of Form 24-101F1). If the firm does not meet the threshold only for one type of security (i.e., for equity but not debt, or for debt but not equity), it should only submit the Form for the one type of security, by completing only one of the tables in Exhibit A of Form 24-101F1. A registered firm must also provide qualitative information on the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument and the specific steps they are taking to resolve delays in the trade reporting and matching process in the future. Registered firms should provide information that is relevant to their circumstances. For example, dealers should provide information demonstrating problems with NOEs or reporting of trade details to the clearing agency. Reasons given for the failure could be one or more matters within the registered firm's control or due to another trade-matching party or service provider.~~

[8] See IIROC ~~Member~~ Rule ~~35~~ 2400 — ~~*Introducing Broker / Carrying Broker Arrangements.*~~*Acceptable Back Office Arrangements.*

[9] See Discussion Paper 24-401, at p. 3984, for a discussion of *interoperability.*

~~(c) The steps being taken by a registered firm to resolve delays in the matching process could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. Dealers should confirm what steps they have taken to inform and encourage their clients to comply with the requirements or undertakings of the trade-matching agreement and/or trade-matching statement. They should confirm what problems, if any, they have encountered with their clients, other trade-matching parties or service providers. They should identify the trade-matching party or service provider that appears to be consistently not meeting matching deadlines or to have no reasonable policies and procedures in place. Advisers should provide similar information, including information demonstrating problems with communicating allocations or with service providers or custodians.~~

~~Regulatory reviews of registered firm exception reports~~

~~3.2~~

~~(a) We will review the completed Forms 24-101F1 on an ongoing basis to monitor and assess compliance by registered firms with the Instrument's matching requirements. We will identify problem areas in matching, including identifying trade-matching parties that have no or weak policies and procedures in place to ensure matching of trades is accomplished within the time prescribed by Part 3 of the Instrument. Monitoring and assessment of registered firm matching activities may be undertaken by the SROs in addition to, or in lieu of, reviews undertaken by us.~~

~~(b) The Canadian securities regulatory authorities may consider the consistent inability to meet the matching percentage target as evidence that either the policies and procedures of one or more of the trade-matching parties have not been properly designed or, if properly designed, have been inadequately complied with. Consistently poor qualitative reporting may also be considered as evidence of poorly designed or implemented policies and procedures. See also section 2.3(4) of this Companion Policy for a further discussion of our approach to compliance and enforcement of the trade-matching requirements of the Instrument.~~

I~~Other i~~nformation reporting requirements

3.3~~1~~ Clearing agencies and matching service utilities are required to include in Forms 24-101F2 and 24-101F5 certain trade-matching information in respect of their participants users or subscribers. The purpose of this information is to facilitate monitoring and enforcement by the Canadian securities regulatory authorities or SROs of the Instrument's matching requirements.

~~Forms delivered in electronic form~~

~~3.4~~ ~~Registered firms are encouraged to complete their Form 24-101F1 on-line on the CSA's website at the following URL addresses:~~

~~In English: http://www.securitiesadministrators.ca/industry_resources.aspx?id=52~~

~~In French: http://www.autorites-valeurs-mobilieres.ca/ressources_professionnelles.aspx?id=52~~

Confidentiality of information

3.2~~5~~ The forms delivered to the securities regulatory authority by a ~~registered firm,~~ clearing agency and matching service utility under the Instrument will be treated as confidential by us, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory. We are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the providers of the information in non-disclosure outweigh the desirability of making such information publicly available. However, we may share the information with SROs and may publicly release aggregate industry-wide matching statistics on equity and debt DAP/RAP trading in the Canadian markets.

PART 4
REQUIREMENTS FOR MATCHING SERVICE UTILITIES

Matching service utility

4.1 (1) Part 6 of the Instrument sets out reporting, systems capacity, and other requirements of a matching service utility. For the purposes of the Instrument, the term *matching service utility* expressly excludes a clearing agency. A matching service utility would be any entity that provides the services of a post-execution centralized matching facility for trade-matching parties. It may use technology to match in real-time trade data elements throughout a trade's processing lifecycle. A matching service utility would not include a registered dealer who offers "local" matching services to its institutional investor-clients. In Québec, a person or company that seeks to provide centralized facilities for matching must, in addition to the requirements of the Instrument, apply for recognition as a matching service utility or for an exemption from the requirement to be recognized as a matching service utility pursuant to the *Securities Act* (Québec) or *Derivatives Act* (Québec). In certain other jurisdictions, in addition to the requirements

of the Instrument, such person or company may be required to apply either for recognition as a clearing agency or for an exemption from the requirement to be recognized as a clearing agency.[10]

(2) A matching service utility would be viewed by us as an important infrastructure system involved in the clearing and settlement of securities transactions. We believe that, while a matching service utility operating in Canada would largely enhance operational efficiency in the capital markets, it would raise certain regulatory concerns. Comparing and matching trade data are complex processes that are inextricably linked to the clearance and settlement process. A matching service utility concentrates processing risk in the entity that performs matching instead of dispersing that risk more to the dealers and their institutional investor-clients. Accordingly, we believe that the breakdown of a matching service utility's ability to accurately verify and match trade information from multiple market participants involving large numbers of securities transactions and sums of money could have adverse consequences for the efficiency of the Canadian securities clearing and settlement system. The requirements of the Instrument applicable to a matching service utility are intended to address these risks.

Initial information reporting requirements for a matching service utility

4.2 Subsection 6.1(1) of the Instrument requires any person or company that carries on or intends to carry on business as a matching service utility to deliver Form 24-101F3 to the securities regulatory authority. We will review Form 24-101F3 to determine whether the person or company that delivered the form is an appropriate person or company to act as a matching service utility for the Canadian capital markets. We will consider a number of factors when reviewing the form, including:

(a) the performance capability, standards and procedures for the transmission, processing and distribution of details of trades executed on behalf of institutional investors;

(b) whether market participants generally may obtain access to the facilities and services of the matching service utility on fair and reasonable terms;

(c) personnel qualifications;

(d) whether the matching service utility has sufficient financial resources for the proper performance of its functions;

(e) the existence of, and interoperability arrangements with, another entity performing a similar function for the same type of security; and

(f) the systems report referred to in section 6.5(b) of the Instrument.

Change to significant information

4.3 Under section 6.2 of the Instrument, a matching service utility is required to deliver to the securities regulatory authority an amendment to the information provided in Form 24-101F3 at least 45 days before implementing a significant change involving a matter set out in Form 24-101F3. In our view, a significant change includes a change to the information contained in the General Information items 1-10 and Exhibits A, B, E, G, I, J, O, P and Q of Form 24-101F3.

Ongoing information reporting and other requirements applicable to a matching service utility

4.4 (1) Ongoing quarterly information reporting requirements will allow us to monitor a matching service utility's operational performance and management of risk, the progress of interoperability in the market, and any negative impact on access to the markets. A matching service utility will also provide trade matching data and other information to us so that we can monitor industry compliance.

(2) Completed forms delivered by a matching service utility will provide useful information on whether it is:

(a) developing fair and reasonable linkages between its systems and the systems of any other matching service utility in Canada that, at a minimum, allow parties to executed trades that are processed through the systems of both matching service utilities to communicate through appropriate, effective interfaces;

(b) negotiating with other matching service utilities in Canada fair and reasonable charges and terms of payment for the use of interface services with respect to the sharing of trade and account information; and

(c) not unreasonably charging more for use of its facilities and services when one or more counterparties to trades are customers of other matching service utilities than the matching service utility would normally charge its customers for use of its facilities and services.

[10] See, for example, the scope of the definition of "clearing agency" in s. 1(1) of the *Securities Act* (Ontario), which includes providing centralized facilities "for comparing data respecting the terms of settlement of a trade or transaction".

Capacity, integrity and security system requirements

4.5 (1) The activities in section 6.5(a) of the Instrument must be carried out at least once a year. We would expect these activities to be carried out even more frequently if there is a significant change in trading volumes that necessitates that these functions be carried out more frequently in order to ensure that the matching service utility can appropriately service its clients.

(2) The independent review contemplated by section 6.5(b) of the Instrument should be performed by competent and independent audit personnel, in accordance with generally accepted auditing standards. Depending on the circumstances, we would consider accepting a review performed and written report delivered pursuant to similar requirements of a foreign regulator to satisfy the requirements of this section. A matching service utility that wants to advocate for that result must submit a request for discretionary relief.

(3) The notification of a material systems failure under section 6.5(c) of the Instrument should be provided promptly from the time the incident was identified as being material and should include the date, cause and duration of the interruption and its general impact on users or subscribers. We consider promptly to mean within one hour from the time the incident was identified as being material. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes ~~during normal business hours~~.

PART 5
TRADE SETTLEMENT

Trade settlement by dealer

5.1 Section 7.1 of the Instrument is intended to support and strengthen the general settlement cycle rules of the SROs and marketplaces. Current SRO and marketplace rules mandate a standard T+1~~2~~ settlement cycle period for most transactions in equity and long-term debt securities.[11] If a dealer is not a participant of a clearing agency, the dealer's policies and procedures to facilitate the settlement of a trade should be combined with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer.

PART 6
REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

Standardized documentation

6.1 Without limiting the generality of section 8.2 of the Instrument, an SRO may require its members to use, or recommend that they use, a standardized form of trade-matching agreement or trade-matching statement prepared or approved by the SRO, and may negotiate on behalf of its members with other trade-matching parties and industry associations to agree on the standardized form of trade-matching agreement or trade-matching statement to be used by all relevant sectors in the industry (dealers, buy-side managers and custodians).

[11] See, for example, IIROC ~~Member~~ Rule 4800 ~~800.27~~ and TSX Rule 5-103(1).

ANNEX E

LOCAL MATTERS

ONTARIO SECURITIES COMMISSION NOTICE

1. Introduction

The CSA have proposed revisions to NI 24-101. The Proposed Revisions are described in the related CSA Notice and Request for Comments – "Proposed Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and Proposed Changes to Companion Policy 24-101 *Institutional Trade Matching and Settlement*" (**CSA Notice**) that precedes this notice.

Unless otherwise defined in this notice, defined terms or expressions used in this notice share the meanings provided in the CSA Notice.

The Ontario Securities Commission (**Commission**) is publishing this notice to supplement the CSA Notice.

2. Substance and purpose of the Proposed Revisions

Please see the CSA Notice.

3. Summary of the Proposed Revisions

Please see the CSA Notice.

4. Authority for the proposed amendments to the Instrument

The proposed amendments to the Instrument described in the CSA Notice will be made under the following provisions of the *Securities Act* (Ontario) (**Act**):

- Paragraph 11 of subsection 143(1) of the Act authorizes the Commission to make rules regulating the listing or trading of publicly traded securities or the trading of derivatives, including rules relating to clearing and settling trades.
- Subparagraph 2(i) of subsection 143(1) of the Act authorizes the Commission to make rules in respect of standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients.
- Paragraph 12 of subsection 143(1) of the Act authorizes the Commission to make rules regulating recognized clearing agencies, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, procedure, interpretation or practice and prescribing restrictions on its ownership, control and direction.

5. Regulatory Impact Assessment

A. Overview

As described in the CSA Notice, some of the Proposed Revisions amend the Instrument and change the Companion Policy in anticipation of shortening the standard settlement cycle for equity and long-term debt trades in Canada from two days after the date of a trade (**T+2**) to one after the date of a trade (**T+1**). The other Proposed Revisions repeal the requirements of registered firms to complete and file exception reports on Form 24-101F1 if they do not meet, with respect to their institutional trades, the institutional trade matching (**ITM**) threshold of 90 percent (**ITM threshold**) of trades by value and volume matched by the ITM deadline during a calendar quarter (**Exception Reporting Requirement**). Lastly, the Proposed Revisions include housekeeping changes intended to clarify and update existing requirements.

In defining the scope for estimating costs to stakeholders, the regulatory impact assessment focuses on the shortening of the settlement cycle to T+1 as the repeal of the Exception Reporting Requirement does not impose business or regulatory costs for market participants. Rather, the repeal of the Exception Reporting Requirement is a permanent removal to reduce unnecessary regulatory burden and is considered a benefit of the Proposed Revisions.

The shortening of the settlement cycle to T+1 impacts a breadth of industry participants including clearing agencies, investment dealers, custodian banks, transfer agents, back-office service providers and investors. However, the scope of the universe of trades and impacted participants that will transition to T+1 settlement is broad compared to the trades subject to the requirements of NI 24-101.[1] Specifically, only trades subject to matching deadlines for registered dealers and advisers are within scope per NI 24-101. The shortening of the settlement cycle impacts registered dealers and advisers trading on a delivery against payment

[1] Based on April, 2022 volumes and values for combined equity and debt trades, those subject to the requirements of 24-101 represented approximately 15% of total value or 3% of total volumes compared to the universe of transactions

(**DAP**)/receipt against payment (**RAP**) basis for or with an institutional investor, as they must have ITM policies and procedures designed to match a DAP/RAP trade as soon as practical after the trade is executed, but no later than noon on T+1 (**ITM deadline**) per NI 24-101.[2]

As a result, the regulatory impact assessment focuses on the incremental compliance costs associated with the Proposed Revisions. As a point of reference for the impact of the Proposed Revisions, we also examined the overall compliance costs associated with the industry's move to T+1. This is detailed in Appendix A.

B. Current regulatory framework

Migration to T+1

NI 24-101 came into force in 2007 and was intended to encourage more efficient and timely pre-settlement confirmation, affirmation, trade allocation and settlement instructions processes for institutional trades in Canada. This process is known as ITM.

Registered dealers and advisers trading on a DAP/RAP basis for or with an institutional investor must have ITM policies and procedures designed to match a DAP/RAP trade as soon as practical after the trade is executed, but currently by no later than noon on T+1.

Exception Reporting Requirement

Under the Exception Reporting Requirement, registered firms must complete and file a Form 24-101F1 for every calendar quarter where they did not meet the ITM threshold of matching 90 percent of trades by value and volume before the ITM deadline. Form 24-101F1 requires registered firms, among other things, to explain why they did not meet the exception reporting thresholds and the steps they have taken to address the delay. This requirement is currently subject to a moratorium. Specifically, in 2020, the CSA provided a three-year moratorium on the applicability of the Exception Reporting Requirement. As a result, registered firms are not required to deliver Form 24-101F1 to the Commission from July 1, 2020 to July 1, 2023.[3]

C. Rationale for intervention

Migration to T+1

The Canadian securities industry is preparing for the migration to a standard T+1 settlement cycle at the same time as the industry in the United States is moving to T+1. Failure to do so would be detrimental to the Canadian capital markets due to the interconnectedness of our markets (i.e., the large volumes and value of cross-border trades and the large number of inter-listed securities). At the same time, there would appear to be no benefit and potentially negative consequences from moving prior to the United States.

The move to T+1 with the United States markets is consistent with previous efforts by the Canadian securities industry to align trade settlement timelines and processes with those of the United States. Previous Canadian industry settlement initiatives have attempted to be consistent with United States industry efforts because market practices in both countries are generally the same, and the securities clearing and settlement systems in both countries are closely integrated.

The Proposed Revisions would facilitate the industry move to T+1.

Exception Reporting Requirement

The moratorium on the Exception Reporting Requirement has not had a negative impact on regulatory oversight and codifying this relief provides certainty to market participants. Market participants confirmed that the Exception Reporting Requirement is burdensome and has limited utility. CSA Staff agree with these comments and have identified the revocation of the Exception Reporting Requirement as a means of permanently removing unnecessary regulatory burden. Given that information in Form 24-101F1 can be obtained from clearing agencies and matching service utilities, CSA Staff are of the view that the Exception Reporting Requirement no longer meaningfully contributes to the CSA's oversight.

The Proposed Revisions would permanently repeal the Exception Reporting Requirement. However, the amendments would not relieve registered firms from complying with other requirements in NI 24-101 such as establishing, maintaining and enforcing policies and procedures to achieve the matching threshold for institutional trades.

D. Proposed intervention

The Proposed Revisions seek to change the ITM deadline from no later than noon on T+1 to no later than 9 p.m. Eastern Time on T. NI 24-101 applies to registered dealers and registered advisers subject to trade matching requirements. Specifically, the

[2] See subsections 3.1(1) and 3.3(1) of NI 24-101. A DAP/RAP trade is a trade in a security executed for a client account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and for which settlement is completed on behalf of the client by a custodian other than the dealer that executed the trade. See the definition "DAP/RAP trade" in section 1.1 of the Instrument.

[3] See https://www.securities-administrators.ca/resources/exception-reporting-ni-24-101/

change to the ITM deadline impacts registered dealers executing DAP/RAP trades with or on behalf of an institutional investor and registered advisers executing DAP/RAP trades for the account of an institutional investor.

In addition, the Proposed Revisions repeal the Exception Reporting Requirement in Part 4 of NI 24-101 including the delivery of Form 24-101F1. This change will codify and replace the current reporting moratorium imposed by local blanket orders.

E. Stakeholders affected

The stakeholders who will be directly impacted by the Proposed Revisions relating to the move to T+1 are clearing agencies and registered dealers trading on a DAP/RAP basis for or with an institutional investor. These direct incremental compliance costs are associated with the Proposed Revisions. In addition, we note the shortening of the settlement cycle to T+1 impacts industry participants outside of the requirements of NI 24-101. These impacted stakeholders include custodian banks, transfer agents, back-office service providers and investors. The impact on these stakeholders is further discussed in Appendix A. We have, where information is available, quantified the anticipated number of stakeholders that will be impacted.

1. Domestic recognized clearing agencies

While it is noted that NI 24-101 does not expressly mandate a T+2 settlement cycle, nor would currently prevent the T+1 migration, there are several provisions that require revision to facilitate the move to a T+1 settlement cycle. In particular, domestic recognized clearing agencies will need to change various rules and procedures that currently mandate a two day settlement cycle, that are keyed to the settlement date, or that generally facilitate the prompt clearance and settlement of trades. We estimate there are two domestic recognized clearing agencies where operations will be impacted because of the move to T+1.

2. Investment dealers

Investment dealers that are direct members of domestic recognized clearing agencies must adhere to the rules of the clearing agencies. These participants have direct access to the clearing agency and are contractually bound by the clearing agency's participant rules. These direct participants will incur compliance costs to adapt to any changes alongside the clearing agency. We estimate there are 36 investment dealers that are direct participants of domestic clearing agencies.

For investment dealers that are not direct participants of a domestic recognized clearing agency, these indirect participants access a clearing agency's services via direct participants. As such, they are clients of the clearing agency's direct participants. We estimate there are 131 non-self clearing investment dealers that will be affected. Investment dealers will incur costs associated with developing new procedures to comply with T+1 settlement of trades.

F. Anticipated costs and benefits

1. Methodology

The analysis below outlines the qualitative and estimated quantitative impact of the incremental costs and benefits associated with the Proposed Revisions.

Estimating the implementation costs associated with the Proposed Revisions begins with establishing the baseline, or what the future would look like in the absence of the Proposed Revisions. For our purposes, the baseline is not a reflection of the current trade settlement requirements and considers future changes that would likely to occur under normal circumstances. On December 21, 2021, the Canadian Capital Markets Association (**CCMA**)[4] announced that it would lead coordinating efforts within Canada and cross-border to shorten the trade settlement cycle from T+2 to T+1.[5] The move to T+1 is an industry-led initiative that will occur even in the absence of the Proposed Revisions. As such, the bulk of the costs associated with the move to T+1 cannot be attributed to the Proposed Revisions. We anticipate that the incremental costs associated with the Proposed Revisions will represent a small portion of total implementation costs. As a point of reference for the impact of the Proposed Revisions, the total industry impact of shifting to T+1 is also examined in Appendix A.

The process for identifying and evaluating costs and benefits in this assessment has been informed by industry and regulatory research and stakeholder feedback. A guiding consideration is the goals of securities regulation relating to protecting investors, facilitating efficient and competitive markets, fostering capital formation, and promoting system stability.

The quantitative estimates below focus on compliance costs and are guided by the Securities and Exchange Commission's approach put forward in their T+1 proposing release.[6] Only the qualitative benefits from shifting to T+1 are considered below due to the significant uncertainty and lack of data needed to quantify the benefits.

[4] CCMA is a national, federally incorporated not-for-profit organization representing dealers, custodians, asset managers and industry associations.
[5] https://ccma-acmc.ca/en/wp-content/uploads/Canada-Announces-Faster-Securities-Settlement-December-1-2021.pdf
[6] See Proposed rule: Shortening the Securities Transaction Settlement Cycle https://www.sec.gov/rules/proposed/2022/34-94196.pdf

2. Benefits to stakeholders

Migration to T+1

The Proposed Revisions are likely to help minimize the number of failed and delayed settlements and provide regulatory clarity. In particular, the Proposed Revision to move the ITM deadline so that trade matching is achieved as soon as practical after a trade is executed and no later than 9 p.m. on T will support trade agreement well ahead of T+1 for market participants captured by the ITMS Instrument. This will improve the chance that T+1 settlement can be achieved.

The Proposed Revisions also provide clarity that Canadian securities regulation is aligned with the industry's move to T+1. This should strengthen incentives for the market to take the necessary operating and infrastructure investments to support a T+1 settlement cycle.

Both these results should add to the overall benefits of shifting to T+1 which include using capital more productively, greater efficiency, improved liquidity, and lower risk management costs (see Appendix A).

Exception Reporting Requirement

Prior relief was granted to registered dealers or advisers through a three-year moratorium from the application of section 4.1 of NI 24-101. The relief provided a three-year moratorium on the applicability of section 4.1 of NI 24-101 where registered dealers or advisers are not required to deliver Form 24-101F1 to the participating jurisdictions. This three-year moratorium covers the period beginning on July 1, 2020 and ending on July 1, 2023. Staff recognize that the moratorium is set to expire prior to the proposed implementation date for the Proposed Revisions. We anticipate that the moratorium will be extended in all CSA jurisdictions until such time as the Proposed Revisions, if approved, come into effect. The Proposed Revisions to permanently repeal the Exception Reporting Requirements represents a benefit to stakeholders by removing unnecessary regulatory burden. Stakeholders have confirmed that the Exception Reporting Requirement, if not repealed, would be burdensome, unnecessary and may not be useful. As a result, CSA Staff have identified the Exception Reporting Requirement as an area to permanently remove unnecessary regulatory burden.

3. Costs to stakeholders

Migration to T+1

As noted above, the baseline used to calculate the incremental costs assumes that T+1 will be implemented in the absence of the Proposed Revisions. Incremental costs are those that the impacted entity incurs directly as a result of the Proposed Revisions. We anticipate that impacted market participants will incur minor incremental costs associated with learning about the regulation and updating existing policies and procedures that refer to NI 24-101. We assume each firm will spend a total of 7 hours on these activities, incurring a total cost of approximately $700 per entity.[7] We do not anticipate that there will be significant variation in the amount of time spent by entities in the different categories of market participant. We estimate that impacted market participants will collectively incur a total of $120,000 in incremental costs as a result of the Proposed Revisions. This represents approximately 0.09% of the estimated total initial T+1 implementation costs (see Appendix A). Table 1 sets out the total incremental costs borne by category of market participants.

Table 1: Incremental costs associated with the Proposed Revisions by category of market participant

	Incremental cost per entity	Number of entities	Total costs per category of entity
Domestic Recognized Clearing Agencies	$700	2	$1,400
Investment Dealers – Clearing Agency Participants	$700	36	$25,200
Investment Dealers - non-self clearing	$700	131	$91,700
		Total	**$120,000[8]**

Exception Reporting Requirement

The repeal of the Exception Reporting Requirement does not impose business or regulatory costs for market participants. Rather, the repeal of the Exception Reporting Requirement reduces unnecessary regulatory burden.

[7] Compliance Analyst (5 hours @ $80/ hour) and Chief Compliance Officer (2 hours @ $150/hour. Hourly rates are based on the 2021 Robert Half Accounting and Finance Salary Guide.

[8] Totals may not add up due to rounding.

4. Alternatives considered

No alternatives to the Proposed Instrument were considered. The migration to a T+1 settlement cycle in Canada will be crucial to follow the United States industry move due to the competitive and cost risks of not staying in sync with United States settlement practices.

Appendix A- Overall industry benefits and costs associated with shortening the settlement cycle

To accompany the estimate of incremental costs associated with the Proposed Revisions, it is beneficial to evaluate the overall compliance costs associated with the industry's move to T+1.

A. Stakeholders affected

Although not directly impacted as a result of the Proposed Revisions, the stakeholders will be affected by the change in the settlement cycle. The overall impact of shortening the settlement cycle to T+1 affects industry participants in addition to clearing agencies and investment dealers, which are affected by the requirements of NI 24-101 (see section E above). These other impacted participants include custodian banks, transfer agents, back-office service providers and investors.

1. Custodian banks & transfer agents

As a result of the compressed processing timeframes to accommodate T+1, transfer agents and custodian banks will also need to update procedures. Specifically, matching processes requires that any custodian holding an investor's assets be in a position to affirm the trade so that the trade can be ready for the clearing and settlement process through the facilities of the clearing agency. In addition, transfer agents will be required to maintain and update the register of issuer securities in accordance with the revised timelines. We estimate there are 42 custodian banks and transfer agents that will be impacted by the move to T+1.

2. Back-office service providers

Industry participants may outsource clearing and settlement processes to service providers.[9] These back-office service providers will also need to modify processes alongside the industry move to T+1 and will incur implementation compliance costs. For the purposes of quantifying the compliance costs for the regulatory impact analysis, service providers have been excluded to avoid double counting the compliance costs. Specifically, the calculation of initial compliance costs is based on the assumption that the market participants remain responsible for migrating to a T+1 settlement cycle. It is acknowledged that many market participants will utilize back-office service providers to assist in the transition for certain functions, thus transferring some implementation costs to service providers.

3. Investors

As described in further detail below, a shorter settlement cycle will reduce settlement risk by decreasing the number of unsettled transactions at any time. This reduction in settlement risk will have a downstream impact on retail and institutional investors in the form of reduced liquidity constraints as investment dealers may require less contribution of financial resources for margin accounts and/or prefunding of cash accounts for purchases. In addition, a reduction in the settlement cycle speeds up the expected time investors can access proceeds following a sale.

B. Anticipated costs and benefits

1. Methodology

The analysis below outlines the overall qualitative and estimated quantitative impact of shifting to a T+1 settlement process. As noted above, the OSC examined the overall impact of shifting to T+1 for completeness and as point of reference for the impact of Proposed Revisions. The process for identifying and evaluating costs and benefits has been informed by industry and regulatory research and stakeholder feedback. A guiding consideration is the goals of securities regulation relating to protecting investors, facilitating efficient and competitive markets, fostering capital formation, and promoting system stability.

The quantitative estimate below focuses on compliance costs and is also guided by the U.S. Securities and Exchange Commission's approach put forward in their T+1 proposing release.[10] A key assumption in this analysis is that most activities needed for migrating to T+1 relate to testing systems and market participants modifying their behaviour. The estimate does not include costs associated with infrastructure and IT changes. A major reason for excluding these costs is the lack of information and significant uncertainty around the types and extent of infrastructure needed for implementing T+1. As a result, the compliance costs listed below likely underestimate the overall cost of implementing T+1.

Similarly, only the qualitative benefits from shifting to T+1 are considered below due to the significant uncertainty and lack of data needed to quantify the benefits.

[9] Examples of such service providers include SS&C Technologies Canada Corp., Broadridge Financial Solutions, Paramax Solutions Inc., and Torstone Technology.

[10] See Proposed rule: Shortening the Securities Transaction Settlement Cycle https://www.sec.gov/rules/proposed/2022/34-94196.pdf

2. Overall benefit of migrating to T+1

(i) Reduction of friction costs from aligning settlement cycle with the United States

Reduced friction costs are the main benefit from aligning timing of Canada's move to T+1 with the US.

Friction costs are the direct and indirect costs associated with the completion of a financial transaction. These costs can be monetary (e.g., trading commissions, management fees) or non-monetary (e.g., opportunity costs). Mismatched trade settlement cycles impose additional friction costs on cross-border transactions between counterparties in jurisdictions with different settlement cycles. For example, a market participant operating in a jurisdiction with T+2 settlement may have to rely on short-term borrowings to fund investment purchases so that settlement aligns with a T+1 jurisdiction. Cross-border harmonization of settlement cycles would help market participants better manage cash flows and potentially reduce and simplify their financing needs.

Alignment with the United States capital markets represents a benefit of the Proposed Revisions to amend the ITM deadline to accommodate T+1 settlement. Previous studies have stressed the importance of Canadian capital markets changing the settlement cycle at the same time as the United States due to the impact on inter-listed securities and cross-border transactions.[11] Positioning settlement timelines to match those in the United States is a benefit by avoiding the drawbacks of differential settlement between Canada and the United States such as higher settlement costs, higher risk and movement of trading activity to the United States.

(ii) The shorter settlement cycle and lower settlement risk

A benefit of migrating to T+1 is through the shorter settlement cycle and the resulting reduction in settlement risk.

Settlement risk mainly involves the risk of loss from a party defaulting on a transaction. Shortening the settlement cycle to T+1 will reduce settlement risk by decreasing the number of transactions that are waiting to be settled at any time and, therefore, the potential loss from default. A shorter cycle also reduces the size of losses from default by mitigating the impact of price volatility as prices have less time to move away from the transaction price.

In general, the benefits of reduced settlement risk promote financial stability and capital formation in the economy. The benefits mainly play out through the clearing agency requiring less collateral from clearing participants. The clearing agency guarantees transactions and therefore bears some settlement risk. As a result, they require clearing participants to post collateral to offset the risk of default. Reduced settlement risk means the clearing agency can require less collateral.

The impact of lower collateral requirements along with the shorter settlement cycle should result in:

- *Capital previously intended as collateral being used more productively in the economy*. For example, instead of holding capital for collateral, dealers can use the capital for other purposes. Moreover, dealers likely do not need to hold as many assets in liquid securities that are needed for collateral.
- *Investors receiving proceeds of their transactions sooner.* As a result, they can deploy the proceeds sooner potentially facilitating greater investment in the economy.
- *Dealers and investors improving their liquidity positions.* Lower collateral requirements mean less of dealers' capital is tied up and more is available to meet payments. In addition, the shorter settlement cycle means that investors can more easily liquidate their securities, improving their ability to meet their liquidity needs.
- *Savings from lower risk management costs.* Reduced settlement risk and collateral requirements by the clearing agency can mean lower risk management costs for dealers.

3. Costs to stakeholders

In the Spring of 2022, OSC staff consulted with the CCMA and other stakeholders on the availability of industry estimates of implementation costs. Due to a lack of industry data at the time of publication, we considered a number of existing studies and the approach taken by regulators in other jurisdictions. Given the interconnectedness of the U.S. and Canadian capital markets, we determined it would be reasonable to adapt the methodology used by the U.S. Securities and Exchange Commission to estimate the costs associated with moving to T+1. Please refer to the methodology section for additional information on the adapted methodology and underlying assumptions.

(i) Initial T+1 implementation costs

For our purposes, these are the compliance costs that will be borne by market participants to migrate to T+1. The estimates reflect the per entity costs of certain implementation activities necessary to migrate to T+1 (e.g., configuring trading systems, updating

[11] See Charles River Associates study from November 1999 - https://ccma-acmc.ca/en/wp-content/uploads/Charles-River-Report-Nov10.pdf

documentation and investor education). The estimates take into account the impact of firm size on implementation costs borne by certain categories of market participants, with large firms expected to incur higher costs. We estimate that market participants will incur approximately $134M in initial implementation costs. Table 2 sets out the estimated per entity cost and total costs by category of market participants.

Table 2: Initial T+1 implementation costs by category of market participant

Type of Entity	Total Cost per Entity	Number of Entities	Total Costs per Category of Entity
Domestic Recognized Clearing Agencies Investment Dealers - Clearing Agency Participants	$4,990,000	2	$9,980,000
Small	$810,000	8	$6,480,000
Medium	$2,170,000	8	$17,360,000
Large	$3,620,000	20	$72,400,000
Investment Dealers - non-self clearing	$50,000	131	$6,550,000
Custodian Banks & Transfer Agents	$510,000	42	$21,420,000
		Total	**$134,000,000**[12]

Due to a lack of data on the necessary investment in IT systems, these cost estimates only reflect the labour costs associated with implementation activities. We encourage impacted market participants to provide estimates of the costs associated with updating existing IT systems.

(ii) Potentially higher initial costs for entrants increasing barriers to entry

If the cost of implementing systems to facilitate T+1 are considerably higher than for T+2, this can increase barriers for participants entering the market, putting pressure on the level of competition.

Assessing the potential for this is difficult as estimates of the infrastructure costs associated with implementing T+1 are not available. However, to date, stakeholders and studies reviewed by staff have not highlighted this as a significant issue. In addition, reduced settlement risk can encourage entry for some participants, effectively offsetting some of the barriers created by T+1 infrastructure costs. As such, it appears unlikely that any potential costs from barriers to entry will outweigh the benefits of moving to T+1.

[12] Totals may not add up due to rounding

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B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
BMG BullionFund
BMG Gold BullionFund
BMG Silver BullionFund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Dec 6, 2022
NP 11-202 Final Receipt dated Dec 8, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3448512

Issuer Name:
BMO Covered Call Energy ETF
BMO Covered Call Health Care ETF
BMO Global Agriculture ETF
BMO US Aggregate Bond Index ETF
BMO US TIPS Index ETF
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Dec 8, 2022
NP 11-202 Preliminary Receipt dated Dec 9, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3470945

Issuer Name:
RBC Emerging Markets Foreign Exchange Fund
RBC Trend Canadian Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated December 6, 2022
NP 11-202 Final Receipt dated Dec 8, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3387821

Issuer Name:
Big Pharma Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated December 5, 2022
NP 11-202 Receipt dated December 6, 2022
Offering Price and Description:
$200,000,000 Preferred Shares and Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3459953

Issuer Name:
Canoe EIT Income Fund
Principal Regulator - Alberta (ASC)
Type and Date:
Final Shelf Prospectus (NI 44-102) dated December 7, 2022
NP 11-202 Receipt dated December 7, 2022
Offering Price and Description:
$975,000,000 Units and Preferred Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3464394

NON-INVESTMENT FUNDS

Issuer Name:
Galiano Gold Inc. (formerly Asanko Gold Inc.)
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated December 7, 2022
NP 11-202 Preliminary Receipt dated December 8, 2022
Offering Price and Description:
US$300,000,000 Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3470550

Issuer Name:
IGM Financial Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Shelf Prospectus dated December 7, 2022
NP 11-202 Preliminary Receipt dated December 7, 2022
Offering Price and Description:
Debt Securities (unsecured), First Preferred Shares, Common Shares, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3470444

Issuer Name:
Kalma Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated December 5, 2022
NP 11-202 Preliminary Receipt dated December 6, 2022
Offering Price and Description:
Minimum Offering: $200,000.00 - 2,000,000 Common Shares
Maximum Offering: $300,000.00 - 3,000,000 Common Shares
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Luc Pelchat
Project #3470104

Issuer Name:
Lumine Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 12, 2022
NP 11-202 Preliminary Receipt dated December 12, 2022
Offering Price and Description:
Distribution by Constellation Software Inc. as a Dividend-in-Kind of 63,582,712 Subordinate Voting Shares of Lumine Group Inc.
Underwriter(s) or Distributor(s):
-
Promoter(s):
Constellation Software Inc.
Project #3471503

Issuer Name:
Opsens Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated December 7, 2022
NP 11-202 Preliminary Receipt dated December 7, 2022
Offering Price and Description:
$10,000,000.00 - 5,263,158 Common Shares
Price: $1.90 per Common Share
Underwriter(s) or Distributor(s):
STIFEL NICOLAUS CANADA INC.
RAYMOND JAMES LTD.
PARADIGM CAPITAL INC.
RBC DOMINION SECURITIES INC.
Promoter(s):
-
Project #3469515

Issuer Name:
Stearman Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 6, 2022
NP 11-202 Preliminary Receipt dated December 6, 2022
Offering Price and Description:
757,000 Common Shares issuable upon deemed exercise of 757,000 outstanding Special
Warrants
6,000,000 Units issuable upon deemed exercise of 6,000,000 outstanding Special Unit
Warrants
2,140,000 Common Shares issuable upon deemed exercise of 2,140,000 outstanding Special
Share Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
Steve Mathiesen
Howard Milne
Project #3470084

Issuer Name:
ZenaTech, Inc.
Type and Date:
Preliminary Long Form Prospectus dated December 5, 2022
(Preliminary) Receipted on December 7, 2022
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Shaun Passley
Project #3469864

Issuer Name:
Big Pharma Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated December 5, 2022
NP 11-202 Receipt dated December 6, 2022
Offering Price and Description:
$200,000,000 Preferred Shares and Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3459953

Issuer Name:
IGM Financial Inc.
Principal Regulator - Manitoba
Type and Date:
Final Shelf Prospectus dated December 7, 2022
NP 11-202 Receipt dated December 7, 2022
Offering Price and Description:
Debt Securities (unsecured), First Preferred Shares, Common Shares, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3470444

Issuer Name:
Power Financial Corporation
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated December 5, 2022
NP 11-202 Receipt dated December 6, 2022
Offering Price and Description:
$3,000,000,000.00 - Debt Securities (unsecured)
First Preferred Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3458671

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	MCLEAN CAPITAL INC.	From: Investment Fund Manager, Portfolio Manager, Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager	December 7, 2022
Voluntary Surrender	Baritone Asset Management Inc.	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer	November 30, 2022
Consent to Suspension (Pending Surrender)	ICPP FUNDS LTD.	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer	December 8, 2022
New Registration	HOOVEST FINANCIAL INC.	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer	December 12, 2022

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

B.11.1 SROs

B.11.1.1 Industry Regulatory Organization of Canada (IIROC) – Amendments Relating to Futures Segregation and Portability Customer Protection Regime – Notice of Commission Approval

NOTICE OF COMMISSION APPROVAL

AMENDMENTS RELATING TO
FUTURES SEGREGATION AND PORTABILITY CUSTOMER PROTECTION REGIME

INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

The Ontario Securities Commission has approved IIROC's proposed amendments to the IIROC Rules and Form 1 relating to the futures segregation and portability customer protection regime (**Amendments**). The Amendments align IIROC requirements with the corresponding rule changes at the Canadian Derivatives Clearing Corporation (**CDCC**) to implement a new customer protection segregation and portability regime based on the use of a gross customer margin (**GCM**) model.

IIROC originally published the Amendments for comment on July 8, 2021, followed by the republication for comment on April 21, 2022. One comment letter was received respecting the republication. IIROC has made non-material changes to the Amendments in response to comments received. A summary of the public comments and IIROC's responses to those comments, as well as the IIROC Notice of Approval/Implementation, including text of the Amendments, can be found at www.osc.ca.

The Amendments will be effective upon the implementation of CDCC's rule amendments for the GCM model initiative on March 31, 2023. If the implementation of CDCC's rule amendments for the GCM model initiative is extended beyond March 31, 2023, the implementation of the Amendments will be extended accordingly.

In addition, the Alberta Securities Commission; the Autorité des marchés financiers; the British Columbia Securities Commission; the Financial and Consumer Affairs Authority of Saskatchewan; the Financial and Consumer Services Commission of New Brunswick; the Manitoba Securities Commission; the Northwest Territories Office of the Superintendent of Securities; the Nova Scotia Securities Commission; the Nunavut Office of the Superintendent of Securities; the Office of the Superintendent of Securities, Digital Government and Service Newfoundland and Labrador; the Office of the Yukon Superintendent of Securities; and the Prince Edward Island Office of the Superintendent of Securities have either not objected to or have approved the Amendments.

B.11.2 Marketplaces

B.11.2.1 Aegis SEF LLC – Application for Exemption from Recognition as Exchange – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION BY
AEGIS SEF LLC
FOR EXEMPTION FROM RECOGNITION AS EXCHANGE

A. Background

AEGIS SEF LLC (**AEGIS SEF**) has applied to the Commission for an exemption from the requirement to be recognized as an exchange pursuant to subsection 21(1) of the *Securities Act* (Ontario) (**OSA**).

AEGIS SEF is a marketplace for trading derivatives that are regulated as swaps by the United States Commodity Futures Trading Commission (**CFTC**). AEGIS SEF offers trading of uncleared bilateral swap transactions involving various underlying commodities, which are regulated as swaps by the CFTC.

AEGIS SEF will enable clients to access its trading platform directly to either enter transactions on their own behalf or on behalf of a participant as an introducing broker. In addition, AEGIS SEF intends to provide direct access to trading on its marketplace to participants located in Ontario and therefore is considered to be carrying on business in Ontario.

As AEGIS SEF will be carrying on business in Ontario, it is required to be recognized as an exchange under the OSA or apply for an exemption from this requirement. AEGIS SEF has applied for an exemption from the recognition requirements on the basis that it is already subject to regulatory oversight by the CFTC.

B. Application and Draft Exemption Order

In the application, AEGIS SEF has outlined how it meets the criteria for exemption from recognition. The specific criteria can be found in Appendix 1 of the draft exemption order. Subject to comments received, Staff intends to recommend that the Commission grant an exemption order with terms and conditions based on the draft exemption order. The application and draft exemption order are available on our website at www.osc.ca.

C. Comment Process

The Commission is publishing for public comment the AEGIS SEF application and the draft exemption order. We are seeking comment on all aspects of the application and draft exemption order.

Please provide your comments in writing, via e-mail, on or before January 16, 2023, to the attention of:

Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions on may be referred to:

Timothy Baikie
Senior Legal Counsel, Market Regulation
Email: tbaikie@osc.gov.on.ca

Heather Cohen
Senior Legal Counsel, Market Regulation
Email: hcohen@osc.gov.on.ca

Mark Garcia
Trading Specialist, Market Regulation
Email: mgarcia@osc.gov.on.ca

Tim Reibetanz
Senior Legal Counsel, Derivatives
Email: treibetanz@osc.gov.on.ca

AEGIS SEF LLC

APPLICATION FOR
EXEMPTION FROM RECOGNITION AS AN EXCHANGE

October 20, 2022

Ontario Securities Commission
20 Queen Street West, 19th Floor
Toronto, Ontario M5H 3S8

Attention: Secretary

Re: AEGIS SEF LLC – Application for Exemption from Recognition as an Exchange

Dear Sirs and Mesdames:

AEGIS SEF LLC, a limited liability company organized under the laws of Delaware (the "**Applicant**" or "**AEGIS-SEF**"), is requesting an order for the following relief (collectively, the "**Requested Relief**") relating to the operation by AEGIS SEF of a marketplace (the "**AEGIS SEF Platform**") for trading swaps that is regulated by the United States Commodity Futures Trading Commission ("**CFTC**") under the terms of the U.S. Commodity Exchange Act ("**CEA**"), in the Province of Ontario:

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

b) exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* ("**NI 21-101**") pursuant to section 15.1(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.

AEGIS-SEF offers trading of uncleared bilateral swap transactions involving various underlying commodities (each a "**SEF Contract**"), which SEF Contracts are regulated as swaps by the CFTC.

AEGIS-SEF will enable (i) sophisticated persons, each of which must be an Eligible Contract Participant ("**ECP**") as defined in the CEA (each a "**Participant**"), to access the AEGIS-SEF Platform directly to trade and execute SEF Contracts on their own behalf, or (ii) Participants to access the AEGIS-SEF Platform indirectly through an introducing broker or commodity trading advisor (each a "**Broker Firm**"), which Broker Firm will access the AEGIS-SEF Platform to trade and execute SEF Contracts in the name of and on behalf of a Participant that is the Broker Firm's client.

In addition, AEGIS-SEF intends to provide direct access to trading on its AEGIS-SEF Platform to Participants and Broker Firms located in Ontario, including participants with their headquarters or legal address in Ontario (e.g., as indicated by a Participant's or Broker Firm's Legal Entity Identifier (LEI)) and all traders conducting transactions on behalf a Participant or Broker Firm, 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**"). The Applicant does not offer access to retail clients.

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

The Applicant seeks the Requested Relief on the basis that it is already subject to regulatory oversight by the CFTC.

This application is divided into the following Parts I to V, Part III of which describes how the Applicant satisfies criteria for exemption of a foreign exchange, that allows customers to trade uncleared bilateral swaps (i.e., OTC derivatives), from recognition as an exchange set by staff of the Ontario Securities Commission (the "**Commission**").

Part I Introduction

1. Description of Applicant's Services to Ontario Residents

Part II Background of the Applicant

1. Ownership of the Applicant
2. Products Traded on the Applicant's Swap Execution Facility
3. Participants

PART I INTRODUCTION

1. Description of the Applicant's Services to Ontarians

1.1 The Applicant operates the AEGIS-SEF Platform, which is an exchange for trading swaps that is regulated by the CFTC. The Applicant's AEGIS-SEF Platform offers trading of uncleared bilateral swaps in various underlying physical commodities, which are regulated as swaps by the CFTC. Additional products may be added in the future, subject to obtaining any required regulatory approvals. The Applicant's AEGIS-SEF Platform enables participants to engage in transactions using the trading methodologies described in Section IV of the Applicant's rulebook (the "**AEGIS-SEF Rulebook**"), available online at https://aegis-hedging.com/swap-execution-facility. As explained in the AEGIS-SEF Rulebook, all the SEF Contracts allowed to be traded on the AEGIS-SEF Platform are uncleared bilateral swaps that are Permitted Transactions (as the term "Permitted Transactions" is defined in the CFTC's Regulations under the CEA). As set forth in Section IV of the AEGIS-SEF Rulebook, the AEGIS-SEF Platform offers Participants the following two execution methods for SEF Contracts:

> (A) Order Book. Rule 1.87 of the AEGIS-SEF Rulebook defines AEGIS-SEF's "Order Book" as: "The Order Book is one of the two forms of swap execution functionality available on the AEGIS-SEF Platform for executing all SEF Contracts, including any Bespoke SEF Contract. As described in Rule 4.7, the Order Book is a trading system or platform in which all Participants on the AEGIS-SEF Platform have the ability to: (i) enter multiple bids to purchase and offers to sell such SEF Contracts, (ii) observe bids to purchase and offers to sell such SEF Contracts entered by other Participants, (iii) transact on (i.e., accept or fill) bids to purchase and offers to sell such SEF Contracts, and (iv) observe the price, quantity, product and delivery date of all such SEF Contracts that are executed from time to time using either the Order Book or the RFQ Function of the AEGIS-SEF Platform." Note that AEGIS-SEF's Order Book has no automatic algorithmic matching engine; Instead, a Participant (Participant #1) may accept an open Order posted on the Order Book (i.e., an open bid to purchase ("**BID**") or an open offer to sell ("**Offer**") a SEF Contract) that has been posted by another Participant (Participant #2) in the AEGIS-SEF Order Book and is available to be filled by Participant #2, because Participant #1 and Participant #2 have already entered into an ISDA Master Agreement between them.
>
> (B) RFQ Function. Rule 1.108 of the AEGIS-SEF Rulebook defines AEGIS-SEF's "Request for Quote Function or RFQ Function" as: "The RFQ Function is one of the two forms of swap execution functionality available on the AEGIS-SEF Platform for executing all SEF Contracts, including any Bespoke SEF Contract. As described in Rule 4.8, the RFQ Function allows a Requesting Participant to submit an RFQ seeking an indicative quote or a firm Order from one or more Designated Participants for a Bid to purchase or an Offer to sell such SEF Contract; provided, however, that only the Designated Participant(s) chosen by the Requesting Participant in its RFQ will be allowed to: (i) observe the terms of the SEF Contract requested in such RFQ, or (ii) submit an indicative Bid/Offer or a firm Order in response to such RFQ; and provided, further, that the Requesting Participant shall be informed by AEGIS-SEF of any relevant open Order resting at that time in the Order Book on the AEGIS-SEF Platform that may be responsive to such RFQ, all as more fully described in Rule 4.8. As also described in Rule 4.8, all Participants on the AEGIS-SEF Platform have the ability to observe the price, quantity, product and delivery date(s) of all SEF Contracts that are executed from time to time using either the Order Book or the RFQ Function of the AEGIS-SEF Platform."

1.2 The Applicant will offer direct access to trading on its AEGIS-SEF Platform to participants that are located in Ontario ("**Ontario Participants**") and that satisfy criteria for an "eligible contract participant" ("**ECP**") as defined in Section 1a(18) of the *U.S. Commodity Exchange Act* (the "**CEA**") and as further described in Part III below. Ontario Participants may include Canadian financial institutions, registered dealers and advisors, government entities, pension funds and other well-capitalized, non-regulated entities.

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

PART II BACKGROUND OF THE APPLICANT

1. Ownership of the Applicant

1.1 The Applicant is a limited liability company organized under the laws of Delaware. The ultimate parent company of the Applicant is AEGIS Hedging Solutions, LLC, a limited liability company organized under the laws of Delaware ("**AEGIS-HS**").

1.2 AEGIS-HS, through its two subsidiaries, AEGIS-SEF and AEGIS CTA, LLC, a Delaware limited liability company ("**AEGIS-CTA**"), is a leading provider of advisory services to commodity market participants primarily in the United States, both of which subsidiaries are subject to regulation by the CFTC. AEGIS-SEF is registered with the CFTC as a SEF. AEGIS-CTA is registered with the CFTC as a commodity trading advisor ("**CTA**"), as defined in the CEA.

2. Products Traded on the Applicant's Swap Execution Facility

2.1 The Applicant will provide its customers with trading and execution services for uncleared bilateral swaps. A full list of the products traded on the Applicant's AEGIS-SEF Platform can be found on the Applicant's website, at https://aegis-hedging.com/sef-compliance.

3. Participants

3.1 The Applicant's AEGIS-SEF Platform will enable clients to access the AEGIS-SEF Platform directly either to enter transactions on their own behalf as Participants or to enter transactions on behalf of other Participants as a Broker Firm. Persons seeking direct access to the AEGIS-SEF Platform as a Participant, or as a Broker Firm acting on behalf of a Participant, to (i) post an open Order or accept an open Order for a SEF Contract using the Order Book or (ii) submit an RFQ for a SEF Contract, submit indicative Bids/Offers, or a firm Order, in response to an RFQ for a SEF Contract, or accept Bids/Offers of firm Orders for a SEF Contract using the RFQ Function, must apply for "**Trading Privileges**" on the AEGIS-SEF Platform under Rule 3.3 of the AEGIS-SEF Rulebook and, if a person's application is accepted, such person must enter into (a) an AEGIS-SEF Platform – Participant Agreement for Market Participants and Financial Counterparties or (b) an AEGIS-SEF Platform – Participant Agreement for Broker Firms (in each case a "**SEF User Agreement**") with the Applicant. For the purposes of this application, holders of Trading Privilege on the AEGIS-SEF Platform will be referred to as "**Participants**" and "**Broker Firms**."

3.2 Participants and Broker Firms include a wide range of sophisticated persons, including commercial and investment banks, corporations and other institutional customers. Each person that wishes to trade directly on the Applicant's AEGIS-SEF Platform as a Participant must qualify as an ECP.

3.3 AEGIS-SEF Platform participant criteria is described more fully in Part III, Paragraph 4.1 below.

PART III APPLICATION OF EXEMPTION CRITERIA TO THE APPLICANT

The following is a discussion of how the Applicant meets the criteria of the Commission for exemption of a foreign exchange that allows participants to trade OTC derivatives from recognition as an exchange.

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).**

1.1.1 The Applicant is registered with the CFTC to operate a SEF in the U.S. pursuant to the CEA effective on and after July 19, 2022. The Applicant is subject to regulatory supervision by the CFTC. The Applicant is obligated to give the CFTC access to all records unless prohibited by law or such records are subject to attorney-client privilege. The CFTC reviews, assesses and enforces the Applicant's adherence to the CEA and the regulations thereunder on an ongoing basis, including the fifteen core principle requirements for SEFs ("**SEF Core Principles**") required by Section 5h of the CEA. The SEF Core Principles relate to the operation and oversight of the platform, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

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.**

1.2.1 The CFTC carries out the regulation of U.S. SEFs in accordance with certain provisions of the CEA. To implement SEF regulation, the CFTC has promulgated regulations and guidelines ("**CFTC Regulations**") that further interpret the SEF Core Principles and govern the conduct of SEFs. The CFTC also undertakes periodic in-depth audits or rule reviews of a SEF's compliance with certain of the SEF Core Principles.

1.2.2 The Applicant is required to demonstrate its compliance with the SEF Core Principles applicable to all U.S. SEFs. Among other things, the SEF Core Principles and CFTC Regulations require SEFs to have a rulebook and a compliance program, including a Chief Compliance Officer and a compliance manual. A SEF's access criteria for Participants and Broker Firms must be impartial and transparent and must be applied in a fair and non-discriminatory manner. The CFTC requires each SEF to have certain required trading protocols. A SEF must publish on its website certain daily trading data for each swap contract listed on the SEF and must report, or cause to be reported, all transactions executed on the SEF to a swap data repository. The CFTC reviews, assesses and enforces a SEF's adherence to CFTC regulations on an ongoing basis.

1.2.3 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of Participants and Broker Firms, to monitor compliance with those requirements and to discipline Participants and Broker Firms, including by means other than exclusion from the marketplace. The Applicant is contracting with the U.S. National Futures Association (the "**NFA**") as its regulatory services provider ("**Regulatory Services Provider**") to conduct market surveillance of trades on its platform for potential violations of the Applicant's rules. The Applicant retains ultimate decision-making authority with respect to any regulatory services to be provided by NFA.

2. Governance

2.1 **Governance – The governance structure and governance arrangements of the exchange ensure:**

Effective Oversight of the Exchange

2.1.1 The board of directors of the Applicant (the "**Board**"), has the power to manage, operate and set policies for the Applicant. The Board has the power to appoint such officers of the Applicant as it may deem necessary or appropriate from time to time.

2.1.2 The Board has the power by itself or through agents, and is authorized and empowered on behalf and in the name of the Applicant, to perform all acts and enter into other undertakings that it may in its discretion deem necessary or advisable in order to promote the sound and efficient operation of the AEGIS-SEF Platform (except such as otherwise required by applicable law), including, but not limited to, the following:

(a) ensuring that the AEGIS-SEF Platform complies with all statutory, regulatory and self-regulatory responsibilities under the CEA;

(b) reviewing, approving and monitoring major strategic, financial and business activities, the Applicant's budget and financial performance;

(c) evaluating risks and opportunities facing the Applicant and proposing options for addressing such issues;

(d) overseeing and reviewing recommendations from the Applicant's committees and the Chief Compliance Officer; and

(e) having the sole power to set the payment dates and amounts of any dues, assessments or fees to be levied on holders of Trading Privileges, subject, of course, to all CFTC regulatory authorizations.

2.1.3 Each director is expected to comply with all applicable law and Applicant policies, and promote compliance by the Applicant and all of its employees with all applicable law and Applicant policies. The Board discharges its responsibilities and exercises its authority in a manner, consistent with applicable legal and regulatory requirements that promotes the sound and efficient operation of the Applicant and its swap execution activities. The Board must, to the extent consistent with such responsibilities and as long as the Applicant remains a direct subsidiary of AEGIS-HS operate within the restraints and delegated authorities set by AEGIS-HS.

2.1.4 The Board provides effective oversight of the AEGIS-SEF Platform as described in greater detail below.

Fitness Standards

2.1.5 The Applicant has established fitness standards for the Board as set forth in Section II, Governance & Ownership, of the AEGIS-SEF Rulebook (the "**Governance & Ownership Provisions**"). The Governance & Ownership Provisions have been adopted by the Board and included in the AEGIS-SEF Rulebook to assist the Board in the exercise of its responsibilities. The Governance & Ownership Provisions are not intended to supersede or interpret any applicable law, and operate in conjunction with the Applicant's Amended and Restated Company Agreement of AEGIS SEF, LLC, dated as of May 2, 2022 ("**Operating Agreement**"). The standards set for the Board reflect the Applicant's commitment to AEGIS-HS, as its managing member ("**Managing Member**") and to the institutions and individuals who rely on the Applicant to provide swap execution services, and to comply with its role as a SEF subject to oversight by the CFTC.

2.1.6 The Board is committed to conducting itself in a legal and ethical manner in fulfilling its responsibilities. Each director is expected to comply with all applicable laws, rules and regulations, and Applicant policies, and promote regulatory compliance by the Applicant and all of its employees. The Board discharges its responsibilities and exercises its authority in a manner, consistent with applicable legal and regulatory requirements, that promotes the sound and efficient operation of the Applicant and its swap execution activities.

Composition

2.1.7 The Board may consist of no less than five directors from time to time designated by the Board or the Applicant's Managing Member. The identities of all directors are published on the Applicant's website and are available to the public.

2.1.8 The Board currently consists of five directors, two of which are Outside Directors (i.e., "**Public Directors**"). As explained in Rule 2.1.8 of the AEGIS-SEF Rulebook:

> "[I]n recognition of the self-regulatory functions to be performed by AEGIS-SEF as described heretofore in this AEGIS-SEF Rulebook, the Board of AEGIS-HS, as the managing member of AEGIS-SEF, has approved a resolution authorizing two voting members of the five voting members of AEGIS-SEF's Board of Directors to be "Public Directors" as the term "Public Director" is defined in Appendix B to Part 38 of the CFTC's Regulations applicable to Contract Markets (with all references therein to "contract market" converted to "SEF"). Accordingly, as the term "material relationship" is defined in

Appendix B to Part 38 of the CFTC's Regulations applicable to Contract Markets, no Public Director of AEGIS-SEF shall have any "material relationship" with AEGIS-SEF, AEGIS-CTA or AEGIS-HS.

Any Public Director of AEGIS-SEF shall be nominated and authorized, and may be removed, in accordance with the provisions of the Limited Liability Company Agreement (the "Operating Agreement") of AEGIS-SEF applicable to the nomination, authorization and removal, in general, of members of the Board of Directors of AEGIS-SEF; provided, however, that upon removal of any such voting member of the AEGIS-SEF Board that is a Public Director, such voting member of the AEGIS-SEF Board must be replaced by another Public Director.

A director shall be considered to have a "material relationship" with AEGIS-SEF if any of the following circumstances exist:

(A) The director is an officer or employee of AEGIS-SEF or an officer or employee of its affiliate. In this context, "affiliate" includes parents or subsidiaries of AEGIS-SEF or entities that share a common parent with AEGIS-SEF;

(B) The director is a member of AEGIS-SEF, or an officer or director of a member. "Member" is defined according to Section 1a(34) of the Commodity Exchange Act and Section 1.3 of the CFTC's Regulations;

(C) The director, or a firm with which the director is an officer, director, or partner, receives more than $100,000 in combined annual payments from AEGIS-SEF, or any affiliate of AEGIS-SEF (as defined in clause (A) above), for legal, accounting, or consulting services. Compensation for services as a director of AEGIS-SEF or as a director of an affiliate of AEGIS-SEF does not count toward the $100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable;

(D) Any of the relationships above apply to a member of the director's "immediate family," i.e., spouse, parents, children and siblings.

2.1.9 Each Director shall be appointed in accordance with the Operating Agreement and shall serve until his or her successor is duly appointed, or until his or her earlier resignation or removal, with or without cause.

Qualifications

2.1.10 In order to fulfill their responsibilities, directors (including Public Directors) are selected based on their experience, qualifications, attributes and skills and the understanding that their leadership will play an integral role in fulfilling the Applicant's business objectives and legal obligations. In particular, directors should:

(a) Demonstrate sufficient experience in the Applicant's scope or intended scope of financial services (including ancillary services valuable for the Applicant to fulfill its business purposes); and

(b) All directors shall be of sufficiently good repute, including the absence of any of the categories that would be disqualifying under Section 1.63(b) of the CFTC's regulations. Additionally, in accordance with CFTC Regulation Section 1.64(b), twenty (20) percent or more of the regular voting members of the Board shall be persons who: (i) are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to governing board deliberations; (ii) are not Participants on the AEGIS-SEF Platform, (iii) are not currently salaried employees of AEGIS-SEF; (iv) are not primarily performing services for AEGIS-SEF in a capacity other than as a member of the AEGIS-SEF Board; and (v) are not officers, principals or employees of a firm which is a Participant on the AEGIS-SEF Platform either in its own name or through an employee on behalf of the firm. No person may serve on the Board who meets any of the categories listed in CFTC Regulation Section 1.63(b).

Verification of Qualifications

2.1.11 In order to verify that each director is qualified to serve, the Applicant requires:

(a) A written statement from each prospective director containing biographical information and related background information; and

(b) Each director must inform the Applicant's Chief Compliance Officer in writing if any of the information in the statement materially changes thereafter.

Upon receipt of the written statement, the Applicant's Chief Compliance Officer will conduct an online search of available NFA resources to determine whether there is anything contradictory to the prospective director's statement and will attempt to resolve any inconsistencies. The Chief Compliance Officer will report the results of this review to the Managing Member and the Board prior to the election of the prospective director. See also Paragraph 2.2.1 below for a discussion of fitness requirements.

Conflicts of Interest

2.1.12 As set forth in Rule 2.6, Conflicts of Interest, of the AEGIS-SEF Rulebook, AEGIS-SEF shall (A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and (B) establish a process for resolving the conflicts of interest.

2.1.13 Pursuant to Section 1.69(b) of the CFTC's Regulations, a member of AEGIS-SEF's Board, disciplinary committee, or oversight panel must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(a) is a named party in interest;

(b) is an employer, employee or fellow employee of a named party in interest;

(c) is associated with a named party in interest through a "broker association" as defined in Section 156.1 of the CFTC's Regulations;

(d) has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing transactions opposite of each other or to clearing transactions through the same clearing member;

(e) has a family relationship with a named party in interest (each of (a) through (e) being a "**Relationship Conflict of Interest**") or

(f) has a direct and substantial financial interest in the result of the deliberations or vote of such body based upon either Applicant or non-Applicant positions that could reasonably be expected to be affected by the action (a "**Financial Conflict of Interest**").

A "family relationship" exists between a named party in interest or potential named party in interest in an Executive Proceeding and a potential Interested Person if one person is the other's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

2.1.14 Prior to the consideration by AEGIS-SEF's Board, disciplinary committee, or oversight panel of any matter involving a named party in interest, each member of AEGIS-SEF's Board, disciplinary committee, or oversight panel must disclose to AEGIS-SEF's CCO whether he or she has one of the Relationship Conflicts of Interest with a named party in interest. The CCO must then determine, based upon the information disclosed by the member and any other source of information that is held by and reasonably available to AEGIS-SEF, and taking into consideration the exigency of the matter, whether the member is subject to a conflicts restriction in any matter involving the named party in interest.

2.1.15 Prior to the consideration by AEGIS-SEF's Board, disciplinary committee, or oversight panel of any significant action , each member of AEGIS-SEF's board of directors, disciplinary committee, or oversight panel must disclose to AEGIS-SEF's CCO the position information shown below in clauses (A) through (E) that is known to him or her. This disclosure requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action.

> (A) Gross positions held at AEGIS-SEF in the member's personal accounts or "controlled accounts," as defined in Section 1.3(j) of the CFTC's Regulations;
>
> (B) Gross positions held at AEGIS-SEF in proprietary accounts, as defined in Section 1.17(b)(3) of the CFTC's Regulations, at the member's affiliated firm;
>
> (C) Gross positions held at AEGIS-SEF in accounts in which the member is a principal, as defined in Section 3.1(a) of the CFTC's Regulations;
>
> (D) Net positions held at AEGIS-SEF in "customer" accounts, as defined in Section 1.17(b)(2) of the CFTC's Regulations, at the member's affiliated firm; and,
>
> (E) Any other types of positions, whether maintained at AEGIS-SEF or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that AEGIS-SEF reasonably expects could be affected by the significant action.

The CCO must then determine, based upon (i) the most recent large trader reports and clearing records available to AEGIS-SEF, (ii) the information provided by the member with respect to positions under clauses (A) through (E), and (iii) any other source of information that is held by and reasonably available to AEGIS-SEF, as well as the exigency of the significant action, whether the member is subject to a conflicts restriction in the deliberations and voting on the subject significant action.

2.1.16 With respect to Financial Conflicts of Interest only, AEGIS-SEF's Board, disciplinary committee or oversight panel, by majority vote, may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain, if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action. In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the deliberating body shall consider the following factors: (i) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and (ii) Whether the member has unique or special expertise, knowledge or experience in the matter under

consideration. Prior to any such determination, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on the significant action.

2.1.17 AEGIS-SEF's Board, disciplinary committees and oversight panels must reflect in their minutes or otherwise document that the required conflicts determination procedures have been followed, including (i) the names of all members who attended the meeting in person or otherwise were present by electronic means, (ii) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated, and (iii) information on the position information that was reviewed for each member.

2.1.18 Pursuant to Rule 2.6.6 of the AEGIS-SEF Rulebook, AEGIS-SEF will refer unresolved Conflicts of Interest to the Regulatory Oversight Committee ("**ROC**") for review and resolution ("**ROC Review Process**").

> At the end of each calendar quarter in which the conflicts determination procedures set forth in Rule 2.6 are applied in a meeting of the Board, a Disciplinary Panel or an Appeal Panel, the ROC will meet to review the minutes of any and all such Board, Disciplinary Panel, or Appeal Panel meetings that occurred during the two preceding calendar quarters in which the conflicts determination procedures set forth in Rule 2.6 were applied. At such a quarterly meeting, the ROC will review the minutes of such meeting that were added pursuant to Rule 2.6.3, and will confirm and validate the handling of the conflict(s) disclosed in such meeting. No meeting in a calendar quarter is required if such procedures were not applied.
>
> Appeals by Adversely Affected Person. In addition, any person or any Participant who believes that she/he was harmed (materially and adversely affected) in any way by a decision of the Board, a Disciplinary Panel, or an Appeal Panel as a result of (i) any Member's undisclosed conflict of interest or (ii) the improper handling of a Member's disclosed conflict of interest (for example, a Member who disclosed a conflict of interest, but did not abstain from the decision-making process and was allowed to continue to participate in that decision-making process), may appeal that decision by the Board, a Disciplinary Panel or an Appeal Panel to the ROC.
>
> Any person appealing a decision by the Board, a Disciplinary Panel, or an Appeal Panel to the ROC shall be allowed to present her/his appeal in writing to the ROC, may attend in person or virtually, and may be represented by counsel, during that portion of the quarterly meeting of the ROC during which such appeal is heard and discussed by the ROC.
>
> Resolution of any appeal by the ROC shall require a vote of a simple majority of the members of the ROC. Specifically, the ROC may deny such appeal by a vote of a simple majority of the members of the ROC or may grant such appeal and require the applicable Board, a Disciplinary Panel or an Appeal Panel to reconsider its decision in light of the admonition of the ROC to properly resolve the applicable conflict of interest. In the event of a tie vote, the vote of the Chairperson of the ROC shall decide the matter.

2.1.19 Reporting of ROC Review Activities. Any appeal to the ROC that is resolved or unresolved at the end of any calendar year shall be included in the CCO's Annual Report to the CFTC under CFTC Regulations Section 37.1501(d) and 37.1501(e).2.1.20 Conflicts between AEGIS Subsidiaries.

A. Under the Shared Services Agreement ("**SSA**") between AEGIS-HS and AEGIS-SEF, AEGIS-HS personnel ("**Shared-Resources**") from time to time may perform services for AEGIS-SEF. In addition, from time to time, personnel of AEGIS-HS may also perform services for AEGIS-CTA. Under the SSA, should a disagreement on prioritization of shared resource work activities occur, the following steps will be taken to resolve such matters:

> 1) Managers of Shared-Resources shall first work to resolve any conflicts as to the assignment of resources.
>
> 2) The Chief Executive Officer of AEGIS-HS will make the final call should there be an unresolvable disagreement regarding resource sharing amongst the Managers of Shared-Resources.
>
> 3) Should the President of AEGIS-SEF be dissatisfied with the decision of Chief Executive Officer of AEGIS-HS, he or she will immediately escalate the concerns to AEGIS-SEF's Regulatory Oversight Committee and then to the full Board of AEGIS-SEF.
>
> 4) The CCO of AEGIS-SEF also has the authority to bring any disagreements on Shared Services resources to AEGIS-SEF's ROC for their review.
>
> 5) If the Board of AEGIS-SEF is unable to reach an agreement with the Chief Executive Officer of AEGIS-HS, the Board of AEGIS-SEF shall escalate its concerns to the full Board of AEGIS-HS.

The full escalation process is designed to reach resolution in less than five (5) business days.

B. All employees, officers and directors must avoid and report any actual or perceived conflict of interest or misappropriation of information which may improperly benefit one business unit of AEGIS, a SEF Participant, or SEF Broker Firm to the detriment of

another business unit of AEGIS, a SEF Participant or SEF Broker Firm. Conflicts of Interest in the implementation of, and/or improper allocation of, Shared-Resources of employees should be reported as soon as the conflict or potential conflict is discovered. It is the responsibility of every employee, officer and director of AEGIS-SEF, at any unit of AEGIS-HS or AEGIS-CTA, to accurately and timely report any actual or potential conflict of interest as soon as the conflict or potential conflict is discovered. A report of Conflict of Interest involving AEGIS-SEF should be made to the CCO of AEGIS-SEF. If the CCO or Senior Staff of AEGIS-SEF is directly involved, the report should be made to the Regulatory Oversight Committee of AEGIS-SEF.

C. The Compliance Official at the affected business unit has authority to review and resolve all Conflicts of Interest matters. Should a matter of Conflict of Interest or misappropriation of material non-public information involve AEGIS-SEF, the CCO of AEGIS-SEF shall confer and refer the incident to the Regulatory Oversight Committee. A record of such matter should be maintained for 5 years. Records of Conflict of Interest involving AEGIS-SEF are to be included in the CCO's Annual report to the CFTC.

Compensation

2.1.21 Compensation awarded to Public Directors and other nonexecutive directors is not linked to the Applicant's business performance.

Certification and Compliance

2.1.22 Each director must become familiar with, and abide by, the Governance & Ownership Provisions. Each prospective director and director must, before taking office, acknowledge his or her receipt and understanding of the Governance & Ownership Provisions, as well as upon any publication of a revised set of Governance & Ownership Provisions or amendment thereto. In addition, (i) upon request from the Applicant, the director shall certify that the qualification information he/she provided to the Applicant before being elected as a director has not changed materially, and (ii) from time to time the director shall provide an updated statement of qualification information that reflects any material changes.

2.1.23 Directors are required to report suspected violations of the Governance & Ownership Provisions or of any applicable law, rule or regulation by any director to the Board, the Regulatory Oversight Committee or the Chief Compliance Officer (who will subsequently relay any such suspected violations to the Board or the Regulatory Oversight Committee, unless such reported violation is proven incorrect after a prompt initial review of its merits). The Board or the Regulatory Oversight Committee, as applicable, shall determine whether to conduct an investigation and what appropriate action should be taken. Directors may consult with the Applicant's General Counsel if there is any doubt as to whether a particular transaction or course of conduct complies with or is subject to the Governance & Ownership Provisions.

Self-Review

2.1.24 The Board reviews its performance and that of its individual directors on an annual basis. The Board, or a committee delegated such responsibility, shall establish criteria for the Board's evaluation, shall conduct the evaluation in accordance with such criteria, and shall make recommendations to improve deficiencies.

Removal for Cause

2.1.25 Any director failing to comply with, or certify compliance with, the Governance & Ownership Provisions, or whose conduct otherwise is likely to be prejudicial to the sound and prudent management of the Applicant, may be removed for cause at any time by the affirmative vote of a majority of the directors, other than the director whose conduct is at issue, or by the affirmative vote of a majority interest of the Managing Member(s), at the annual meeting or at a special meeting called for that purpose.

Board Committees

2.1.26 The Applicant's Governance and Ownership Provisions contemplate three standing committees of the Board: the Nominating Committee, the SEF Participant Committee, and the Regulatory Oversight Committee. The Board may from time to time constitute and appoint additional standing committees as it may deem necessary or advisable. The Applicant may also from time to time establish one or more special committees as it may deem necessary or advisable.

2.1.27 The Regulatory Oversight Committee consists only of Public Directors. Each member of the Regulatory Oversight Committee shall serve until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Regulatory Oversight Committee or as a Public Director. A member of the Regulatory Oversight Committee may serve for multiple terms. The Regulatory Oversight Committee has responsibility to:

(i) Monitor the AEGIS-SEF Platform's self-regulatory program for sufficiency, effectiveness, and independence;

(ii) Oversee all facets of the AEGIS-SEF Platform's self-regulatory program, including trade practice, market surveillance, audits, examinations and other regulatory responsibilities with respect to participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements), and the conduct of investigations;

(iii) Review the size and allocation of the AEGIS-SEF Platform's regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;

(iv) Review the performance of the CCO, and make recommendations with respect to such performance to the Board;

(v) Review all regulatory proposals prior to implementation and advise the Board as to whether and how such changes may impact regulation;

(vi) Maintain minutes and records of its meetings, deliberations and analyses, including records of all decisions made by the ROC such as decisions resolving conflicts of interest in accordance with the procedures described above under "Conflicts of interest;"

(vii) Recommend changes to the AEGIS-SEF Platform's self-regulatory program that would ensure fair, vigorous, and effective regulation;

(viii) Prepare an annual report to the Board and the CFTC describing the Self-Regulatory Program, which sets forth such Program's expenses, describes its staffing and structure, catalogues investigations and disciplinary proceedings taken during the year, and reviews the performance of disciplinary panels, appeals panels and the CCO; and

(ix) Perform such other duties as the Board may delegate to it from time to time.

(a) that business and regulatory decisions are in keeping with its public interest mandate,

2.1.28 The Applicant is committed to ensuring the integrity of its AEGIS-SEF Platform and the stability of the financial system, in which market infrastructure plays an important role. The Applicant must ensure the integrity of a transaction that occurs on the AEGIS-SEF Platform and the protection of customer funds under Core Principle 7 – *Financial Integrity of Transactions* ("**Core Principle 7**"). The Applicant fulfills this requirement in part through compliance with other SEF Core Principles, such as Core Principle 3 – *Swaps Not Readily Subject to Manipulation* ("**Core Principle 3**"). Stability of the market infrastructure is enhanced through compliance with Core Principle 13 – *Financial Resources* ("**Core Principle 13**"). Core Principle 13 requires the AEGIS-SEF Platform to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. The rules, policies and activities of the Applicant are designed and focused on ensuring that they maintain best practices and fulfil this public interest mandate. The Applicant operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs and derivatives trading facilities.

(b) 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,

2.1.29 At such time as determined in the discretion of the Board (or at and for such other time as may otherwise be required by the CFTC Regulations), the Board shall be composed of at least 20%, but no less than two, Public Directors, or such other percentage of Public Directors as may be required to comply with the CEA and CFTC Regulations. The Board has two (2) Public Directors. Also, at such time as is determined in the discretion of the Board (or at and for such other time as may otherwise be required by the CFTC Regulations), the Regulatory Oversight Committee shall consist only of Public Directors. Paragraph 2.1.18 above contains a discussion of the criteria for Public Director independence. Paragraph 2.1.10 above contains a discussion of director qualification, including compliance with Section 1.64(b)(3) of the CFTC's regulations, which requires that a minimum number of board members represent a diversity of membership interests.

(c) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

2.1.30 The Applicant, through its conflicts of interest rules, policies and procedures in Rule 2.6 of the AEGIS-SEF Rulebook, as well as its compliance with Core Principle 12 – *Conflicts of Interest* ("**Core Principle 12**"), has established a robust set of safeguards designed to ensure that the AEGIS-SEF Platform operates free from conflicts of interest or inappropriate influence as described above. The CFTC also conducts its own surveillance of the markets and market participants and actively enforces compliance with applicable regulations. In addition to this regulatory oversight, the Applicant separately establishes and enforces rules governing the activity of all market participants in its market. The Applicant's conflict of interest policies are described in greater detail in Paragraphs 2.1.12 through 2.1.20 above.

(d) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.1.31 See Paragraph 2.1.10 above for information on the director qualifications. Members of the Applicant's Management Team are recruited for their particular position based upon their skills and expertise. Their individual goals and performance are regularly assessed by their direct manager as part of the Applicant's performance management process.

2.1.32 Pursuant to the Applicant's AEGIS-SEF Rulebook, the liability of each employee of the Applicant to third parties for obligations of the Applicant is limited to the fullest extent provided in the CEA and other applicable law. The Applicant's Operating Agreement provides for the indemnification by the Applicant against losses or damages sustained by a person with respect to third-party actions or proceedings due to the fact that such person is a Director or other officer of the Applicant.

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.**

2.2.1 See Paragraphs 2.1.5 and 2.1.6 above for a description of the Applicant's fitness standards for the Board as a whole. See Paragraph 2.1.11 above for a description of the Applicant's policies and procedures for ensuring that each director is a fit and proper person.

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.**

3.1.1 The CFTC core principles relevant to products traded on the AEGIS-SEF Platform include: Core Principle 2 – *Compliance with Rules* ("**Core Principle 2**"), Core Principle 3, Core Principle 4 – *Monitoring of Trading and Trade Processing* ("**Core Principle 4**"), Core Principle 6 – *Positions Limits or Accountability*, Core Principle 7 and Core Principle 9 – *Timely Publication of Trading Information* ("**Core Principle 9**"). As noted previously, Core Principle 3 requires SEFs to demonstrate that new products are not susceptible to manipulation.

3.1.2 Rule 10.1 of Section X of the AEGIS-SEF Rulebook describes the procedure for adding new products or changing existing products (i.e., SEF Contracts) as follows:

> "From time to time, AEGIS-SEF will offer specific SEF Contracts on the AEGIS-SEF Platform, which will be listed, together with the applicable Contract Specifications, on AEGIS-SEF's webpage. The process for listing any SEF Contract on the AEGIS-SEF Platform is described in Rules 5.1 and 5.2 of this Rulebook. As set forth in Rule 5.1 of this Rulebook, the President of AEGIS-SEF, whether acting on its own volition or in response to a request from a Participant, shall have authority, subject to complying with Rule 5.2 and to objectively justifiable commercial criteria, to submit a proposed SEF Contract to the CFTC, either with a request for prior approval pursuant to CFTC Regulations Section 40.3, or with a self-certification pursuant to CFTC Regulations Section 40.2.

In order to submit a swap to the CFTC as self-certified, AEGIS-SEF must: (i) meet the submission criteria contained in CFTC Rule 40.2; (ii) determine that the swap is "not readily susceptible to manipulation" in accordance with Core Principle 3 and CFTC Rules 37.300 and 37.301; and (iii) include in the self-certified submission the information required by Appendix C to Part 38 of the CFTC Regulations. Rule 5.2 of Section V of the AEGIS-SEF Rulebook provides the following description:

> "[T]he CCO shall submit the following information required by Appendix C to Part 38 of the CFTC's Regulations in connection with each swap that AEGIS-SEF submits to the CFTC for prior approval, or with a self-certification, as a SEF Contract:
>
> (a) For cash-settled swaps, documentation demonstrating that the Settlement Price index is a reliable indicator of market values and conditions, is highly regarded by industry/market agents, and is publicly available on a timely basis;
>
> (b) Where an independent, private-sector third party calculates the referenced price index, verification that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash Settlement Prices included in the index;
>
> (c) Any other available information demonstrating that the referenced price index calculation procedures safeguard against potential attempts to artificially influence the price, and a description of how the calculation procedures eliminate or reduce the impact of potentially unrepresentative data;
>
> (d) Appropriate speculative limits, if necessary, to prevent manipulation; and

(e) Procedures for intraday market restrictions that pause or halt trading in the event of extraordinary price moves that may result in distorted prices."

3.1.3 Only uncleared bilateral swaps that are Permitted Transactions may be traded as SEF Contracts on the AEGIS-SEF Platform. Consequently, if any product traded on the AEGIS-SEF Platform is made "available to trade" under Section 5c(c) of the CEA and CFTC Regulation 37.10, that would cause such product to become a Required Transaction and, thereafter, such product would no longer be a Permitted Transaction and could no longer be traded on the AEGIS-SEF Platform, except in situations where at least one counterparty to the swap involving such product was eligible for the End-User Exception or the Hedging-Affiliate Exception under, respectively, Section 2(h)(7)(A) or Section 2(h)(7)(D) of the CEA

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.**

3.2.1 Among other things, the requirement that new swaps comply with the SEF Core Principles means that they contain an analysis of the underlying cash market and the deliverable supply of the underlying product. In response to the Applicant's process for introducing a new product or changing an existing product, as described above, the CFTC has the right to follow up with questions requesting additional information on the underlying market including, but not limited to: supply and demand characteristics, participant composition, market concentration, deliverable supply estimates, the relation of the swap size to the underlying market, the quality of the product across various delivery facilities and the delivery facilities used for the product. If the Applicant is unable to provide satisfactory answers to the CFTC's questions, it may require the AEGIS-SEF Platform to withdraw the proposed product addition or change. It is the Applicant's experience that the terms and conditions of swaps that trade on the AEGIS-SEF Platform are standardized, generally accepted and understood by participants.

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.**

3.3.1 Paragraph 9.3 of this application covers the way that the Applicant measures, manages and mitigates the trading risk associated with products traded on the AEGIS-SEF Platform.

3.3.2 The Applicant's compliance function is responsible for ensuring that surveillance systems monitor trading by Participants to prevent manipulation, price distortion and other violations of AEGIS-SEF Platform rules and applicable law. Pursuant to a Regulatory Services Agreement ("**RSA**"), the Applicant has contracted with the NFA as a Regulatory Services Provider for the purposes of monitoring the AEGIS-SEF Platform's markets. As part of the market surveillance provided, the NFA uses an automated system to detect, among other things, (a) disruptions of the deliverable supplies underlying a swap, (b) market manipulation of the reference prices, and (c) also monitors the orderly liquidation of physically deliverable expiring swaps. Consistent with other SEFs, the Applicant has determined that it is not necessary and appropriate to set position limits or position accountability levels for swaps at this time.

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 such 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.

4.1.1 Consistent with applicable law, including SEF Core Principles, the AEGIS-SEF Platform provides access to participants on a fair, non-discriminatory and open basis. Participant status, and access to, and usage of, the AEGIS-SEF Platform in such capacity, is available to all market participants that meet the criteria set forth by the Applicant and engage in transactions on the AEGIS-SEF Platform in accordance with the AEGIS-SEF Platform's rules. Section III of the AEGIS-SEF Rulebook sets out the admission and eligibility criteria that participants must meet. Among other requirements, AEGIS-SEF Rulebook standards require that participants must:

• be of good financial standing and meet the financial and related reporting requirements set forth in Section III of the AEGIS-SEF Rulebook.

• upon initial application for trading privileges, represent to the Applicant that it is an ECP. In addition, at least annually, the participant must represent that it has been and continues to be as of such date, an ECP;

• notify the Applicant's Chief Compliance Officer immediately upon becoming aware that it fails to meet its minimum financial requirements; and

• demonstrate a capacity to adhere to all applicable rules of the AEGIS-SEF Platform, , CFTC regulations and SRO regulations, including those concerning record-keeping, reporting, financial requirements and trading procedures.

4.1.2 Ontario Participants using the AEGIS-SEF Platform must be registered under Ontario securities laws, exempt from such registration requirements, or not subject to such registration requirements.

4.1.3 Core Principle 11 requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF should avoid (a) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (b) imposing any material anticompetitive burden on trading. As such, the Applicant does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate, because such rules would not meet SEF Core Principle requirements.

4.1.4 The Applicant may deny the grant of trading privileges, or prevent a person from becoming or remaining a participant, if it would cause the Applicant to be in violation of any applicable law. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access. Under Rule 3.3.4 of the AEGIS-SEF Rulebook, AEGIS-SEF shall promptly notify the Person in writing if AEGIS-SEF denies or conditions the Person’s application for access to the AEGIS-SEF Platform.

4.1.5 Pursuant to Rule 2.4.3 of the AEGIS-SEF Rulebook, any applicant who is denied trading privileges or any participant who has privileges removed may request a review of such decision by the SEF Participant Committee. As described in Rule 2.4.3:

> “The SEF Participant Committee shall (i) determine the standards and requirements for initial and continuing Participant eligibility, (ii) review appeals of staff denials of Participant applications, and (iii) approve Rules that would result in different categories or classes of Participants receiving disparate access to the AEGIS-SEF Platform. The SEF Participant Committee shall not, and shall not permit AEGIS-SEF to, restrict access or impose burdens on access to the AEGIS-SEF Platform in a discriminatory manner, within each category or class of Participants or between similarly-situated categories or classes of Participants.”

The Board (or SEF Participant Committee) shall confirm, reverse or modify the initial decision and will promptly notify the applicant or participant as the case may be, accordingly. The Board (or SEF Participant Committee) may in its discretion schedule a hearing or establish any other process that it believes is necessary and appropriate to consider the request for reconsideration. Any decision by the Board (or SEF Participant Committee) then made constitutes the final action of the AEGIS-SEF Platform with respect to the matter in question. In the event that the Board (or SEF Participant Committee) upholds the decision to deny access, the applicant may then submit its dispute to arbitration under Rule 8.1 of the AEGIS-SEF Rulebook.

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.**

5.1.1 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. Participants are required to comply with a significant number of rules governing trading on the AEGIS-SEF Platform pursuant to the AEGIS-SEF Rulebook. The applicable rules are primarily located in Section

III (Access by Participants, Authorized Users and Broker Firms), Section IV (Trading Operations), and Section VI (Code of Conduct) of the AEGIS-SEF Rulebook.

5.1.2 The Applicant is contracting with the NFA for the NFA to conduct market surveillance of its AEGIS-SEF Platform trades. The NFA staff are responsible for conducting trade practice surveillance and market surveillance for the Applicant. This includes reviewing deals on an ongoing basis to determine if there are any potential violations of the Applicant's Rulebook and monitoring compliance with market manipulation rules and the orderly liquidation of physically delivered expiring swaps. NFA uses an automated surveillance system known as NASDAQ Market Surveillance , or “SMARTS.” The NFA staff uses SMARTS to effectively and efficiently profile markets and Participants, query the Applicant's audit trail, generate automated trade exception reports and conduct daily monitoring of prices, volume and market news. In addition to the information collected automatically by SMARTS, information is gathered by NFA staff from a variety of other sources to perform surveillance. NFA investigators are grouped into Investigation Teams organized by the Applicant and by asset class to ensure that the NFA provides adequate staff with sufficient expertise to oversee the Applicant's market.

5.1.3 The Applicant expends considerable human, technological and financial resources that are focused on the maintenance of fair, efficient, competitive and transparent markets, and the protection of all AEGIS-SEF Platform participants from fraud, manipulation and other abusive trading practices. The Applicant's market surveillance activities include a broad range of interconnected efforts that include trade practice reviews, data quality assurance audits and enforcement activities. To fulfill its mandate to effectively monitor and enforce the AEGIS-SEF Platform's rules, the Applicant has established an automated trade surveillance system capable of detecting potential trade practice violations of the Applicant's Rulebook. As noted above, participants are required to comply with a significant number of rules governing trading on the AEGIS-SEF Platform pursuant to the AEGIS-SEF Platform's rules, which are primarily found in Section III (Access by Participants, Authorized Users and Broker Firms), Section IV (Trading Operations), and Section VI (Code of Conduct) of the AEGIS-SEF Rulebook.

5.1.4 Investigating and enforcing rule violations are necessary components of regulatory safeguards. The AEGIS-SEF Platform's disciplinary rules include establishing review panels, conducting investigations, prosecuting violations and imposing sanctions as set forth in Section VII (Discipline and Enforcement) of the AEGIS-SEF Rulebook, which is discussed below in in Part 7.

5.1.5 The Applicant is dedicated to safeguarding the integrity of its AEGIS-SEF Platform, and ensuring that it is free from manipulation and other abusive practices. The efforts described in this Part 5 are a necessary component of markets that work efficiently and safely, thereby allowing participants that use the AEGIS-SEF Platform to have access to a marketplace that is open, transparent and free from manipulation and market abuse.

5.1.6 Specifically with reference to regulatory technology, the Applicant has made significant investments in this area, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, ensuring that the Applicant's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace. The Applicant has developed an audit trail of market activity and powerful and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical orders and transaction data, maintain profiles of markets and participants, and detect trading patterns potentially indicative of market abuses.

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.

6.1.1 Pursuant to its obligations under the regulatory oversight under the CEA and under CFTC Regulations, the Applicant has implemented rules, policies and other similar instruments that govern the operations and activities of its participants. The Applicant's rules are covered in Sections I through X of its AEGIS-SEF Rulebook, which include: Section I (Definitions), Section II (Governance & Ownership), Section III (Access by Participants, Authorized Users and Broker Firms), Section IV (Trading Operations), Section V (Contracts to be Traded), Section VI (Code of Conduct), Section VII (Discipline and Enforcement), Section VIII (Arbitration), Section IX (Miscellaneous) and Section X (Contract Specification for Listed SEF Contracts). The Applicant believes that its rules and policies that govern the activities of Participants are consistent with the rules and policies of other derivatives marketplaces and therefore do not 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, , 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.

6.1.2 The Applicant's AEGIS-SEF Rulebook is subject to the standards and requirements outlined by the CFTC's SEF Core Principles. At a high level, the Applicant's Rulebook seeks to ensure fair and orderly markets accessible to all eligible participants. This aim is accomplished by establishing rules that reflect the SEF Core Principle criteria, that are not contrary to the public interest, and are designed to:

(i) **ensure compliance with applicable legislation.** The Applicant is obligated to comply with the CEA, the SEF Core Principles and the CFTC Regulations (collectively, the "**U.S. SEF Regulations**"). As a result, the Applicant must implement rules that require compliance with the U.S. SEF Regulations by its participants. SEF Core Principle 1 – *Compliance with Core Principles* requires a swaps trading facility to comply with all applicable CFTC requirements and CEA core principles to be designated a SEF and maintain such designation. The Applicant proactively ensures compliance with all applicable laws and regulations, evidenced in part by its regular dialogue with the CFTC, including public commenting on proposed regulations. Core Principle 2 requires SEFs to ensure participants consent to SEF rules and jurisdiction prior to accessing its markets. Section III of the Applicant's AEGIS-SEF Rulebook governs membership requirements and establishes compliance with the rules that brings market participants within the jurisdiction of the CFTC and the scope of the SEF Core Principles.

(ii) **prevent fraudulent and manipulative acts and practices.** Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls. Core Principle 3 requires a SEF to ensure the swaps it trades are not readily susceptible to manipulation. The Applicant complies with this Core Principle by including narrative descriptions of the product terms and conditions of every swap and by certifying in its CFTC Rule 40.2 submission that each swap is not readily susceptible to manipulation in accordance with Core Principle 3 and the criteria set forth in Appendix C to Part 38 of the CFTC regulations. Also, Sections IV and VI of the Applicant's AEGIS-SEF Rulebook prescribes trading practices and trading conduct requirements, including prohibited trading activities and prohibitions on fictitious trades, fraudulent activity and manipulation.

(iii) **promote just and equitable principles of trade.** Core Principle 9 requires a SEF to promote transparency by making timely public disclosures of trading information. The Applicant conforms to this Core Principle by publishing daily information on settlement prices, volume, open interests, and opening and closing ranges for actively traded swaps, where applicable to the method of execution and products traded on the AEGIS-SEF Platform. Core Principle 7 requires a SEF to ensure the financial integrity of transactions entered into on its markets. The Applicant's data and order entry feed systems offer simultaneous and equivalent access to all market participants. Core Principle 11 prohibits the imposition of unreasonable restraints or uncompetitive burdens on trade. Throughout its rulebook, the Applicant has established transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation. Additionally, Section IV of Chapter 1 of the Applicant's compliance manual requires that compliance personnel ensure the Applicant does not adopt any rule or take any action that would result in any unreasonable restraint of trade or impose any material anticompetitive burden on trading. The Applicant believes that compliance with these Core Principles, which require transparency, financial integrity, fair access and fair competition among participants, promotes just and equitable principles of trade.

(iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, , settling, processing information with respect to, and facilitating transactions in the products traded on the exchange.** Rule 2.8 of the AEGIS-SEF Rulebook authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC may require. Furthermore, the Applicant may enter into any arrangement with any other person (including any governmental authority (such as the Ontario Securities Commission) or trading facility) where the Applicant determines such person exercises a legal or regulatory function under any applicable law or considers the arrangement to be in furtherance of the operation or duties of the Applicant under applicable law.

(v) **promote a framework for disciplinary and enforcement actions.** Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Section VII of the Applicant's AEGIS-SEF Rulebook describes the AEGIS-SEF Platform's rules for rule enforcement and Section VIII prescribes the Applicant's procedures for dispute resolution.

(vi) **ensure a fair and orderly market.** Core Principle 2 requires a SEF to establish rules governing the operation of the SEF, including orderly trading procedures and rule enforcement programs. Core Principle 3 requires a SEF to ensure that swaps traded on the facility are not readily subject to manipulation. Core Principle 4 requires a SEF to establish procedures for monitoring of trading and trade process. The Applicant complies with these Core Principles by prescribing trading rules, collecting and evaluating

market activity data, by maintaining and auditing its real-time monitoring program, and by auditing historical data to detect trading abuses. Core Principle 9 requires timely public disclosure of trade information, all of which is published daily. SEF Core Principle 14 – *System Safeguards* requires a SEF to establish and maintain risk analysis, emergency procedure, and periodic systems testing programs. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance. The Applicant believes that compliance with these Core Principles, which require effective trading rules, real-time and post-trade monitoring, public data dissemination and risk management procedures and testing, ensure a fair and orderly market.

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.

7.1.1 SEF Core Principle 2 requires the Applicant to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Section VII of the Applicant's Rulebook sets out the Applicant's rules for discipline and rule enforcement and Section VIII prescribes the Applicant's dispute resolution procedures.

7.1.2 The Applicant has the authority to initiate and conduct investigations, and enforce remedial action for breaches, and to impose sanctions for such violations. It is the duty of the Applicant's Chief Compliance Officer to enforce the rules, but the Chief Compliance Officer may also delegate such authority to market regulation staff, which consists of employees of the Applicant and the NFA ("**Market Regulation Staff**").

7.1.3 The Market Regulation Staff have the authority to conduct investigations of possible violations of the Rulebook, prepare written reports respecting such investigations, furnish such reports to the Applicant's review panel (the "**Review Panel**") and conduct the prosecution of such violations. An investigation must be commenced upon receipt of a request from CFTC staff or receipt of information by AEGIS-SEF that, in the judgment of the Market Regulation Staff, indicates a reasonable basis for finding that a violation has occurred or will occur. The Applicant maintains records of all investigations conducted by the Applicant in accordance with its recordkeeping policy.

7.1.4 If it is concluded that a violation may have occurred, the participant may be issued a warning letter or an investigation report concerning the matter may be filed with the Review Panel. No more than one warning letter may be issued to the same person found to have committed the same violation more than once in a rolling 12-month period. The investigation report must include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; Market Regulation Staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued. The report may also include the participant's disciplinary history at the AEGIS-SEF Platform, including copies of any warning letters.

7.1.5 The Review Panel has the power to direct that an investigation of any suspected violation be conducted by the Market Regulation Staff, and shall hear any matter referred to it by the Market Regulation Staff regarding a suspected violation. Upon receipt of an investigation report, the Review Panel shall promptly review the report and, within twenty (20) days of receipt, take one of the following actions:

(a) If the Review Panel determines that additional investigation or evidence is needed, it shall promptly direct the Market Regulation Staff to conduct further investigation;

(b) If the Review Panel determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and must include a written statement setting forth the facts and analysis supporting the decision; or

(c) If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, it must direct that the participant alleged to have committed the violation be served with a notice of charges (as set forth in Rule 7.4 of the AEGIS-SEF Rulebook).

7.1.6 If the Review Panel determines that there may have been a violation but that no adjudication is warranted, the Review Panel may issue a warning letter to the participant informing it that there may have been a violation and that such continued activity may result in disciplinary sanctions. Where a violation is determined to have occurred, no more than one warning letter for the same potential violation may be issued to the same person during a rolling 12-month period.

7.1.7 If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, the Chief Compliance Officer shall serve a notice of charges (a "**Notice**") on the participant alleged to have been responsible for the violation (such participant, the "**Respondent**").

7.1.8 The Respondent shall serve on the Chief Compliance Officer a written answer (an "**Answer**") to the Notice and a written request for a hearing on the charges within twenty (20) days of the date of service of the Notice. The Answer must include a statement that the Respondent admits, denies, or does not have and is unable to obtain sufficient information to deny each allegation.

7.1.9 Formal hearings on any Notice shall be conducted by the "**Hearing Panel**" selected by the Board. The Hearing Panel may not include any members of the Market Regulation Staff, or any person involved in adjudicating any other stage of the same proceeding. The Hearing Panel must meet the composition detailed in CFTC Regulation 1.64(c), which requires that whenever the Hearing Panel is acting with respect to a disciplinary action in which the Respondent is a member of the Board, the Review Panel or the Hearing Panel or when the suspected violation involves manipulation (or attempted manipulation) of the price of a Contract or conduct which directly results in financial harm to a non-member of the Applicant that: (a) at least one member of the Hearing Panel is not a member of the AEGIS-SEF Platform; and (b) the Hearing Panel include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Hearing Panel's responsibilities.

7.1.10 Prior to the commencement of the hearing, the Hearing Panel may accept a written offer of settlement from the Respondent, whereby the Respondent, without either admitting or denying any violations must accept the jurisdiction of AEGIS-SEF over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed under such offer of settlement.

7.1.11 Section VII of the AEGIS-SEF Rulebook sets out the Applicant's procedures for holding a hearing. After the hearing is complete, Rule 7.13 requires the Hearing Panel to render a written decision based upon the weight of evidence and to provide a copy to the Respondent. Rule 7.16 allows a Respondent to appeal a decision by the Hearing Panel to be heard by an Appeal Panel appointed by the Board of AEGIS-SEF. In addition, a disciplinary action may be appealed to the CFTC pursuant to Part 9 of the CFTC Regulations.

8. Clearing and Settlement

8.1 **Clearing Arrangements – Per Rule 4.5 and 4.6 of the AEGIS SEF Rulebook the exchange does not offer, nor does it intend to offer in the future, any SEF Contracts that are intended to be cleared. As explained in Rule 4.6.1, "The only SEF Contracts that will be offered (i.e., listed) by AEGIS-SEF shall be Permitted Transactions, i.e., uncleared bilateral swaps that are not intended to be cleared."**

9. Systems and Technology

9.1 **System 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, and

(h) financial reporting.

9.1.1 The Applicant's AEGIS-SEF Platform 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.

9.1.2 The Applicant has put safeguards and security tools in place to protect the critical data and system components of its AEGIS-SEF Platform. As discussed in Paragraph 5.1.3 above, the Applicant outsources its automated trade surveillance capable of detecting potential trade practice violations of the Applicant's Rulebook to the NFA, while maintaining full responsibility for compliance obligations.

9.1.3 The Applicant captures and retains all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all trades and trade-related activity within a reasonable period of time and to provide evidence of any violations of the rules of the Applicant. The Applicant has also developed risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including but not limited to market restrictions that could pause or halt trading under market conditions prescribed by the Applicant.

9.1.4 The Applicant has established a Business Continuity Plan and Disaster Recovery document with respect to the AEGIS-SEF Platform. The plan describes the Applicant's response to and addresses both small-scale and wide-scale service disruptions to the Applicant's AEGIS-SEF Platform. The main objectives of the Applicant's Business Continuity Plan and Disaster Recovery document is to enable timely recovery and resumption of the AEGIS-SEF Platform's operation and the resumption of the Applicant's fulfillment of its responsibilities and obligations following any disruptions to AEGIS-SEF Platform operations, including: order processing; price reporting; market surveillance; and maintenance of a comprehensive audit trail.

9.1.5 The Applicant operates and provides to participants a robust and scalable platform. Standard system monitoring metrics include capacity and performance level alerts. In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation.

9.2 **Without limiting the generality of Paragraph 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 center 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.

9.2.1 The Applicant's AEGIS-SEF Platform uses technology for its electronic trading platform that includes software provided by third-party vendors and software developed internally by its affiliate, AEGIS-Hedging Solutions (see discussion of outsourcing in Paragraph 14.1.1 below).

9.2.2 The Applicant's AEGIS-SEF Platform makes capacity estimates by regularly monitoring its systems usage as well as maintaining constant communications between internal parties whenever new business or possible changes in the market may increase capacity on the systems.

9.2.3 The Applicant conducts regular performance and capacity tests in a production test environment which matches production in its size, scope and infrastructure. Testing is described in Paragraph 9.1.5 above.

9.2.4 The Applicant has internal policies and controls that govern system access, failures, and errors. Also, the Applicant and/or its service providers periodically conduct risk audits, internal physical security compliance inspections and covert internal and external intrusion tests. Additionally, the Applicant performs cybersecurity vulnerability testing. Such tests are designed to periodically assess the operating effectiveness of security controls as well as to monitor internal compliance with security policies and procedures. External threats such as physical hazards and natural disasters are addressed in the Applicant's Business Continuity Plan and Disaster Recovery document.

9.2.5 The Applicant and/or its service providers review the configuration of its systems as part of its regular control procedures and conducts reviews as needed when issues are identified and resolved through its enterprise risk management and governance protocols. Configuration management is the subject of internal audits and is also included in the Applicant's Business Continuity Plan and Disaster Recovery tests.

9.2.6 The Applicant reviews and keeps current the development and testing methodology of the above systems pursuant to procedures contained in the Applicant's Compliance Manual, and Business Continuity Plan and Disaster Recovery document. The Applicant's Business Continuity Plan and Disaster Recovery document is designed to allow for the recovery and resumption of operations and the fulfillment of the duties and obligations of the Applicant following a disruption. The Applicant performs periodic tests to verify that the resources outlined in the Business Continuity Plan and Disaster Recovery document are sufficient to ensure continued fulfillment of all duties of the Applicant under the CEA and CFTC Regulations.

9.2.7 Complete backups are stored in an approved off-site storage facility pursuant to the Applicant's Business Continuity Plan and Disaster Recovery document. This data is retained off-site for an appropriate amount of time (daily, weekly, or monthly), depending on the specific need of the application.

9.3 **Information Technology Risk Management Procedures – The exchange has appropriate risk management procedures in place, including those that handle trading errors and trading halts, and those that respond to market disruptions and disorderly trading.**

9.3.1 The Applicant provides extensive market integrity controls to ensure fair and efficient markets. As described in Rules 4.1.2 and 4.1.3 of the AEGIS-SEF Rulebook, the Applicant uses risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including (i) monitoring SEF Contract Equivalent Trades on other markets operated by DCMs and other SEFs; (ii) suspending or curtailing trading, limiting trading to liquidation only (in whole or in part), or halting trading; (iii) ordering the liquidation or transfer of SEF Contracts, the fixing of a Settlement Price, or the reduction of Positions; (iv) imposing or modifying trading limits, price limits and/or position limits; (v) establishing limits on the number and/or size of Orders that may be submitted to the AEGIS-SEF Platform; (vi) establishing limits on the number of SEF Contracts that may be traded on the AEGIS-SEF Platform or pursuant to the AEGIS-SEF Rules; (vii) any other action as directed by the CFTC.

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.**

10.1.1 The Applicant has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. Under U.S. SEF Regulations, a SEF must submit financial statements to the CFTC and maintain adequate financial resources to cover its operating costs for a period of at least one year, calculated on a rolling basis. A SEF must also hold liquid financial assets equal to at least six months' operating costs. The Applicant maintains no less than the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC requirements.

11. Trading Practices

11.1 **Trading Practices – Trading Practices are fair, properly supervised and not contrary to the public interest.**

11.1.1 The Applicant is obligated to comply with U.S. SEF Regulations, which, as described in Paragraph 6.1.2 above, require trading practices that are fair, properly supervised and not contrary to the public interest. The U.S. SEF Regulations also require that the Applicant implements rules that require compliance with the U.S. SEF Regulations by its participants. The Applicant's Rulebook, which addresses SEF trading practices, is subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's Rulebook both seek to ensure fair and orderly markets accessible to all eligible participants that are properly supervised and operated in a manner consistent with 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.**

11.2.1 Rules pertaining to order size and limits are set forth in Section IV of the Rulebook. As noted in Paragraph 11.1.1 above, the Applicant's Rulebook is subject to the standards and requirements outlined by the SEF Core Principles, and are subject to periodic review by the Applicant to ensure that the limits are fair, equitable and appropriate for the market. The Applicant submits that its rules 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 the Foreign Regulator. This information is also provided to all participants on an equitable basis.**

11.3.1 Core Principle 9 requires a SEF to make public timely information concerning swaps transactions executed on the SEF. The Applicant fulfills Core Principle 9 by posting trade data to its website daily, and by reporting swaps data to DTCC, the swaps

data repository for the Applicant's AEGIS-SEF Platform. Additionally, participants on the AEGIS SEF that have elected to self-report transactions, do so to their respective swap data repositories.

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.**

12.1.1 The Applicant operates a platform that is regulated by the CFTC as a SEF. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor participants' trading activity on the platform under Sections 37.203(e), 37.401, 37.402 and 37.403 of the CEA.

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.**

12.2.1 Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls and has adequate resources available to ensure that controls are properly applied. Principle 2 also requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. Paragraph 7 of this application describes the resources available to the platform to investigate and discipline participants for rule violations. Also, Section VII of the Applicant's AEGIS-SEF Rulebook sets out the Applicant's disciplinary rules and Section VIII prescribes the Applicant's dispute resolution procedures.

12.2.2 The CCO is appointed by the Board and assists the Applicant in meeting its regulatory obligations, as set out by the CFTC.

12.2.3 It is the duty of the CCO to enforce the AEGIS-SEF Platform's rules and to assess the quality of its compliance oversight and disciplinary policies and procedures. As noted in this application, the Applicant's market regulation staff, under the direction and direct supervision of the CCO, is responsible for conducting investigations of possible violations of any of the Applicant's rules ("**Violations**"), preparing written reports with respect to such investigations, furnishing such reports to the Applicant's disciplinary panels and conducting the prosecution of any Violations in accordance with Section VII of the Rulebook. The CCO, on an ongoing basis, reviews the performance of staff and, where necessary, establishes procedures for the remediation of noncompliance issues. The CCO reports directly to the Board. The CCO is supervised by the Board's Regulatory Oversight Committee. The CCO is required to meet with the ROC at least quarterly and review the AEGIS-SEF Platform's self-regulatory program, including compliance oversight and disciplinary processes. The ROC reviews the performance of the CCO and prepares an annual report to the Board and the CFTC assessing the self-regulatory programs of the AEGIS-SEF Platform, including a description of the program, the expenses of the program, the staffing and structure of the program, a catalog of investigations and disciplinary actions taken during the year, and a review of the performance of the disciplinary panels and the CCO.

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.**

12.3.1 Please see Paragraph 16.1.1 below.

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.**

13.1.1 The Applicant collects data on a daily basis related to its regulated activity in compliance with Core Principle 10 – *Recordkeeping and Reporting*. The Applicant is required to maintain records of all activities relating to its business, including data related to order messaging, order execution and pricing. Data is collected from across the AEGIS-SEF Platform, independent of whether the transaction was privately negotiated or matched in the central limit order book. The Applicant maintains a precise and complete data history, referred to as the audit trail, for every order entered and transaction executed across the AEGIS-SEF Platform. Audit trail information for each transaction includes the order instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction. On a daily basis, files of all electronic orders are archived and copies are stored at multiple locations to ensure redundancy and critical safeguarding of the data. Furthermore, as a safeguard, the CFTC and the Applicant require participants to maintain all audit trail data for a minimum of five years.

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.**

14.1.1 The Applicant has entered into several licensing and services agreements with affiliates (including a Shared Services Agreement) and unaffiliated third parties for the use of (i) trade reporting technology, (ii) front, middle and back office functionality (including monitoring, invoicing and billing), (iii) software and (iv) various support services, including operations and compliance support, trade reporting, books and records, on-boarding of clients, telecommunications and information technology. These agreements permit the Applicant to meet its obligations and are in accordance with industry best practices. The outsourcing arrangements have terms that allow the Applicant to monitor the services provided to ensure that the Applicant meets its regulatory obligations with respect to the outsourced service and that any services are provided in accordance with industry best practices. The Applicant at all times retains responsibility for any functions delegated to any service provider, including the NFA, and the ultimate decision-making authority.

14.1.2 As described more fully in Paragraph 5.1.2 above, the Applicant has contracted with the NFA to perform certain surveillance, investigative and regulatory functions under the Applicant's Rulebook.

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.

15.1.1 The CFTC requires that the Applicant must charge comparable fees for participants receiving comparable access to, or services from, the AEGIS-SEF Platform. The Applicant complies with this requirement and therefore fees charged by the Applicant do not create an unreasonable condition or limit on access by participants.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

15.1.2 The Applicant is required by CFTC Regulations to charge all Participants and Broker Firms fees that are impartial, transparent and applied in a fair and non-discriminatory manner. The Board of the Applicant has the sole authority to set the times and amounts of any assessments or fees to be paid by Participants and Broker Firms. All fee changes must be submitted to the CFTC for certification or approval under Part 40 of the CFTC Regulations prior to their implementation. The Applicant provides its fee schedule to each Participant or Broker Firm.

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 cooperate with the Commission, self-regulatory organizations, other exchanges, , and other appropriate regulatory bodies.**

16.1.1 It is the Applicant's policy to respond promptly and completely, through the legal and compliance departments, to any proper regulatory inquiry or request for documents. All inquiries and other communications from the Commission will be referred immediately to the Applicant's legal and compliance departments.

16.1.2 Rule 2.8 of the AEGIS-SEF Rulebook authorizes the Applicant to enter into information-sharing agreements or other arrangements or procedures necessary to allow the Applicant to obtain any necessary information to perform any monitoring of trading and trade processing, provide information to other markets, the CFTC, the Ontario Securities Commission or any other governmental body with jurisdiction over the Applicant upon request and which allow the Applicant to carry out such international information-sharing agreements as may be required. Also, the Applicant may enter into any information-sharing arrangement with any person or body (including the CFTC, the Ontario Securities Commission, the NFA, any self-regulatory organization, any SEF, DCM, market, clearing organization or any Governmental Body). The Applicant shares or will share information with DTCC (as a designated swap repository).

16.2 **Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.**

16.2.1 The CFTC has entered into memorandum of understanding ("**MOU**") arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the Commission

are parties to an MOU that was entered into by the parties on March 25, 2014. The MOU is available at: https://www.osc.gov.on.ca/en/About_mou_20140327_nmou-covered-entities.htm.

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).**

17.1.1 The Applicant adheres to the standards of IOSCO by virtue of the fact that it must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. The Applicant is regularly examined by the CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

PART IV SUBMISSIONS BY THE APPLICANT

1.1 The swaps that trade on the Applicant's AEGIS-SEF Platform fall under the definition of "derivative" set out in Section 1(1) of the OSA. The AEGIS-SEF Platform operated by the Applicant falls under the definition of "marketplace" set out in Section 1(1) of the OSA because it brings together buyers and sellers of derivatives and uses established, non-discretionary methods under which orders interact with each other.

1.2 An "exchange" is not defined under the OSA; however, subsection 3.1(1) of the companion policy to National Instrument 21-101 – *Marketplace Operation* provides that a "marketplace" is considered to be an "exchange" if it, among other things, sets requirements governing the conduct of marketplace participants or disciplines marketplace participants. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor participants' trading activity. Because a SEF regulates the conduct of its participants, it is considered by the Commission to be an exchange for purposes of the OSA.

1.3 Pursuant to OSC Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges*, the Commission considers an exchange located outside Ontario to be carrying on business as an exchange in Ontario if it provides Ontario Participants with direct access to the exchange. Since the Applicant provides Ontario Participants with direct access to trading derivatives on its AEGIS-SEF Platform, it is considered by the Commission to be "carrying on business as an exchange" in Ontario and therefore must either be recognized or exempt from recognition by the Commission.

1.4 The Applicant satisfies all the criteria for exemption from recognition as an exchange set out by Commission Staff, as described under Part III of this application. Ontario market participants that trade in swaps would benefit from the ability to trade on the Applicant's AEGIS-SEF Platform, as they would have access to a range of swaps and swap counterparties that otherwise may not be available in Ontario. Stringent CFTC oversight of the Applicant's AEGIS-SEF Platform as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant will ensure that Ontario users of the AEGIS-SEF Platform are adequately protected in accordance with international standards set by IOSCO.

1.5 Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.

PART V CONSENT TO PUBLICATION

The Applicant consents to the publication of this application for public comment.

Yours very truly,

/s/ Andrew Furman

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c: Shahen Mirakian, McMillan LLP

ANNEX I

DRAFT ORDER

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(THE ACT)
AND
IN THE MATTER OF
AEGIS SEF LLC

ORDER
(Section 147 of the Act)

WHEREAS AEGIS SEF LLC (**Applicant**) has filed an application dated October 20, 2022 (**Application**) with the Ontario Securities Commission (**Commission**) requesting 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 United States Commodity Futures Trading Commission (**CFTC**) granted the Applicant permanent registration as a swap execution facility (**SEF**) on July 19, 2022;

AND WHEREAS the Applicant has represented to the Commission that:

1.1 The Applicant is a limited liability company organized under the laws of Delaware. The ultimate parent company of the Applicant is AEGIS Hedging Solutions, LLC, a Delaware limited liability company, that is not publicly traded, but is privately owned. No less than two of the five voting members of the Applicant's Board of Directors must be Public Directors (which have no ownership interest in the Applicant and no "material relationship" with the Applicant, its parent, or any affiliate of the Applicant);

1.2 The Applicant is a marketplace for trading derivatives that are regulated as swaps by the CFTC. The Applicant's SEF supports order book and request for quote functionality. Additional trading functionality may be added in the future, subject to obtaining any required regulatory approvals;

1.3 In the United States, the Applicant operates under the jurisdiction of the CFTC and obtained registration with the CFTC to operate a SEF on July 19, 2022;

1.4 The Applicant is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace;

1.5 The Applicant has retained the National Futures Association to be a regulatory services provider (**RSP**);

1.6 Because the Applicant regulates the conduct of its participants, it is considered by the Commission to be an exchange;

1.7 Because the Applicant has participants located in Ontario, including (a) 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 behalf of such participants, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), and (b) traders physically located in Ontario who conducts transactions on behalf of any other entity, 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;

1.8 The Applicant does not offer access to retail clients;

1.9 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above; and

1.10 The Applicant satisfies all the SEF Criteria as described in Appendix 1 to Schedule "A".

AND WHEREAS the products traded on the Applicant 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 Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission attached hereto as Schedule "A" to this order, or the determination whether it is appropriate that the Applicant continue to be exempted from the requirement to be recognized as an exchange, 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 acknowledgements of the Applicant to the Commission, the Commission has determined that Applicant satisfies the criteria set out in Appendix 1 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(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 _____, 2022.

_____

_____

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

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

Regulation and Oversight of the Applicant

2. The Applicant will maintain its registration as a swap execution facility (**SEF**) with the Commodity Futures Trading Commission (**CFTC**) and will continue to be subject to the regulatory oversight of the CFTC.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as a SEF registered with the CFTC.

4. 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

5. 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 contract participant" under the United States Commodity Exchange Act, as amended (**CEA**).

6. For each Ontario User provided direct access to its SEF, the Applicant will require, as part of its application documentation or continued access to the SEF, 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.

7. 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 on the Applicant.

8. 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

9. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the CEA (and for greater certainty, excluding security-based swaps), without prior Commission approval.

Submission to Jurisdiction and Agent for Service

10. 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.

11. The Applicant will submit to 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

12. The Applicant will notify staff of the Commission promptly of:

(a) any authorization to carry on business granted by the CFTC 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 CFTC where it is required to report such non-compliance to the CFTC;

(e) any known investigations of, or disciplinary action against, the Applicant by the CFTC 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

13. 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 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 against whom disciplinary action has been taken since the previous report by the Applicant or its regulation services provider (**RSP**) acting on its behalf, or, to the best of the Applicant's knowledge, by the CFTC with respect to such Ontario Users' activities on the Applicant and the aggregate number of disciplinary actions taken against all participants since the previous report by the Applicant or its RSP acting on its behalf;

(d) a list of all active investigations since the previous report by the Applicant or its RSP acting on its behalf relating to Ontario Users and the aggregate number of active investigations since the previous 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 previous 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 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

14. The Applicant will provide and, if applicable, cause its RSP to 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 1 to SCHEDULE "A"

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 does not offer products which are intended to be cleared.

8.2 Risk Management of Clearing House

The exchange does not offer products which are intended to be cleared.

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, and

(h) 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 center 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, 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).

DRAFT ORDER

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(THE ACT)
AND
IN THE MATTER OF
AEGIS SEF LLC

ORDER
(Section 147 of the Act)

WHEREAS AEGIS SEF LLC (**Applicant**) has filed an application dated October 20, 2022 (**Application**) with the Ontario Securities Commission (**Commission**) requesting 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 United States Commodity Futures Trading Commission (**CFTC**) granted the Applicant permanent registration as a swap execution facility (**SEF**) on July 19, 2022;

AND WHEREAS the Applicant has represented to the Commission that:

1.1 The Applicant is a limited liability company organized under the laws of Delaware. The ultimate parent company of the Applicant is AEGIS Hedging Solutions, LLC, a Delaware limited liability company, that is not publicly traded, but is privately owned. No less than two of the five voting members of the Applicant's Board of Directors must be Public Directors (which have no ownership interest in the Applicant and no "material relationship" with the Applicant, its parent, or any affiliate of the Applicant);

1.2 The Applicant is a marketplace for trading derivatives that are regulated as swaps by the CFTC. The Applicant's SEF supports order book and request for quote functionality. Additional trading functionality may be added in the future, subject to obtaining any required regulatory approvals;

1.3 In the United States, the Applicant operates under the jurisdiction of the CFTC and obtained registration with the CFTC to operate a SEF on July 19, 2022;

1.4 The Applicant is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace;

1.5 The Applicant has retained the National Futures Association to be a regulatory services provider (**RSP**);

1.6 Because the Applicant regulates the conduct of its participants, it is considered by the Commission to be an exchange;

1.7 Because the Applicant has participants located in Ontario, including (a) 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 behalf of such participants, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), and (b) traders physically located in Ontario who conducts transactions on behalf of any other entity, 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;

1.8 The Applicant does not offer access to retail clients;

1.9 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above; and

1.10 The Applicant satisfies all the SEF Criteria as described in Appendix 1 to Schedule "A".

AND WHEREAS the products traded on the Applicant 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 Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission attached hereto as Schedule "A" to this order, or the determination whether it is appropriate that the Applicant continue to be exempted from the requirement to be recognized as an exchange, 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 acknowledgements of the Applicant to the Commission, the Commission has determined that Applicant satisfies the criteria set out in Appendix 1 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(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 _____, 2022.

_____

_____

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

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

Regulation and Oversight of the Applicant

2. The Applicant will maintain its registration as a swap execution facility (**SEF**) with the Commodity Futures Trading Commission (**CFTC**) and will continue to be subject to the regulatory oversight of the CFTC.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as a SEF registered with the CFTC.

4. 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

5. 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 contract participant" under the United States Commodity Exchange Act, as amended (**CEA**).

6. For each Ontario User provided direct access to its SEF, the Applicant will require, as part of its application documentation or continued access to the SEF, 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.

7. 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 on the Applicant.

8. 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

9. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the CEA (and for greater certainty, excluding security-based swaps), without prior Commission approval.

Submission to Jurisdiction and Agent for Service

10. 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.

11. The Applicant will submit to 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

12. The Applicant will notify staff of the Commission promptly of:

(a) any authorization to carry on business granted by the CFTC 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 CFTC where it is required to report such non-compliance to the CFTC;

(e) any known investigations of, or disciplinary action against, the Applicant by the CFTC 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

13. 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 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 against whom disciplinary action has been taken since the previous report by the Applicant or its regulation services provider (**RSP**) acting on its behalf, or, to the best of the Applicant's knowledge, by the CFTC with respect to such Ontario Users' activities on the Applicant and the aggregate number of disciplinary actions taken against all participants since the previous report by the Applicant or its RSP acting on its behalf;

(d) a list of all active investigations since the previous report by the Applicant or its RSP acting on its behalf relating to Ontario Users and the aggregate number of active investigations since the previous 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 previous 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 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

14. The Applicant will provide and, if applicable, cause its RSP to 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 1 to SCHEDULE "A"

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 does not offer products which are intended to be cleared.

8.2 Risk Management of Clearing House

The exchange does not offer products which are intended to be cleared.

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, and

(h) 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 center 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, 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).

B.11.3 Clearing Agencies

B.11.3.1 CDS Clearing and Depository Services Inc. – Material Amendments to CDS External Procedures – Participant Fund Administered by CDS for the New York Link Service – Notice of Commission Approval

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS EXTERNAL PROCEDURES
PARTICIPANT FUND ADMINISTERED BY CDS FOR THE NEW YORK LINK SERVICE

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved, on December 09, 2022, the Material Amendments to CDS External Procedures related to Participant Fund Administered by CDS for the New York Link Service.

A copy of the CDS notice was published for comment on September 22, 2022, on the Commission's website at: www.osc.ca.

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