The Ontario Securities Commission

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The Ontario Securities Commission exercises its regulatory oversight function through the administration and enforcement of Ontario's *Securities Act* (R.S.O. 1990, c. S.5) and *Commodity Futures Act* (R.S.O. 1990, c. C.20), and administration of certain provisions of the *Business Corporations Act* (R.S.O. 1990, c. B.16).

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A. Capital Markets Tribunal

A.1 Notices of Hearing

A.1.1 Nvest Canada Inc. et al. – ss. 127(1), 127.1

File No.: 2023-1

**IN THE MATTER OF
NVEST CANADA INC.,
GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY AND
WARREN CARSON**

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

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: February 15, 2023 at 10:00 a.m.

LOCATION: By videoconference

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Capital Markets Tribunal to make the order requested in the Statement of Allegations filed by Staff of the Commission on January 17, 2023.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 5(1) of the *Capital Markets Tribunal Practice Guideline.*

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 20th day of January, 2023

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

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

IN THE MATTER OF
NVEST CANADA INC.,
GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY AND
WARREN CARSON

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1 of
the *Securities Act*, RSO 1990 c S.5)

A. OVERVIEW

1. This proceeding arises out of unregistered trading and an illegal distribution of crypto assets and company shares. Beginning in or around January 2018, and continuing to at least May 2020 (the **Material Time**),[1] Shorupan Pirakaspathy, Warren Carson, and the companies they controlled, created crypto assets called "GXTokens"—which are securities—and sold thousands of dollars' worth of them to Ontarians. They also sold shares in the companies.

2. The sale of GXTokens and revenue generated was central to the Respondents' activities. GXToken sales were driven through the creation of a multi-level marketing scheme called "GXBroker." The Respondents enticed members of the public to become "brokers," by telling them that they could run their own crypto asset business and earn commissions using the Respondents' online crypto asset operating system.

3. The Respondents aggressively promoted their activities online, including through YouTube videos, touting the tokens as investments that would increase in value, and the virtues of becoming a GXBroker. The Respondents used GXBrokers as a *de facto* sales force, and conduit, to facilitate the further sale of GXTokens to the public.

4. Registration requirements serve an important gate-keeping function by ensuring that only properly qualified persons are permitted to engage in the business of trading securities. Prospectus requirements are fundamental to ensuring that investors are provided with full, true, and plain disclosure of all material facts relating to the securities being offered.

5. None of the Respondents filed a prospectus in connection with the sale of GXTokens or the shares of the companies, and none of Pirakaspathy, Nvest, or GX Technology were registered to trade in securities. This conduct exposed investors to risk and undermined public confidence in the capital markets.

B. FACTS

The following allegations of fact are made:

A. The Respondents

6. Shorupan Pirakaspathy (**Pirakaspathy)**, and Warren Carson (**Carson)**, through their companies GX Technology Group Inc. (**GX Technology** DBA **Global X Change**), and Nvest Canada Inc. (**Nvest**) (collectively, the **Respondents),** created and sold a crypto asset called GXToken to Ontario investors. GXTokens are securities under s. 1.(1) of the Act.

7. Pirakaspathy and Carson also sold shares in the corporate Respondents to Ontario investors.

8. Pirakaspathy and Carson were residents in Ontario for periods during the Material Time. For periods of time thereafter, both Pirakaspathy and Carson ceased residing in Ontario.

9. Pirakaspathy and Carson controlled and operated Nvest and GX Technology. They were directors and *de facto* officers of the companies (Nvest from December 2017 to November 2020, and GX Technology from March 2018 to November 2020). Nvest was the parent company of GX Technology. Both federally incorporated companies listed the same Pickering, Ontario address as the head office.

10. Prior to the activities at issue, the OSC issued a warning letter to Pirakaspathy concerning Nvest's plans to enter the Ontario market and the need to register if offering securities in Ontario. Despite this letter, the Respondents engaged in the sale of GXTokens and shares.

B. The Creation and Sale of GXTokens

11. The sale of GXTokens and revenue generated, including through the Respondents' network of GXBrokers described below, was central to the Respondents' activities.

[1] All activities described occurred during the Material Time unless otherwise indicated.

12. The Respondents created a finite supply of 350 million GXTokens. 300 million of these GXTokens were to be available for sale to the public through a three-stage offering period. The corporate Respondents held the majority of these GXTokens, and acted as the primary market for their sale.

13. GXTokens could be purchased through Global X Change using the Respondents' client-side operating system known as "the Global X Change Operating System" (the **GX Operating System**).

14. According to the Respondents, the GX Operating System was intended to provide users and GXBrokers with the tools necessary to facilitate the purchase, and sale of crypto assets, including GXTokens.

15. The Respondents held a portion of the GXTokens in reserve as a "Founders and Advisors Allocation" whereby they stood to profit if the market price of the GXTokens increased.

C. The GXBroker Program and Further Trading of GXTokens

16. The Respondents created a network of "brokers" through a proprietary multi-level marketing scheme they called GXBroker. Through this program, the Respondents were involved in, and facilitated and intermediated the further sales of GXTokens. They also created a market for the GXTokens.

17. The Respondents aggressively promoted GXTokens and the GXBroker program online, including on social media, and through in-person events. The Respondents and their affiliates were featured in YouTube videos that promoted, and contained representations about the mechanics of GXTokens, the GXBroker program, Global X Change, and the GX Operating System. Between December 2018 and January 2021, hundreds of these videos were released on YouTube accounts associated with the Respondents

18. The Respondents told the public that GXBrokers could run their own crypto asset business using the GX Operating System, and earn commissions/transactional revenue by facilitating trades of crypto assets, including GXTokens, for other investors.

19. The Respondents were responsible for the control and operation of Global X Change and the GX Operating System, including back-end system development, system maintenance, training, and customer support for the GXBrokers. The success of the GXToken, the GXBroker program, as well as Global X Change, was dependent upon the Respondents' efforts.

20. The Respondents' network of GXBrokers acted, in effect, as a *de facto* sales force, and conduit, to facilitate the further sale of GXTokens to the public.

21. The sale of the GXTokens was instrumental to the Respondents' ability to generate revenue and make money. Any user could create a free account and use the GX Operating System to trade crypto assets and to purchase GXTokens. Rather than charge a fee for the use of the GX Operating System, the Respondents' ability to generate revenue was largely to come from the sale of GXTokens, including from signing up GXBrokers, as well as the purported sale of additional services to these GXBrokers.

22. To become a GXBroker, an investor had to purchase and "stake" a specified block of GXTokens proving that they owned them.

23. The Respondents also created a further category of GXBroker called "GXBroker Dealer." To become a GXBroker Dealer, investors had to purchase USD 100,000 worth of GXTokens from the Respondents.

24. Practically, investors who wished to become either a GXBroker, or a GX Broker Dealer, had to purchase GXTokens directly from the Respondents.

25. When an investor ordered GXTokens through a GXBroker, this sale was to be fulfilled through Global X Change/the GX Operating System, and the GXTokens were to come from the corporate Respondents' GXToken holdings. GXBrokers did not themselves hold the crypto assets to be sold.

26. The Respondents offered financial incentives in the form of commission/transactional revenue to GXBrokers, and GXBroker Dealers, for recruiting other investors to purchase GXTokens and become GXBrokers themselves. The commissions/transactional revenue available to GXBrokers were said to be higher for the sale of GXTokens than for the other types of crypto asset transactions.

27. The Respondents singled out the sale of the GXTokens for higher commissions/transactional revenue payouts because their sale would produce revenue for the Respondents.

D. GXTokens were Promoted as Investments

28. The Respondents actively and regularly promoted GXTokens as investments. Pirakaspathy and Carson solicited investors both in person, and online. They also facilitated the sale of GXTokens by providing payment and account setup instructions to investors.

29. The YouTube videos associated with the Respondents made various representations concerning the investment potential of GXTokens. These representations included:

    a) GXTokens would increase in value over time;

    b) Demand for GXTokens would arise from the finite number of GXTokens released, the expected appeal of the GXBroker program, as well as other Global X Change products and services to be provided;

    c) GXTokens would be tradeable through Global X Change's proprietary exchange, as well as through third party crypto asset exchanges. GXTokens were eventually listed on at least two third party crypto asset exchanges;

    d) Buy-side pressure, arising from the listing and trading of GXTokens on secondary exchanges, would drive up the price; and

    e) As a GXBroker, commissions/transactional revenue could continue to be earned after all the GXTokens were sold out. At that point in time, new crypto tokens would be onboarded for sale through the established distribution network of GXBrokers.

30. While the Respondents touted the value of GXTokens and Global X Change, various products and features were described as being in development, or to be developed. Investors experienced difficulties using the GX Operating System as a result of its state or lack of development, including problems trading crypto assets and liquidating GXTokens.

31. Investor funds were received in the Nvest, GX Technology and associated corporate bank accounts, all of which were controlled by Pirakaspathy and Carson. Disbursements of investor funds included payments to third parties, as well as to Pirakaspathy and Carson.

32. The Respondents raised at least $280,000 from Ontario investors through the sale of GXTokens, as well as the sale of shares of the corporate Respondents.

<u>Unregistered Trading</u>

33. None of Pirakaspathy, Nvest, or GX Technology, were registered with the Commission to trade in GXTokens, or the corporate Respondents' shares. No exemptions from the registration requirement were available to the Respondents under Ontario Securities Law

34. Based on the conduct described above, Pirakaspathy, Nvest, and GX Technology engaged in, or held themselves out as engaging in, the business of trading in GXTokens, as well as Nvest and GX Technology shares, without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.

<u>Illegal Distribution</u>

35. The sales of the GXTokens and the shares of Nvest and GX Technology were trades in securities not previously issued and were therefore distributions.

36. No preliminary prospectus or prospectus was filed for the distribution of the GXTokens or the shares of Nvest and GX Technology. The Respondents did not take steps to determine whether investors qualified as accredited investors. Many did not. The investments did not qualify for any other exemption from the prospectus requirements set out in s. 53 of the Act and the Respondents did not file reports of exempt distribution, including Form 45-106F1, with the OSC.

37. By engaging in the conduct described above, the Respondents engaged in a distribution of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the prospectus requirement, contrary to section 53 of the Act.

<u>Authorizing, Permitting, or Acquiescing in Breaches of Ontario Securities Law</u>

38. Pirakaspathy and Carson, as directors and *de facto* officers of the corporate Respondents, authorized, permitted or acquiesced in the conduct described above. As a result, Pirakaspathy and Carson are deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

39. The following breaches of Ontario securities law and/or conduct contrary to the public interest are alleged to have occurred as a result of the conduct described above:

    i. Pirakaspathy, Nvest, and GX Technology engaged in, and held themselves out as engaging in, the business of trading in securities without being registered to do so and without an applicable exemption from the registration requirement contrary to subsection 25(1) of the Act;

    ii. Each of the Respondents engaged in distributions of securities without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement contrary to section 53 of the Act;

    iii. Pirakaspathy and Carson authorized, permitted or acquiesced in Nvest and GX Technology's non-compliance with Ontario securities law, contrary to s. 129.2 of the Act; and

    iv. Each of the Respondents engaged in conduct that is contrary to the public interest.

40. These allegations may be amended, and further and other allegations may be added as the Tribunal may permit.

D. ORDERS SOUGHT

41. It is requested that the Capital Markets Tribunal (the **Tribunal**) make the following orders:

As against each of Pirakaspathy, Carson, Nvest, and GX Technology:

i. that they cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2 of subsection 127(1) of the Act;

ii. that they be prohibited from acquiring any securities permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

iii. that any exemptions contained in Ontario securities law do not apply to them permanently or for such period as is specified by the Tribunal, pursuant to paragraph 3 of subsection 127(1) of the Act;

iv. that they be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

v. that they be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

vi. that they pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

vii. that they disgorge to the OSC any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

viii. that they pay costs of the OSC investigation and the hearing, pursuant to section 127.1 of the Act; and

ix. such other order as the Tribunal considers appropriate in the public interest.

And further as against each of Pirakaspathy and Carson:

i. that they resign any position they may hold as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

ii. that they be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8 of subsection 127(1) of the Act;

iii. that they resign any position they may hold as a director or officer of any registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act; and

iv. that they be prohibited from becoming or acting as a director or officer of any registrant permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.2 of subsection 127(1) of the Act.

DATED this 17th day of January, 2023

ONTARIO SECURITIES COMMISSION
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Enforcement Branch

A.2
Other Notices

A.2.1 Nvest Canada Inc. et al.

FOR IMMEDIATE RELEASE
January 20, 2023

NVEST CANADA INC.,
GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY AND
WARREN CARSON,
File No. 2023-1

TORONTO – The Tribunal issued a Notice of Hearing on January 20, 2023 setting the matter down to be heard on February 15, 2023 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated January 20, 2023 and Statement of Allegations dated January 17, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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inquiries@osc.gov.on.ca

A.2.2 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
January 20, 2023

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

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

A copy of the Order dated January 20, 2023 is available at capitalmarketstribunal.ca.

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Ontario Securities Commission

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A.2.3 Mark Odorico

FOR IMMEDIATE RELEASE
January 20, 2023

MARK ODORICO,
File No. 2022-18

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

A copy of the Order dated January 20, 2023 is available at capitalmarketstribunal.ca.

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A.2.4 Majd Kitmitto et al.

FOR IMMEDIATE RELEASE
January 23, 2023

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

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

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated January 20, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.3
Orders

A.3.1 Bridging Finance Inc. et al.

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

File No. 2022-9

Adjudicators: Timothy Moseley (chair of the panel)
Sandra Blake
William Furlong

January 20, 2023

ORDER

WHEREAS on January 19, 2023, the Capital Markets Tribunal held a hearing by videoconference with respect to Andrew Mushore's motion for an expedited merits hearing and related relief;

ON HEARING the submissions of the representatives for each of Mushore, Staff of the Ontario Securities Commission, David Sharpe, Natasha Sharpe and the receiver of Bridging Finance Inc., and on reading the materials filed by the parties;

IT IS ORDERED, for reasons to follow, that Mushore's motion is dismissed.

"Timothy Moseley"

"Sandra Blake"

"William Furlong"

A.3.2 Mark Odorico

IN THE MATTER OF
MARK ODORICO

File No. 2022-18

Adjudicators: Andrea Burke (chair of the panel)
Sandra Blake
Dale R. Ponder

January 20, 2023

ORDER

WHEREAS on January 20, 2023, the Capital Markets Tribunal held a hearing by videoconference, in relation to the application brought by Mark Odorico to review the decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated April 7, 2022 and August 15, 2022 (the **Application**);

AND WHEREAS Odorico made a request to vary deadlines contained in the Tribunal's orders dated October 7, 2022 (**October 7 Order**) and January 12, 2023 (**January 12 Order**);

ON HEARING the submissions of Odorico and the representatives of Staff of the New Self Regulatory Organization of Canada (formerly IIROC) (**New SRO**) and Staff of the Ontario Securities Commission;

IT IS ORDERED THAT:

1. paragraph 1(a)(iii) of the January 12 Order is varied as follows:

   a. by 4:30 p.m. on January 27, 2023, Odorico shall serve a summary of his anticipated evidence as a witness;

2. paragraph 2(k) of the October 7 Order is varied as follows:

   a. by 4:30 p.m. on January 27, 2023, Odorico shall serve and file his written submissions, if any, on the Application; and

3. paragraph 2(l) of the October 7 Order is varied as follows:

   a. by 4:30 p.m. on February 10, 2023, Staff of the New SRO shall serve and file its hearing brief, if any, and written submissions on the Application.

"Andrea Burke"

"Sandra Blake"

"Dale R. Ponder"

A.3.3 Majd Kitmitto et al. – ss. 127(1), 127.1

IN THE MATTER OF
MAJD KITMITTO,
STEVEN VANNATTA,
CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO,
DONALD ALEXANDER (SANDY) GOSS,
JOHN FIELDING AND
FRANK FAKHRY

File No. 2018-70

Adjudicators: M. Cecilia Williams (chair of the panel)
Sandra Blake
Geoffrey D. Creighton

January 20, 2023

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

WHEREAS on October 11 and 13, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider the sanctions and costs that the Tribunal should impose on Majd Kitmitto, Steven Vannatta, Christopher Candusso, Donald Alexander (Sandy) Goss, and Frank Fakhry as a result of the findings in the Reasons and Decision on the merits, issued May 26, 2022;

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

IT IS ORDERED THAT:

1. With respect to Kitmitto:

   a. pursuant to paragraph 2 of s 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), trading in any securities by Kitmitto shall cease for 10 years from the date of this order, except that Kitmitto shall be permitted to trade:

      i. mutual funds, exchange-traded funds, government bonds and/or guaranteed investment certificates (**GICs**) for the account of any registered retirement savings plan (**RRSP**), registered retirement income fund (**RRIF**) and tax-free savings account (**TFSA**), as defined in the *Income Tax Act*, RSC 1985, c 1, as amended (the **Income Tax Act**), in which Kitmitto has sole legal and beneficial ownership;

      ii. solely through a registered dealer in Ontario, to whom Kitmitto must have given a copy of this order; and

      iii. only after the amounts ordered in subparagraphs 1(g) and 1(h) have been paid in full;

   b. pursuant to paragraph 2.1 of s 127(1) of the Act, the acquisition of any securities by Kitmitto is prohibited for a period of 10 years from the date of this order, except that Kitmitto shall be permitted to acquire:

      i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Kitmitto has sole legal and beneficial ownership;

      ii. solely through a registered dealer in Ontario, to whom Kitmitto must have given a copy of this order; and

      iii. only after the amounts ordered in subparagraphs 1(g) and 1(h) have been paid in full;

   c. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Kitmitto for a period of 10 years from the date of this order;

   d. pursuant to paragraphs 7 and 8.1 of s 127(1) of the Act, Kitmitto shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of s 127(1) of the Act, Kitmitto is prohibited for a period of 10 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant;

f. pursuant to paragraph 8.5 of s 127(1) of the Act, Kitmitto is prohibited for a period of 10 years from the date of this order from becoming or acting as a registrant or as a promoter;

g. pursuant to paragraph 9 of s 127(1) of the Act, Kitmitto shall pay an administrative penalty in the amount of $600,000 to the Commission; and

h. pursuant to s 127.1 of the Act, Kitmitto shall pay $147,075, for the costs of the investigation and hearing.

2. With respect to Vannatta:

a. pursuant to paragraph 2 of s 127(1) of the Act, trading in any securities by Vannatta shall cease for 15 years from the date of this order, except that Vannatta shall be permitted to trade:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Vannatta has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Vannatta must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 2(g) through 2(i) have been paid in full;

b. pursuant to paragraph 2.1 of s 127(1) of the Act, the acquisition of any securities by Vannatta is prohibited for a period of 15 years from the date of this order, except that Vannatta shall be permitted to acquire:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Vannatta has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Vannatta must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 2(g) through 2(i) have been paid in full;

c. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Vannatta for a period of 15 years from the date of this order;

d. pursuant to paragraphs 7 and 8.1 of s 127(1) of the Act, Vannatta shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of s 127(1) of the Act, Vannatta is prohibited for a period of 15 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant;

f. pursuant to paragraph 8.5 of s 127(1) of the Act, Vannatta is prohibited for a period of 15 years from the date of this order from becoming or acting as a registrant or as a promoter;

g. pursuant to paragraph 9 of s 127(1) of the Act, Vannatta shall pay an administrative penalty in the amount of $650,000 to the Commission;

h. pursuant to paragraph 10 of s 127(1) of the Act, Vannatta shall disgorge to the Commission the amount of $54,435; and

i. pursuant to s 127.1 of the Act, Vannatta shall pay $183,844, for the costs of the investigation and hearing.

3. With respect to Candusso:

a. pursuant to paragraph 2 of s 127(1) of the Act, trading in any securities by Candusso shall cease for three years from the date of this order, except that Candusso shall be permitted to trade:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Candusso has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Candusso must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 3(g) through 3(i) have been paid in full;

b. pursuant to paragraph 2.1 of s 127(1) of the Act, the acquisition of any securities by Candusso is prohibited for a period of three years from the date of this order, except that Candusso shall be permitted to acquire:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Candusso has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Candusso must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 3(g) through 3(i) have been paid in full;

c. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Candusso for a period of three years from the date of this order;

d. pursuant to paragraphs 7 and 8.1 of s 127(1) of the Act, Candusso shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of s 127(1) of the Act, Candusso is prohibited for a period of three years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant;

f. pursuant to paragraph 8.5 of s 127(1) of the Act, Candusso is prohibited for a period of three years from the date of this order from becoming or acting as a registrant or as a promoter;

g. pursuant to paragraph 9 of s 127(1) of the Act, Candusso shall pay an administrative penalty in the amount of $100,000 to the Commission;

h. pursuant to paragraph 10 of s 127(1) of the Act, Candusso shall disgorge to the Commission the amount of $30,782; and

i. pursuant to s 127.1 of the Act, Candusso shall pay $73,537, for the costs of the investigation and hearing.

4. With respect to Goss:

a. pursuant to paragraph 2 of s 127(1) of the Act, trading in any securities by Goss shall cease for 15 years from the date of this order, except that Goss shall be permitted to trade:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Goss has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Goss must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 4(g) through 4(i) have been paid in full;

b. pursuant to paragraph 2.1 of s 127(1) of the Act, the acquisition of any securities by Goss is prohibited for a period of 15 years from the date of this order, except that Goss shall be permitted to acquire:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Goss has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Goss must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 4(g) through 4(i) have been paid in full;

c. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Goss for a period of 15 years from the date of this order;

d. pursuant to paragraphs 7 and 8.1 of s 127(1) of the Act, Goss shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of s 127(1) of the Act, Goss is prohibited for a period of 15 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant;

f. pursuant to paragraph 8.5 of s 127(1) of the Act, Goss is prohibited for a period of 15 years from the date of this order from becoming or acting as a registrant or as a promoter;

g. pursuant to paragraph 9 of s 127(1) of the Act, Goss shall pay an administrative penalty in the amount of $1,000,000 to the Commission;

h. pursuant to paragraph 10 of s 127(1) of the Act, Goss shall disgorge to the Commission the amount of $1,228,509; and

i. pursuant to s 127.1 of the Act, Goss shall pay $183,844, for the costs of the investigation and hearing.

5. With respect to Fakhry:

a. pursuant to paragraph 2 of s 127(1) of the Act, trading in any securities by Fakhry shall cease for 10 years from the date of this order, except that Fakhry shall be permitted to trade:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Fakhry has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Fakhry must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 5(g) through 5(i) have been paid in full;

b. pursuant to paragraph 2.1 of s 127(1) of the Act, the acquisition of any securities by Fakhry is prohibited for a period of 10 years from the date of this order, except that Fakhry shall be permitted to acquire:

i. mutual funds, exchange-traded funds, government bonds and/or GICs for the account of any RRSP, RRIF and TFSA, as defined in the Income Tax Act, in which Fakhry has sole legal and beneficial ownership;

ii. solely through a registered dealer in Ontario, to whom Fakhry must have given a copy of this order; and

iii. only after the amounts ordered in subparagraphs 5(g) through 5(i) have been paid in full;

c. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Fakhry for a period of 10 years from the date of this order;

d. pursuant to paragraph 7 and 8.1 of s 127(1) of the Act, Fakhry shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of s 127(1) of the Act, Fakhry is prohibited for a period of 10 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant;

f. pursuant to paragraph 8.5 of s 127(1) of the Act, Fakhry is prohibited for a period of 10 years from the date of this order from becoming or acting as a registrant or as a promoter;

g. pursuant to paragraph 9 of s 127(1) of the Act, Fakhry shall pay an administrative penalty in the amount of $600,000 to the Commission;

h. pursuant to paragraph 10 of s 127(1) of the Act, Fakhry shall disgorge to the Commission the amount of $126,546; and

i. pursuant to s 127.1 of the Act, Fakhry shall pay $147,075, for the costs of the investigation and hearing.

“M. Cecilia Williams”

“Sandra Blake”

“Geoffrey D. Creighton”

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A.4
Reasons and Decisions

A.4.1 Majd Kitmitto et al. – ss. 127(1), 127.1

Citation: *Kitmitto (Re),* 2023 ONCMT 4
Date: 2023-01-20
File No. 2018-70

**IN THE MATTER OF
MAJD KITMITTO,
STEVEN VANNATTA,
CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO,
DONALD ALEXANDER (SANDY) GOSS,
JOHN FIELDING AND
FRANK FAKHRY**

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

Adjudicators: M. Cecilia Williams (chair of the panel)
Sandra Blake
Geoffrey D. Creighton

Hearing: By videoconference, October 11 and 13, 2022

Appearances:

Katrina Gustafson Khrystina McMillan	For Staff of the Ontario Securities Commission
Andrew Guaglio	For Majd Kitmitto
Peter Zaduk Kristy Wong	For Steven Vannatta
Alistair Crawley Alexandra Grishanova	For Christopher Candusso
Lara Jackson John M. Picone	For Donald Alexander (Sandy) Goss
Stephanie Voudouris Greg Temelini Janice Wright	For Frank Fakhry

REASONS AND DECISION

1. BACKGROUND AND DECISION

[1] This was a sanctions and costs hearing before the Tribunal to determine whether it is in the public interest to make an order against Majd Kitmitto (**Kitmitto**), Steven Vannatta (**Vannatta**), Christopher Candusso (**Candusso**), Donald Alexander (Sandy) Goss (**Goss**), and Frank Fakhry (**Fakhry**, and collectively with Kitmitto, Vannatta, Candusso and Goss, the **Respondents**).

[2] Staff requests an order for significant market bans, administrative penalties, disgorgement and costs.

[3] For the reasons that follow, we find it in the public interest to order that:

a. Kitmitto is subject to market participation bans for 10 years, with certain carve-outs, shall pay an administrative penalty of $600,000, and shall pay costs of $147,075;

b. Vannatta is subject to market participation bans for 15 years, with certain carve-outs, shall pay an administrative penalty of $650,000, shall disgorge $54,435, and shall pay costs of $183,844;

c. Candusso is subject to market participation bans for three years, with certain carve-outs, shall pay an administrative penalty of $100,000, shall disgorge $30,782, and shall pay costs of $73,537;

d. Goss is subject to market participation bans for 15 years, with certain carve-outs, shall pay an administrative penalty of $1,000,000, shall disgorge $1,228,509, and shall pay costs of $183,844; and

e. Fakhry is subject to market participation bans for 10 years, with certain carve-outs, shall pay an administrative penalty of $600,000, shall disgorge $126,546, and shall pay costs of $147,075.

2. MERITS DECISION

[4] The Merits Decision, issued on May 26, 2022, dealt with alleged breaches of various sections of the *Securities Act*,[1] (the **Act**) related to insider trading, tipping, and misleading staff of the Ontario Securities Commission (**Staff**). There were also allegations that certain of the Respondents' misconduct engaged the Tribunal's public interest jurisdiction. The majority of the Panel found that:

a. Kitmitto contravened s 76(2) of the Act by tipping Vannatta, Candusso and Goss while he was in possession of material non-public information (**MNPI**) related to Amaya Gaming Group Inc. (**Amaya**);

b. Vannatta contravened s 76(1) of the Act by engaging in insider trading and contravened s 76(2) of the Act by tipping four relatives while in possession of MNPI. Further, he engaged the Tribunal's public interest jurisdiction by concealing his trading from his employer, and contravened s 122(1) of the Act by misleading Staff;

c. Candusso contravened s 76(1) of the Act by engaging in insider trading;

d. Goss contravened s 76(1) of the Act by engaging in insider trading and contravened s 76(2) of the Act by tipping his assistant Fakhry while in possession of MNPI. Further, he engaged the Tribunal's public interest jurisdiction by making recommendations to fifteen of his clients to purchase shares of Amaya while he was in possession of MNPI; and

e. Fakhry contravened s 76(1) of the Act by engaging in insider trading and contravened s 76(1) of the Act by tipping his cousin and a client. He also engaged the Tribunal's public interest jurisdiction by making recommendations to five of his clients to purchase shares of Amaya while he was in possession of MNPI.[2]

3. LAW ON SANCTIONS

[5] The Act's objectives include, among other things, protecting investors from unfair or fraudulent practices, and fostering confidence in fair and efficient capital markets.[3]

[6] The Tribunal has a public interest jurisdiction to order sanctions that may limit or prohibit participation in the Ontario capital markets in the future by removing "those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets".[4] The Tribunal's role when imposing sanctions is not to punish past conduct, but to restrain "future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient".[5]

[7] The sanctions imposed must be appropriate and proportionate to the circumstances of the case and the conduct of each respondent.[6] Sanctions have to be carefully tailored to the particular breaches of the Act, the role of the perpetrator and the particular circumstances applicable to each respondent.[7] The layering on of sanctions must not aggregate to a result that is punitive rather than protective and deterrent. Punishment is not a permissible goal of sanctions.[8]

[8] The Tribunal has identified a non-exhaustive list of factors to be considered in determining appropriate sanctions, including the seriousness of the misconduct, the experience of the respondent and level of activity in the marketplace, the size of the profit made from the misconduct, remorse of the respondent, any mitigating factors, and the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").[9]

[9] Before turning to our analysis of the appropriate sanctions and costs in this case we outline the sanctions and costs sought by Staff.

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1 RSO 1990, c S.5
2 *Kitmitto (Re)*, 2022 ONCMT 12 (**Merits Decision**) at para 423
3 Act, s 1.1
4 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 43
5 *Mithras Management Ltd (Re),* (1990) 13 OSCB 1600 at 1611
6 *Bradon Technologies Ltd (Re),* 2016 ONSEC 19 at para 28
7 *Azeff (Re),* 2015 ONSEC 29 (***Azeff***) at para 10
8 *Azeff* at para 7
9 *Belteco Holdings Inc (Re),* (1998) 21 OSCB 7743 at 7746

4. SANCTIONS AND COSTS SOUGHT BY STAFF

[10] Staff seeks sanctions and costs for each Respondent as follows:

	Kitmitto	Vannatta	Candusso	Goss	Fakhry
Market bans	15 years	permanent	7 years	permanent	permanent
Administrative penalty	$600,000	$1.25 M	$150,000	$2 M	$653,097
Disgorgement	N/A	$54,435	$30,782	$1,228,509	$126,546
Costs	$217,800	$272,250	$108,900	$272,250	$217,800

[11] Staff submits that the following market bans be imposed upon each of the Respondents:

a. a prohibition from acquiring any securities or from trading in any securities (subject to certain carve-outs);

b. any exemptions contained in Ontario securities law not apply; and

c. resignation from any positions held as a director or officer of an issuer or registrant, and a prohibition from becoming or acting as a director or officer of an issuer or registrant, or from becoming or acting as a registrant or promoter.

[12] We now turn to our analysis of the sanctions appropriate in this case.

5. APPROPRIATE SANCTIONS

[13] Before dealing with the appropriate sanctions for each of the Respondents, we address several issues applicable to more than one of the Respondents.

5.1 Matters relevant to more than one Respondent

5.1.1 Seriousness of the misconduct

[14] The prohibition against insider trading is a "significant component" of the schemes of investor protection and the fostering of fair and efficient capital markets and confidence in them. Insider trading and tipping strike at the heart of the Act's key objectives by creating a "grossly unfair" informational advantage to the person(s) trading with MNPI. Such conduct undermines investor confidence in the capital markets, potentially causing prospective investors to refuse to purchase securities if they have reason to fear that insiders will be free to trade on the basis of undisclosed information.[10] We therefore view the seriousness of the allegations in this case as an important factor in determining sanctions.

5.1.2 Remorse

[15] Staff submits there is a lack of remorse shown by the Respondents. We acknowledge that there is no obligation to express remorse and failure to express remorse is not an aggravating factor.[11] The courts have also recognized in the criminal context that the right to make full answer and defense and denial of guilt are not aggravating factors.[12] In our view, these principles also apply in the securities regulatory context. A respondent can deny an allegation and defend themselves as considered appropriate.

[16] Certain of the Respondents also submit that they have a statutory right to appeal the Merits Decision and that it should not be considered an aggravating factor that they act in a way to preserve that right. In our view, it is not an aggravating factor for a Respondent to avail themselves of the right to make full answer and defence and/or to behave in a manner consistent with preserving their position in a potential appeal.

[17] However, we also acknowledge that a respondent who does not demonstrate remorse will not receive the mitigating benefit such remorse may bring.

5.1.3 Market bans

[18] The severity of sanctions imposed may depend on whether the respondent is a registrant or non-registrant[13] and the scope of their role and activity within the capital markets. In our view, removal from the capital markets provides future protection for investors and the markets. Market bans, (for trading, acting as a director or officer, acting as a registrant,

[10] *Finkelstein v Ontario Securities Commission*, 2018 ONCA 61 at paras 22-24
[11] *Black Panther Trading Corporation (Re),* 2017 ONSEC 8 at para 38
[12] *R v Ellacott,* 2017 ONCA 681 at paras 30 and 31
[13] *Azeff* at para 8

etc.) enhance that protective shield, while administrative penalties mainly serve the elements of specific and general deterrence.

5.1.4 Appropriate Trading Ban Carve-outs

[19] Staff proposes that the trading bans be subject to the following carve-outs:

a. mutual funds, exchange-traded funds, government bonds and/or guaranteed investment certificates;

b. for the account of any registered retirement savings plan, registered retirement income fund and tax-free savings account, as defined in the *Income Tax Act*,[14] in which the Respondent has sole legal and beneficial ownership; and

c. provided those trades are conducted solely through a registered dealer in Ontario, to whom the Respondent must have given a copy of the sanctions and costs order.

[20] All the Respondents, except Fakhry, seek further carve-outs for their unique circumstances including, trading in non-registered accounts, trading without the use of a third-party registered dealer, acquiring shares through compensation from work, and trading in any securities on certain conditions.

[21] Goss submits that the risk of investor harm and to the integrity of the capital markets is protected by limiting the types of securities traded to those proposed by Staff. Therefore, Goss submits he ought to be able to trade without using a registered dealer. Alternatively, the risks are removed if trading through a registered dealer so any securities should be permitted for trading. Goss also submits that it is irrelevant whether the trading is conducted in a registered or non-registered account. Goss's submissions were adopted by Kitmitto and Vannatta.

[22] We do not agree with introducing further carve-outs for any of the Respondents for the following reasons. "Participation in the capital markets is a privilege, not a right".[15] The Respondents have demonstrated that they should not be permitted to participate without check in the capital markets. Without the use of a registered dealer, there is no certainty of compliance with the permitted carve-outs. Trading bans are imposed to keep wrongdoers from participating in the capital markets in light of the seriousness of their breaches of the Act. Restricting the type of account also serves a regulatory purpose. Trading bans protect the public, while limited carve-outs with respect to type of account and type of security are intended to address the public policy goal of allowing financial planning for retirement and other life savings.

[23] We note that none of the Respondents provided submissions or objected to the condition that the trading carve-outs only take effect after the full payment of the applicable administrative penalty, disgorgement and costs. In *VRK Forex and Investments Inc (Re)*[16] at paragraph 39*,* the panel commented that "such a term might be punitive, especially in a case where the respondents assert impecuniosity." However, the panel went on to say, "we leave it to panels in future cases to determine whether a similar term is in the public interest where it is requested by Staff but contested by a respondent."[17] In this case, the term has not been contested by any of the Respondents. We therefore adopt the condition proposed by Staff and make no further comment on this condition.

[24] We deal with the length of trading bans when we address sanctions for each Respondent specifically below.

5.1.5 Director and Officer Bans

[25] Staff asks that the market bans ordered include restricting the Respondents' ability to act as a director or officer of a registrant or issuer. Certain Respondents submit that such an order would be inappropriate as there is no connection between the findings in the Merit Decision and being a director or officer.

[26] Directors and officers are in elevated positions of trust due to the integrity and expertise required of such roles. In addition, these types of positions often involve access to MNPI. In our view, individuals holding leadership positions in issuers and registrants must demonstrate integrity and trustworthiness. The Respondents have demonstrated through their misconduct that they cannot be trusted with MNPI. We therefore find that director and officer bans are appropriate for all Respondents.

5.1.6 Calculation of Administrative Penalties

[27] There is no formula for determining the quantum of an administrative penalty. Factors to consider in determining an appropriate administrative penalty include: the seriousness of the misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized any profit because of their misconduct; the amount of money raised or obtained from investors; and the level of administrative penalties imposed in other cases.[18] In our view,

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[14] RSC 1985, c 1 (5th Supp)
[15] *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451 (ONSC) at para 55
[16] 2022 ONCMT 28 (***VRK***)
[17] *VRK* at para 39
[18] *Agueci (Re),* 2015 ONSEC 19 (***Agueci***) at para 12

this list of factors is non-exhaustive and the importance of any factor will vary depending on the circumstances present in each case.

[28] Staff has taken two different approaches with respect to the calculation of administrative penalties sought in this proceeding, both of which approaches have been used in previous Tribunal decisions. For Kitmitto, Vannatta and Candusso they employ an amount per breach approach. They propose the following amounts: $200,000 for insider trading in breach of s 76(1) (regardless of the number of trades), $200,000 for each tip of MNPI in breach of s 76(2), and $250,000 for misleading Staff in breach of s 122(1). However, for Goss and Fakhry they base the administrative penalty sought on a multiple of the amount of profit each earned, proposing in each instance that double the profit would be an appropriate administrative penalty.

[29] Staff submits that for Kitmitto, Vannatta and Candusso a multiple of profit would be insufficient to address specific and general deterrence given the small amount of profit each earned from their misconduct (and in Kitmitto's case no profit was earned). Goss submits that profit should not be the focus for administrative penalties, but rather the nature and extent of the misconduct in question should be the basis of our decision on the appropriate administrative penalty.

[30] In our view, consistency of approach is important as it permits a clearer reflection of the relative seriousness of the misconduct among the Respondents in this case. In assessing the administrative penalties we take an amount per breach approach, rather than considering the amount of profit, if any, earned. We then adjust the dollar amount of the initial calculation of the administrative penalty up or down to reflect the seriousness of the conduct, the conduct relative to the other Respondents, and any aggravating or mitigating factors. Considering past cases[19], and the passage of time,[20] we accept the per breach amounts proposed by Staff as summarized in paragraph 28 above.

5.1.7 Disgorgement

[31] Paragraph 10 of s 127(1) of the Act provides that, if a person or company has not complied with Ontario securities law, the Commission may order the person or company to disgorge to the Commission "any amounts obtained as a result of the non-compliance."

[32] Except for the amount of disgorgement for Goss, none of the Respondents with respect to whom Staff is seeking an order of disgorgement contested the appropriateness of such an order. The panel finds that amounts obtained by Respondents who traded on MNPI shall be disgorged. We deal with Goss's submission about whether it is appropriate to order disgorgement of profits earned in family accounts over which he had trading authority below in the section dealing with Goss.

5.2 Appropriate sanctions for each Respondent

5.2.1 Kitmitto

[33] Kitmitto was a senior analyst at Aston Hill Asset Management Inc. (**Aston Asset Management**). He submits that, compared to other Respondents, he was young, inexperienced, a junior employee and a non-registrant. We find, however, that he occupied a position of trust and was an access person with regular access to MNPI.

[34] Considering the sanctioning factors set out in *Belteco*, the following facts are relevant to our determination of appropriate sanctions. Kitmitto initiated the course of conduct that led to multiple violations of Ontario securities law by himself and the other Respondents. Without his tipping, the other Respondents could not have engaged in insider trading, tipping, misleading Staff and abusive conduct in concealing trades from an employer, and recommending Amaya to their clients while in possession of MNPI. Although Kitmitto did not profit from his violations of the Act, large profits were made by those he tipped. He was responsible for tipping three separate individuals, not a single isolated act. Those three tippees then tipped a further seven individuals, made recommendations based on MNPI to 20 others, and traded on MNPI. The market impact of Kitmitto's breaches was widespread and amounted to approximately $1.5 million of illegally obtained profits.

[35] Kitmitto has no prior record of breaching Ontario securities law. It has been about eight years since the events that gave rise to this proceeding. There is no evidence that Kitmitto has contravened Ontario securities law in that time.

[36] Kitmitto submits that appropriate sanctions include market bans for seven years, subject to carve-outs including the right to purchase and sell shares acquired as compensation from work, and an administrative penalty of $90,000.

[37] For the reasons already discussed above, we disagree with providing further carve-outs to the trading bans other than those proposed by Staff. With respect to Kitmitto's submission for a carve-out to allow equity compensation, we conclude that it is not appropriate to grant such a carve-out without any specific details that would allow us to assess its appropriateness.

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[19] *Azeff; Agueci*

[20] *Fiorillo v Ontario Securities Commission*, 2016 ONSC 6559 at para 295

[38] We give weight to the fact that this case involved one piece of MNPI, rather than in other cases where MNPI was sought out on numerous occasions for the purpose of insider trading.

[39] Having regard to all the factors noted above, in particular the seriousness of the allegations, the need for both specific and general deterrence, and the fact that Kitmitto initiated the course of conduct, providing the opportunity for others to breach Ontario securities law, we find that market bans for a period of 10 years are appropriate.

[40] Kitmitto committed three breaches of the Act by tipping three individuals. Applying the amount per breach of $200,000 for each tip, we find that an administrative penalty in the amount of $600,000 is appropriate, given the significant market impact of his conduct. We conclude that there are no mitigating factors to adjust the amount down nor aggravating factors to adjust the amount up.

5.2.2 Vannatta

[41] Vannatta was a portfolio manager and access person at Aston Asset Management, and a registrant with the Commission. He engaged in insider trading and tipped four of his relatives with MNPI (each of whom then traded in Amaya shares). Vannatta's insider trading earned him $54,435.

[42] Having regard to the sanctioning factors, and in particular considering the seriousness of the allegations, Vannatta's status as a registrant at the time, his experience in the market, his attempts to mislead Staff, and his attempts to conceal his trading from his employer, we find that market participation bans for 15 years are appropriate.

[43] With respect to the appropriate administrative penalty for Vannatta, we consider the appropriate penalties relating to his tipping, his trading and his misleading of Staff. We then turn to his submissions regarding his ability to pay and that Staff's proposed administrative penalty offends s 12 of the Charter.

[44] Vannatta submits that there is no finding that his relatives were tipped individually or all at once. There is no finding whether a single relative, having received a tip from Vannatta, did not tip the others on their own initiative. The finding that the trading was "timely, profitable and either uncharacteristic or opportunistic" does not preclude these possibilities and in fact is entirely consistent with them. We agree that this calls for an administrative penalty based on one tip rather than four discrete breaches of the Act, and therefore $200,000 is an appropriate administrative penalty for engaging in tipping while in possession of MNPI.

[45] The Merits Panel found that Vannatta engaged in insider trading and we find that $200,000 is an appropriate administrative penalty for this breach.

[46] The Merits Panel found that Vannatta misled the Commission during its investigation.[21] Misleading Commission investigators hinders the Commission's ability to monitor and enforce compliance with Ontario securities law, and impedes effective regulation of the capital markets.[22] As held by the Court of Appeal for Ontario, "[i]t is difficult to imagine anything that could be more important to protecting the integrity of [the] capital markets than ensuring that those involved in those markets … provide full and accurate information to the [Commission]."[23] As a result, we find that $250,000 is the appropriate administrative penalty for this breach.

[47] Vannatta submits that an important consideration in fixing an administrative penalty is the Respondent's ability to pay. The administrative penalty should not be so crushing as to cripple the respondent financially and place him under a permanent monetary burden. He submits that this applies here to the cumulative effect of the administrative penalty, costs, disgorgement, and the fact that he has effectively been banned from the industry since February 2018. This effective ban came about, he submits, because the allegations in this matter resulted in his suspension from his job at Purpose Investments and have deprived him since then of the livelihood he has pursued since 2008.

[48] We do not accept Vannatta's submissions regarding the relevance of ability to pay to our decision about the appropriate administrative penalty, for the following reasons. Vannatta has not been subject to any market bans for the past eight years. In addition, we have little financial information other than his Canada Revenue Agency Notice of Assessments for 2019 and 2020. There is no evidence of his financial condition over the past two years, including any bank statements. The onus of demonstrating impecuniosity as a mitigating factor lies upon the respondent who asserts it. Vannatta has not produced clear and complete evidence and has therefore failed to meet the onus upon him. In any event, this Tribunal has repeatedly held that a respondent's ability to pay is not determinative or even a predominant factor in determining the appropriate financial sanction for a respondent to pay.[24]

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[21] See Merits Decision at paras 212 to 218

[22] *Da Silva (Re),* 2012 ONSEC 32 at para 7

[23] *Wilder v Ontario Securities Commission*, 2001 CanLII 24072 (ONCA) at para 22

[24] See for example, *Sabourin (Re)*, 2010 ONSEC 10 at para 60*; Factorcorp Inc (Re)*, 2013 ONSEC 34 at para 35; *Rezwealth Financial Services Inc (Re)*, 2014 ONSEC 18 at para 69

[49] Vannatta submits that Staff's proposed sanctions would offend s 12 of the Charter[25] in that the quantum of the penalty and Vannatta's alleged inability to pay amounts to cruel and unusual punishment. In support, Vannatta cites the recent Supreme Court of Canada case *R v Bissonnette*.[26] That case dealt with the constitutionality of consecutive periods of parole ineligibility for multiple murders. The court held that "[t]o determine whether a punishment is intrinsically incompatible with dignity, the court must determine whether the punishment is, by its very nature, degrading or dehumanizing"[27] and a punishment that can never be carried out is contrary to the fundamental values of Canadian society.[28]

[50] Vannatta submits that he has no prospect of ever paying off the monetary sanctions of the magnitude proposed by Staff. According to Vannatta, Staff is asking for a "punishment that can never be carried out," a punishment which therefore is "contrary to the fundamental values of Canadian society" and one that is "intrinsically incompatible with human dignity."

[51] We disagree with Vannatta's submission on this issue. The threshold for a breach of s 12 is extremely high, only met where the punishment is "grossly disproportionate" to what is appropriate or is "intrinsically incompatible with human dignity" because it would "outrage our standards of decency".[29] That threshold has not been met because in our view a financial penalty alone cannot be equated to imprisonment with consecutive periods of parole ineligibility. As held by the Court of Appeal for Ontario, ability to pay was "immaterial" to a s 12 analysis even in the criminal context where default of payment could result in imprisonment.[30]

[52] We conclude that an administrative penalty in the amount of $650,000 is appropriate. The administrative penalty represents $200,000 for insider trading, $200,000 for tipping and $250,000 for misleading Staff. We take guidance from *Agueci* in determining the appropriate penalty for misleading Staff where repeated attempts to mislead resulted in an administrative penalty of $250,000. Additionally, Vannatta shall disgorge $54,435, and this amount was not contested by Vannatta.

5.2.3 Candusso

[53] Candusso was Kitmitto's roommate. Unlike the other Respondents, he did not work at Aston Asset Management nor Aston Hill Securities. He is not a registrant or market participant.

[54] Candusso engaged in one violation of the Act by trading in Amaya shares while in possession of MNPI and earned a profit of $30,782.

[55] Candusso submits that no basis exists to impose a director and officer ban as he has not abused his position as a market participant or registrant that would justify such bans against him. For the reasons articulated above, we disagree with this submission and find that director and officer bans are appropriate.

[56] Candusso also seeks further trading carve-outs due to his alleged limited access to MNPI, including the ability to trade in any securities as long as he does not own greater than one percent of the outstanding securities of an issuer. We reject these submissions for the reasons previously outlined.

[57] We find that Candusso's experience in the market, level of activity in the market, and size of profit, put him at the lower end of the range in terms of potential risk to the capital markets. While Candusso's conduct is serious, we do not find any aggravating behaviour. We therefore determine that market bans of three years are appropriate.

[58] In this case, we considered the fact that Candusso's conduct had less of a market impact compared to the other Respondents as a mitigating factor. We find that adjusting the per breach amount that we have used for other respondents of $200,000 down to $100,000 is the appropriate administrative penalty.

[59] Disgorgement in the amount of $30,782 is appropriate and this was not contested by Candusso.

5.2.4 Goss

[60] Goss has been registered with the Commission since 1993 and has decades of experience in the securities industry. During the relevant period, he was a registered investment advisor at Aston Hill Securities, an affiliate of Aston Asset Management's parent company.

[61] We find that Goss's conduct was among the most serious at issue in these proceedings. He engaged in insider trading on a large scale, repeatedly, in his own and his family's accounts, as well as recommending significant trading in client accounts while in possession of MNPI, leading to significant profits. During the relevant period, he purchased 95,400

[25] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act,* 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the **Charter**)
[26] 2022 SCC 23 (***Bissonnette***)
[27] *Bissonnette* at para 67
[28] *Bissonnette* at para 95
[29] *R v Pham*, 2002 CanLII 41969 (ONCA) at para 11 citing *R v MacDonald*, 1998 CanLII 13327 (ON CA) at para 68; *Bissonnette* at para 69
[30] *R v Pham*, 2002 CanLII 41969 (ONCA) at para 17

Amaya shares for himself, 14,040 Amaya shares for his family members' accounts, and nearly a half million for his clients. In total, he earned over $1.2 million through insider trading in his own account and his family accounts.

[62] Goss also tipped his assistant Fakhry, which led to further violations of securities laws.

[63] Goss submits that permanent market bans should only be ordered where there are attempts to mislead Staff or conceal information. He relies on *Agueci* as an example to support this position where misleading Staff was found to be an aggravating factor.[31] However, we note that there have been other Tribunal cases where permanent bans have been imposed where there was no finding of the respondent misleading Staff.[32] In our view, it is appropriate to take a holistic approach where the length of any market ban reflects the overall misconduct of the respondent in question and is sufficient to provide specific and general deterrence.

[64] As mentioned above, the seriousness of the misconduct is an important factor to consider and especially when considering the magnitude of Goss's trading (on his own behalf and on behalf of his family members), his tip to Fakhry, and his recommendations to clients because this misconduct created additional unfair trading advantages, further undermined investor confidence, and jeopardized the integrity of our capital markets.

[65] Taking into consideration Goss's extensive personal trading, his tip to Fakhry and his recommendation to 15 clients to trade Amaya, all while in possession of MNPI, we conclude that market bans of 15 years are appropriate.

[66] In determining the appropriate administrative penalty, and applying the above factors to Goss, we have already noted that the breaches of s 76(1) and (2), tipping and insider trading, are serious. Goss breached two sections of the Act. The market impact of his breaches was approximately $1.2 million in ill-gained profits. We also consider Goss's status as a registrant at the time, experience in the market, level of activity in the market, the size of the profit, and both specific and general deterrence. We are mindful that the breaches occurred approximately eight years ago, and Goss has not suffered a permanent loss of employment over that period.

[67] Applying the per breach approach we have used for the other Respondents, our initial calculation of the appropriate administrative penalty is $400,000 ($200,000 for insider trading plus $200,000 for the tip of MNPI to Fakhry). We conclude that this initial calculation should be adjusted up by a significant amount to appropriately reflect the extent and impact of Goss's misconduct, as described in paragraph 66, our conclusion that his misconduct was among the most serious in this proceeding, and to achieve appropriate specific and general deterrence. We conclude, therefore, that an administrative penalty of $1 million is appropriate.

[68] Regarding disgorgement, Goss submits that he should only be required to disgorge the amounts earned in his trading accounts and not the amounts earned by trading on behalf of his family. The issue of whether disgorgement orders should be limited to the amount that the respondents obtained personally, either directly or indirectly through corporate entities, has been litigated and lost. Goss relies on *Azeff*[33] for his submission that a respondent should not be required to disgorge amounts earned in his family accounts. Subsequently, the Tribunal determined that it may order a particular respondent to disgorge funds obtained in contravention of the Act regardless of whether that respondent personally obtained the funds.[34]

[69] While this is not a case of trading in a corporate account, we conclude the same reasoning applies in this instance. Goss, using MNPI, made the decision to trade Amaya in the accounts of his family members. Trading in those accounts with the benefit of MNPI, resulting in profits, would not have happened but for Goss having MNPI and making the decision to trade Amaya in the family accounts.

[70] In addition, from a policy perspective, it would undermine confidence in the capital markets if those trading with the inappropriate advantage of MNPI were able to shelter their misconduct by deciding to conduct their insider trades in the accounts of others over which they have trading authority.

[71] We conclude that the profits in Goss's family's accounts are funds that were obtained in contravention of the Act. Goss is, therefore, required to disgorge $1,228,509, being the total amount of profits earned in his personal accounts and the accounts of his family members.

5.2.5 Fakhry

[72] Fakhry was Goss's assistant at Aston Hill Securities, having followed Goss there from their previous employer. He had been registered with the Commission since 1999, and at the time had 8 clients of his own. Fakhry is no longer registered and has not been registered in any capacity since September 11, 2020.

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31 *Agueci* at paras 20 and 34
32 *Bradon Technologies Ltd (Re),* 2016 ONSEC 19
33 *Azeff (Re)*, 2015 ONSEC 29 at paras 43 and 44
34 *Phillips (Re),* 2015 ONSEC 36 at para 20

[73] Fakhry made five purchases of Amaya shares while in possession of MNPI earning a profit of $126,546, contrary to s 76(1).

[74] Fakhry also tipped two other individuals about MNPI, contrary to s 76(2) of the Act.

[75] Fakhry submits that he should not be subject to harsher sanctions than is merited. He did not engage in deceptive behavior and there is no prospect of him returning to the industry. The objectives of specific and general deterrence, he submits, are fully achieved with 10-year market prohibitions.

[76] Applying the sanctioning factors to Fakhry, we considered the seriousness of the allegations, his status as a registrant at the time, his experience in the marketplace, the level of his personal activity, and his recommendations to his clients. We also considered as mitigating factors that Fakhry did not engage in deceptive behaviour and that he is unlikely to return to the industry. We determine that market bans of 10 years are appropriate.

[77] We conclude that an administrative penalty of $600,000 is appropriate. This is based on applying a $200,000 per breach approach to Fakhry's three breaches of the Act (one breach of s 76(1) and two breaches of s 76(2)), and considering the seriousness of the misconduct, his status as a registrant at the time, his experience in the market and the level of his activity. In the circumstances, we see no compelling aggravating or mitigating evidence to adjust the initial calculation of $600,000.

[78] Fakhry is also required to disgorge the amount of his profit earned, $126,546, which he agreed was appropriate.

6. COSTS

[79] Section 127.1 of the Act gives the Tribunal discretion to order a respondent to pay the costs of the investigation and hearing if the Tribunal is satisfied that the person or company has not complied with the Act or has not acted in the public interest.

[80] Costs are not intended to penalize respondents or discourage them from bringing matters before the Tribunal that they wish to contest in good faith.[35]

[81] In determining costs, the respective conduct and responsibilities of each of the respondents in the circumstances are factors to consider.

[82] Insider trading and tipping is difficult to establish and requires, as in this case, extensive investigation and forensic skill. Staff, in our view has been responsible in being conservative in its costs request of $1,089,000. This amount represents a 20% reduction from the total costs of approximately $1,362,234 (which includes total investigation costs sought by Staff in the amount of $344,573, total litigation costs in the amount of $883,651, and disbursements in the amount of $134,010).

[83] However, we find that Staff has not clearly established the investigative costs related to this hearing. This was a complex investigation that began as three separate files and resulted in two separate proceedings, this proceeding and the *Cheng et al* proceeding. Due to the investigations starting in a combined fashion it is difficult to parse out costs related to this investigation as opposed to the *Cheng et al.* investigation.

[84] To address this difficulty, Staff indicated that they included only 50% of the time recorded by its two investigators for one portion of the investigation in its Bill of Costs. Based on each of their hours worked and hourly rate, including only claiming 50% of their time for the specified portion, Staff has requested a total of $273,215 for this phase of its investigation. We do not find that Staff's discounted time adequately addresses the possibility of "double dipping" and co-mingling of the investigations at the same time. The amount of $273,215 should be reduced again by 50% to $136,607. Considering this further reduction, we find that the investigation costs sought by Staff of $344,573 should be reduced by $136,607 for a total of $207,965.

[85] Staff sought litigation costs of $883,651. We find that this number is appropriate.

[86] With respect to the disbursements, Staff sought an expert report in response to some of the respondents indicating that they were planning to file an expert report. Experts were never called at the merits hearing yet Staff is claiming this expense. Several Respondents submit that the cost of Staff's responding expert report from Forensic Economics Inc. in the approximate amount of $100,000 should not be included in the costs requested by Staff. They submit that if it is included, no portion should be attributed to them as they did not request the initial expert report. We disagree. The report is an expense incurred by Staff who were acting prudently in preparing to respond to a Respondent's expert. The fact that neither report was submitted into evidence does not negate the legitimacy of the expense in preparing for the hearing. The appropriate disbursement costs remain at $134,010.

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[35] *Doulis (Re),* 2014 ONSEC 40 at para 89

[87] Based on the above, the appropriate total amount of costs sought by Staff is $1,225,626 before accounting for the divided success Staff achieved at the merits hearing.

[88] Seven allegations against the Respondents were not proven. Staff proposed a 20% discount to reflect that they did not succeed in proving all of the allegations. In our view, not enough weight has been afforded to the divided success of Staff at the merits hearing and a 40% reduction of the total costs and disbursements would be more appropriate. We therefore award costs to Staff in the amount of $735,376.

[89] We find that the allocation of costs payable by each Respondent as proposed by Staff is fair.

[90] Not all Respondents were involved in all the allegations. The volume of evidence adduced for each Respondent varied significantly, as did the time taken by their respective cases. Notably, Staff did not prove the allegations against two respondents (John Fielding and Claudio Candusso) who are therefore not a part of this sanctions and costs hearing.

[91] Kitmitto tipped three individuals. Vannatta traded, tipped and misled Staff. Goss traded extensively, tipped and recommended Amaya to his clients. Fakhry traded, tipped and recommended Amaya to his clients. Conversely, Candusso traded, and Staff were not successful in all their allegations against him. We determine that the costs should be allocated as follows: Kitmitto is responsible for 20% ($147,075), Vannatta for 25% ($183,844), Candusso for 10% ($73,538), Goss for 25% ($183,844) and Fakhry for 20% ($147,075).

7. CONCLUSION

[92] We conclude that sanctions which include market participation bans, disgorgement and administrative penalties are appropriate and proportionate to the circumstances and conduct of each of the Respondents and that it is in the public interest to make these orders.

[93] We will issue a separate order giving effect to our decision on sanctions and costs. In summary, we order:

1. With respect to Kitmitto:

   a. the acquisition of any securities and trading in any securities by Kitmitto shall cease for 10 years from the date of this order, subject to carve-outs and only after the amounts ordered in subparagraphs 1(d) and 1(e) are paid in full;

   b. any exemptions contained in Ontario securities law do not apply to Kitmitto for a period of 10 years;

   c. Kitmitto shall immediately resign from any positions that he holds as a director or officer of an issuer or registrant and is prohibited for a period of 10 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant, or from becoming or acting as a registrant or promoter;

   d. Kitmitto shall pay an administrative penalty in the amount of $600,000 to the Commission; and

   e. Kitmitto shall pay $147,075, for the costs of the investigation and hearing.

2. With respect to Vannatta:

   a. the acquisition of any securities and trading in any securities by Vannatta shall cease for 15 years from the date of this order, subject to carve-outs and only after the amounts ordered in subparagraphs 2(d) through 2(f) have been paid in full;

   b. any exemptions contained in Ontario securities law do not apply to Vannatta for a period of 15 years;

   c. Vannatta shall immediately resign any positions that he holds as a director or officer of an issuer or registrant and is prohibited for a period of 15 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant, or from becoming or acting as a registrant or promoter;

   d. Vannatta shall pay an administrative penalty in the amount of $650,000 to the Commission;

   e. Vannatta shall disgorge to the Commission the amount of $54,435; and

   f. Vannatta shall pay $183,844, for the costs of the investigation and hearing.

3. With respect to Candusso:

   a. the acquisition of any securities and trading in any securities by Candusso shall cease for three years from the date of this order, subject to carve-outs and only after the amounts ordered in subparagraphs 3(d) through 3(f) are paid in full;

   b. any exemptions contained in Ontario securities law do not apply to Candusso for a period of three years;

c. Candusso shall immediately resign any positions that he holds as a director or officer of an issuer or registrant and is prohibited for a period of three years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant, or from becoming or acting as a registrant or promoter;

d. Candusso shall pay an administrative penalty in the amount of $100,000 to the Commission;

e. Candusso shall disgorge to the Commission the amount of $30,782; and

f. Candusso shall pay $73,537, for the costs of the investigation and hearing.

4. With respect to Goss:

a. the acquisition of any securities and trading in any securities by Goss shall cease for 15 years from the date of this order, subject to carve-outs and only after the amounts ordered in subparagraphs 4(d) through 4 (f) are paid in full;

b. any exemptions contained in Ontario securities law do not apply to Goss for a period of 15 years;

c. Goss shall immediately resign any positions that he holds as a director or officer of an issuer or registrant and is prohibited for a period of 15 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant, and from becoming or acting as a registrant or as a promoter;

d. Goss shall pay an administrative penalty in the amount of $1,000,000 to the Commission;

e. Goss shall disgorge to the Commission the amount of $1,228,509; and

f. Goss shall pay $183,844, for the costs of the investigation and hearing.

5. With respect to Fakhry:

a. the acquisition of any securities and trading in any securities by Fakhry shall cease for 10 years from the date of this order, subject to carve-outs and only after the amounts ordered in subparagraphs 5(d) through 5(f) are paid in full;

b. any exemptions contained in Ontario securities law do not apply to Fakhry for a period of 10 years;

c. Fakhry shall immediately resign any positions that he holds as a director or officer of an issuer or registrant and is prohibited for a period of 10 years from the date of this order from becoming or acting as a director or an officer of any issuer or registrant, and from becoming or acting as a registrant or as a promoter;

d. Fakhry shall pay an administrative penalty in the amount of $600,000 to the Commission;

e. Fakhry shall disgorge to the Commission the amount of $126,546; and

f. Fakhry shall pay $147,075, for the costs of the investigation and hearing.

Dated at Toronto this 20th day of January, 2023

“M. Cecilia Williams”

“Sandra Blake”

“Geoffrey D. Creighton”

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B. Ontario Securities Commission

B.2
Orders

B.2.1 West Red Lake Gold Mines Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 24, 2023

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

AND

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

AND

IN THE MATTER OF
WEST RED LAKE GOLD MINES INC.
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia and Alberta.

Interpretation

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

Representations

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

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

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0017

B.3
Reasons and Decisions

B.3.1 Fidelity Digital Asset Services, LLC

Headnote

Application for time-limited relief from the requirement to be recognized as a clearing agency; National Instruments 21-101 Marketplace Operation, 23-101 Trading Rules, 23-103 Electronic Trading and Direct Electronic Access to Marketplaces, 24-102 Clearing Agency Requirements; and prospectus and trade reporting requirements – relief to allow the Filer to operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision – relief will expire in 5 years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

Statute Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 21.2(0.1), 53, 74 & 147.

Instrument, Rule or Policy Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 21-101 Marketplace Operation, s. 15.1.
National Instrument 23-101 Trading Rules, s. 12.1.
National Instrument 23-103 Electronic Trading and Direct Access to Marketplaces, s. 10.
National Instrument 24-102 Clearing Agency Requirements, s. 6.1.
OSC Rule 91-506 Derivatives: Product Determination, ss. 2 & 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)
AND
ALBERTA,
BRITISH COLUMBIA,
MANITOBA,
NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES,
NOVA SCOTIA,
NUNAVUT,
PRINCE EDWARD ISLAND,
QUEBEC,
SASKATCHEWAN AND
YUKON

AND

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

AND

IN THE MATTER OF
FIDELITY DIGITAL ASSET SERVICES, LLC
(the Filer or FDAS)

DECISION

Background

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**CSA SN 21-327**), if crypto assets that are securities or derivatives are traded on a platform, such platform would be subject to securities legislation. In addition, securities and/or derivatives legislation may apply to platforms that facilitate the buying and selling of crypto assets, including crypto assets that are commodities, because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered time-limited relief from certain securities law requirements that would allow crypto asset platforms to operate within a regulated environment, with regulatory requirements tailored to the crypto asset platform's operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Canadian Securities Administrators (**CSA**) take the position that the relevant service offered by the Filer includes the purchase, sale and settlement of trades of Crypto Contracts involving bitcoin, ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that itself is not a security or derivative (collectively, **Crypto Assets**) with an entity in the Fidelity group of companies, Fidelity Clearing Canada ULC (**FCC**). Because the CSA considers the Filer to be facilitating the purchase, sale and settlement of Crypto Contracts with FCC for Canadian securities law purposes, the Filer filed an application to be exempted from certain requirements under applicable securities legislation. This decision (the **Decision**) has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the provinces and territories of Canada will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction and in each of the other applicable Jurisdictions, as defined below (the **Coordinated Review Decision Makers**), have received an application from the Filer (the **Coordinated Review Application**) for a decision under the securities legislation of those Jurisdictions (the **Legislation**) exempting the Filer from the following (the **Requested Coordinated Relief**):

(i) except in British Columbia, New Brunswick, Nova Scotia, and Saskatchewan, the Marketplace Rules (as defined in Appendix A) (the **Marketplace Relief**);

(ii) in Ontario, British Columbia, Saskatchewan, Alberta and Quebec, the Clearing Recognition Requirement (as defined in Appendix A) (the **Clearing Recognition Relief**);

(iii) in Ontario, British Columbia, Saskatchewan, Alberta and Quebec, the Clearing Agency Rules (as defined in Appendix A) (the **Clearing Relief**); and

(iv) the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**).

The securities regulatory authority or regulator in the Jurisdiction has received an application from the Filer (the **Passport Application**) for a decision under the Legislation exempting the Filer from the prospectus requirements of the Legislation in respect of the Filer entering into Crypto Contracts with FCC (as defined below) to purchase, hold and sell Crypto Assets (as defined below) (the **Requested Prospectus Relief**).

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

(a) the Ontario Securities Commission is the principal regulator (the **Principal Regulator**) for each of the Coordinated Review Application and the Passport Application;

(b) the decision in respect of the Requested Coordinated Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker; and

(c) in respect of the Requested Prospectus Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada.

The Coordinated Review Application and the Passport Application are collectively the **Application**, and the Requested Coordinated Relief and the Requested Prospectus Relief are collectively the **Requested Relief**.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this Decision, unless otherwise defined. In addition to the terms defined above, the following terms shall have the following meanings:

FCC means Fidelity Clearing Canada ULC.

FCC Decisions means, collectively, (i) the decision document of the Jurisdictions exempting FCC from certain of the requirements under the securities legislation of the Jurisdictions in relation to Crypto Contracts that FCC enters into with its clients relating to Crypto Assets on the condition that, among others, FCC retains FDAS as its foreign custodian and custodies all of FCC's clients' Crypto Assets with FDAS and (ii) the decision document of the Jurisdictions permitting FCC to custody or sub-custody Crypto Assets and cash held by investment funds governed by National Instrument 81-102 *Investment Funds* and permitting FDAS to sub-custody Crypto Assets held by such investment funds.

FDAS Bank Account means the omnibus bank account at a depository institution in the name of FDAS, for the benefit of FDAS' clients, holding FDAS' clients' cash.

FDAS Matching Service, for purposes of the Marketplace Relief, means only that portion of the FDAS Service that involves the execution of purchase or sale transactions relating to Crypto Contracts with FCC based on FDAS' internal matching engine, and does not include the portion of the FDAS Service that involves purchase or sale transactions relating to Crypto Contracts with FCC that are executed by FDAS based on prices received from external counterparties through FDAS' smart order router.

FDAS Service, for purposes of this Decision, means the purchase by FDAS of Crypto Contracts from FCC, and the sale by FDAS of Crypto Contracts to FCC, in each case upon the receipt by FDAS of a purchase or sale order from FCC, and the reconciliation, trade settlement and delivery of the Crypto Assets, that are related to such Crypto Contracts, into or out of FCC's custodial account(s) at FDAS through corresponding adjustments made by FDAS to the cash and/or Crypto Asset balances in FCC's custodial account(s) pursuant to the terms of the custodial services agreement between FDAS and FCC.

FDAS Wallets means the FDAS omnibus digital wallets holding Crypto Assets relating to, in the case of Crypto Assets held for FCC, Crypto Contracts.

IIROC means the Investment Industry Regulatory Organization of Canada.

Jurisdictions means each of the provinces and territories of Canada.

Representations

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

The Filer

1. FDAS is a limited liability trust company organized under New York law authorized pursuant to Section 102-a of the New York Banking Law to engage in all activities described in Sections 96 and 100 of the New York Banking Law, with the exception of accepting deposits and making loans (other than pursuant to the exercise of its fiduciary powers). FDAS provides custody and trade execution services for digital assets. As a New York State-chartered trust company, FDAS is regulated by the New York State Department of Financial Services. In addition, FDAS is registered as a "money services business" with Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury. FDAS is not registered in any capacity in Canada.

2. FDAS is part of the Fidelity group of companies known as Fidelity Investments. FCC, which is also part of the Fidelity group of companies, is, and will be, the only Canadian client of FDAS.

3. FDAS is currently operating in Canada as described in this Decision. Subject to the Requested Relief, FDAS is not in default of securities legislation of any of the Jurisdictions.

4. The United States has a comprehensive financial services regime that FDAS is subject to. The New York State Department of Financial Services requires FDAS to satisfy, among other things, certain prescribed financial and capital requirements.

The Filer's Operating Model in Canada

5. FCC is FDAS' sole Canadian client. FDAS will not otherwise carry on business in Canada and will not advertise or otherwise market its services or business in Canada.

6. FCC is registered as an investment dealer in each of the Jurisdictions, a futures commission merchant in Ontario, a dealer (futures commission merchant) in Manitoba and a derivatives dealer in Québec. As an investment dealer, FCC is

a member of IIROC. FCC is also approved by IIROC to act as a carrying broker. Accordingly, FCC is subject to regulation and regulatory oversight in Canada.

7. Any other person in Canada that wishes to use the FDAS Service must do so through the services offered by FCC.

8. FCC relies on the relief granted in the FCC Decisions in connection with its own services involving Crypto Contracts. The FCC Decisions include a number of conditions that address, among other things, the regulatory framework that applies to FDAS, the steps taken by FDAS to mitigate operational and custodial risks, appropriate systems oversight, and the supervision, insurance and capital requirements that FDAS is subject to.

The FDAS Service

9. While the only Crypto Contracts currently available through the FDAS Service are based on bitcoin and ether, FDAS plans to expand the FDAS Service in the future to include other Crypto Assets.

10. Under the FDAS Service, all orders and executions only occur through FDAS. In other words, for FCC orders submitted through the FDAS Service, FDAS is the seller on each FCC buy order and the purchaser on each FCC sell order. The bilateral contract or arrangement between FCC and FDAS in connection with that buy or sell transaction and FCC's contractual right relating to the Crypto Asset is referred to as a Crypto Contract.

11. In all cases, including with orders placed by FCC, FDAS, insofar as it trades as principal, manages its risk with offsetting trades being executed immediately against other FDAS clients or approved counterparties as described in representations 12 through 15.

12. In order to establish the execution price, subject to the requirements of the applicable order type, FCC's orders with FDAS are either (a) matched internally with another client of FDAS under the FDAS Matching Service or (b) failing that, routed away and filled based on prices provided to FDAS by FDAS' approved counterparties. FCC does not know if an executed order is internally matched or routed away. FCC also does not know the identity of any FDAS client whose orders facilitated an internal match, nor the identity of approved counterparties to whom an order has been routed.

13. The FDAS Matching Service involves the operation by FDAS of a non-displayed order book that facilitates the matching of client orders. Order matching is conducted on a price-time priority basis – orders with the highest (buy) or lowest (sell) price are prioritized over orders with a lower (buy) or higher (sell) price; orders are then ranked on the system by arrival time. Orders matched through the FDAS Matching Service are assigned a trade price of the mid-point of prices that are derived from reference prices from external marketplaces, subject to the constraints of the applicable order type. FCC does not know the execution price of an order before the order is executed. If an order is not matched through the FDAS Matching Service, it will be routed away to FDAS' approved counterparties in the manner described in the next paragraph.

14. The routing algorithm used by FDAS prioritizes orders by price in order to attempt to provide FCC and FDAS' other clients with the best price for orders available from the FDAS Matching Service and, if an order is not matched through the FDAS Matching Service, FDAS' network of approved counterparties. For this purpose, "best price" means the highest available price for sell orders and the lowest available price for buy orders. If an order is not matched through the FDAS Matching Service, the FDAS Service requests the best prices that are available from FDAS' approved counterparties. The order handling process chooses the best price from among the prices quoted by these approved counterparties within a narrow range, and executes the order against FDAS at that price as the execution price, subject to the requirements of the applicable order type. FDAS then executes the client order in a riskless principal trade. For trades executed with FCC, FDAS does not mark-up or mark-down quotes received from approved counterparties.

15. If an order is not executed after it is routed away, it remains eligible either to be matched through the FDAS Matching Service or to be executed through FDAS' approved counterparties until the client cancels the order or the order is cancelled systematically at the end of the day. The manner in which an initially unfilled order is handled depends upon the order type.

16. Reference data is provided by FDAS to FCC and FDAS' other clients on a proprietary user interface. This reference data shows purchase and sale prices for trades on certain digital asset trading venues. This indicative pricing is not reflective of the liquidity available through the FDAS Matching Service or its approved counterparties, or of FDAS client trades executed through the FDAS Service, and is not to be relied upon by FCC as the expected execution price for any order.

17. FDAS provides information to each client regarding the status of the client's orders and resulting trades. Together with the reference data provided, as referred to in the preceding paragraph, FDAS provides sufficient information to facilitate the trading decisions of FCC, and compliance by FCC with its best execution obligations under IIROC rules, which, for greater certainty, require fair pricing. FDAS also provides information to FCC to allow it to understand how its orders are handled and executed, how trades are priced and any associated fees applied by FDAS in the context of a trade.

18. FDAS clears and settles trades between FCC and FDAS in the manner described below and by recording appropriate transfers between the FDAS Wallets and the FDAS Bank Account.

19. Under the FDAS Service, all trades involving an order placed by FCC are settled only between U.S. dollars and Crypto Contracts, and the full value of each transaction is exchanged (less any fees). Proceeds from buy or sell orders are made available to FCC after FDAS' trade settlement processes are complete. When a buy order is executed, the notional U.S. dollar value of the transaction is debited from FCC's U.S. dollar cash custody account with FDAS, and the Crypto Assets relating to the Crypto Contract traded are reflected in FDAS's custody dashboard. When a sell order is executed, the amount of Crypto Assets to which FCC has an interest are debited from its balance in FCC's custody account with FDAS, and the U.S. dollars to be received by FCC are reflected in FDAS' custody dashboard. Once FDAS' trade settlement processes are completed, the Crypto Assets relating to the Crypto Contract or the U.S. dollar proceeds of the transaction are available to FCC.

20. The FDAS Service does not enable short selling, as the FDAS Service does not implement a sell order unless the client holds the requisite Crypto Assets with FDAS.

21. FDAS has established and will maintain and apply effective policies and procedures to prevent fraud and market manipulation in connection with the FDAS Service, including through policies and procedures to monitor for and investigate potential instances of abusive trading. Certain features of the FDAS Service also help to limit the opportunities for fraud or market manipulation. These features include:

    a) limiting the use of the FDAS Service to approved clients;

    b) only allowing orders to be entered by authorized users;

    c) not displaying orders entered on the FDAS Matching Service to other clients;

    d) using the pricing mechanics descried in paragraph 13 to price trades via the FDAS Matching Service;

    e) hiding trade details for transactions executed between FDAS and a client from all of its other clients and from public view; and

    f) prohibiting the crossing of trades between accounts of the same client.

    In addition, FDAS does not provide economic incentives to counterparties to attract order flow.

22. The Filer has also established and maintains policies that address and escalate complaints, that govern the cancellation, variation and correction of trades executed through the FDAS Service and that address the maintenance of books, records and other documents relating to the transactions executed by the Filer with FCC, including, but not limited to, records of all orders and trades, including the product, price, volume, time when the order is entered, matched, cancelled or rejected, any reference pricing used to assign prices to trades resulting from the FDAS Matching Service, and the identifier of the FCC authorized user that entered the order.

23. The Filer has risk management policies and procedures and internal controls in place to minimize the risk that clearing and settlement of trades will not take place according to the Filer's rules, policies and procedures. These policies and procedures address, and mitigate, counterparty risk by, among other things, establishing an approval process for counterparties, establishing risk limits per counterparty and addressing the potential for counterparty default.

24. Conflicts of interest are minimized, as the components of the FDAS Service do not permit for any level of differentiation between clients. This means that all of FDAS' clients, including FCC and FDAS' affiliates that use the FDAS Service, are treated the same. Further, FDAS does not provide any economic or other incentive to FCC or to FDAS' affiliates to use the FDAS Service (including to attract order flow), and all fees are transparent to the client. FDAS also does not trade against its clients through the FDAS Service for speculative purposes.

Other Considerations

25. Staff of the CSA have informed FDAS that staff are of the view that as a result of FDAS' provision of the FDAS Service to FCC, in certain Jurisdictions, the FDAS Matching Service constitutes a "marketplace", as that term is defined in NI 21-101.

26. The Filer submits that the application of the Marketplace Rules is not warranted. Further, the terms and conditions to be imposed in this Decision on FDAS and by the FCC Decisions on FCC, the only Canadian client of FDAS, are adequate to address key risks.

27. Staff of the CSA have informed FDAS that staff are of the view that as a result of FDAS' provision of the FDAS Service to FCC, in certain Jurisdictions the FDAS Service constitutes a "clearing agency" or a "clearing house", as such terms are defined or referred to in securities or commodities futures legislation.

28. Given the structure of the FDAS Service, the terms and conditions set out in this Decision, and the fact that FCC, a regulated investment dealer subject to the IIROC registration and compliance regime, will be FDAS' sole Canadian client, the Filer submits that it is appropriate to exempt FDAS from the recognition requirement that applies to clearing agencies or clearing houses, as applicable, seeking to carry on business in the Jurisdictions. FDAS is a limited liability trust company regulated by the New York State Department of Financial Services, it is not systemically important and it does not pose a significant risk to the capital markets because the FDAS Services is very limited in scope, particularly in Canada.

29. Generally, the PFMI Principles and PFMI Disclosure Framework Document (as defined in NI 24-102) are not relevant to FDAS because of the nature and scope of the FDAS Services, and FDAS' global regulatory environment.

30. Under the FDAS Service, FDAS is the counterparty to each transaction entered into by FCC through the FDAS Service. Accordingly, the Filer submits that given the structure of the FDAS Service and given the fact that the only Canadian client that will use the FDAS Service is FCC, a regulated investment dealer, the FDAS Service and FDAS do not present the same risk profile as other Crypto Asset trading platforms that operate or wish to operate in the Jurisdictions as a clearing agency or clearing house, as applicable.

31. For the reasons specified above, the Filer submits that it is not prejudicial to the public interest to grant the Requested Relief.

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 and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Requested Coordinated Relief satisfies the test set out in the securities legislation of that jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Requested Coordinated Relief, as applicable.

The Decision of the Principal Regulator under the Legislation is that the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation of its jurisdiction is that the Requested Coordinated Relief is granted, subject to the Filer complying with the following terms and conditions:

<u>Limitations on dealings with Canadian clients</u>

A. The Filer will not provide the FDAS Service to any Canadian client other than FCC.

B. The Filer will only continue to offer the FDAS Service to FCC so long as FCC is registered as an investment dealer in one of the Jurisdictions, is an IIROC member dealer in good standing, and is in compliance with applicable securities law.

C. The Filer will require FCC to provide prompt notification to the Filer if it is no longer registered as an investment dealer in any of the Jurisdictions, is no longer an IIROC member dealer in good standing, or is not in compliance with applicable securities law.

<u>Limitations on trading by Filer</u>

D. The Filer will not submit orders to the FDAS Service on a proprietary basis, other than in connection with offsetting trades relating to client orders that are executed on a riskless principal basis, or as it otherwise deems appropriate for the delivery of its services. For clarity, at no time shall the Filer trade against its clients through the FDAS Service for speculative purposes.

<u>Regulatory status and compliance with applicable law</u>

E. The Filer will continue to be regulated as a New York State-chartered trust company by the New York State Department of Financial Services and registered as a "money services business" with the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury, and will comply with all applicable requirements.

F. The Filer will promptly notify the Principal Regulator if the New York State Department of Financial Services makes a determination that the Filer is not permitted by that regulatory authority to continue to offer the FDAS Service being provided to FCC.

G. The Filer will promptly notify the Principal Regulator if it is required by the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, or the National Futures

Association to transition to or be regulated under a regulatory framework overseen by any one of those financial or other regulators.

H. The Filer will comply with applicable securities law.

General filings

I. The Filer will file with the Principal Regulator the information otherwise required to be filed by an ATS in Exhibit E of the Form 21-101F2 as it relates to the FDAS Service provided by the Filer to FCC.

Financial viability

J. The Filer will at all times satisfy the financial and capital requirements imposed on it by the New York State Department of Financial Services and will otherwise maintain sufficient financial resources for the proper performance of the FDAS Service provided to FCC, and for its performance of those functions in furtherance of its compliance with these terms and conditions.

K. The Filer will notify the Principal Regulator immediately upon becoming aware that the Filer does not or may not have sufficient financial resources in accordance with the requirements of condition J.

Market integrity

L. The Filer will take reasonable steps to ensure that the operation of the FDAS Service does not interfere with fair and orderly markets.

M. The Filer will maintain and ensure compliance with effective policies and procedures to prevent fraud and market manipulation in connection with the FDAS Service, including policies and procedures to monitor for and investigate potential instances of abusive trading.

N. The Filer will maintain and ensure compliance with reasonable policies addressing and escalating complaints and governing the cancellation, variation or correction of trades executed through the FDAS Service.

Conflicts of interest

O. The Filer will establish, maintain and ensure compliance with effective policies and procedures to manage any conflict of interest arising from the FDAS Service in a manner that ensures that none of its affiliates receives an unreasonable advantage in their use of the FDAS Service to the detriment of FCC or FCC's use of the FDAS Service.

Transparency of operations and of order and trade information

P. The Filer will provide FCC with information reasonably necessary to enable it to understand the FDAS Service, including how orders are handled and interact, how trades are priced and any associated fees or spreads.

Q. The Filer will provide FCC with sufficient and relevant information regarding market pricing (for example, current pricing from relevant indices) and trade information to facilitate the trading decisions of FCC, and compliance by FCC with its best execution obligations under IIROC rules.

Confidentiality of users' order and trade information

R. The Filer will maintain appropriate and sufficient controls to protect the confidentiality of FCC's order and trade information, subject to FCC consenting to the disclosure or such information and/or disclosure to any of the applicable Canadian securities regulatory authorities as required by applicable securities laws.

Books and records

S. The Filer will keep books, records and other documents reasonably necessary for the proper recording of its business and to demonstrate compliance with applicable securities laws and the conditions of this Decision, including, but not limited to, records of all orders and trades, including the product, price, volume, time when the order is entered, matched, cancelled or rejected, any reference pricing used to assign prices to trades resulting from the FDAS Matching Service, and the identifier of any FCC authorized user that entered the order, for all transactions that the Filer executes with FCC and any related transactions undertaken by the Filer in facilitating the execution with FCC.

T. The Filer will maintain the books, records and other documents referred to in paragraph 22 in electronic form and promptly provide them in the format and at the time requested by the Principal Regulator pursuant to applicable securities laws. Such books, records and other documents will be maintained by the Filer for a minimum of seven years.

Systems and internal controls

U. The Filer will maintain effective internal controls to manage operational risks, including risks related to systems that support the FDAS Service, including internal controls to ensure that its systems function properly and have adequate capacity and security.

V. The Filer will maintain effective procedures and processes to ensure the provision of accurate and reliable settlement services in connection with trades executed through the FDAS Service.

W. The Filer will establish, maintain and apply effective risk management policies and procedures and internal controls in place to minimize the risk that settlement will not take place as expected.

X. The Filer will maintain effective information technology controls, and conduct regular reviews and testing of such controls, to support the FDAS Service, including controls relating to operations, information security, cyber resilience, change management, problem management, network support and system software support.

Y. The Filer will establish, maintain and apply policies and procedures that appropriately govern the selection and oversight of service providers to which key services or systems supporting the FDAS Service have been outsourced. Policies and procedures will include:

a. steps for appropriate due diligence in selecting a provider,

b. requirements relating to:

i. a written contract,

ii. access to appropriate books and records relating to the service provided,

iii. conflicts management,

iv. appropriate internal controls relating to, among other things, information security and cyber resilience; and

c. a process for monitoring performance and adherence to the contract.

Z. The Filer will maintain, update and test a business continuity plan, including emergency procedures, and a plan for disaster recovery that provides for the timely recovery of operations and fulfilment of its obligations with respect to the FDAS Service, including in the event of a wide-scale or major disruption.

Reporting

AA. The Filer will provide at least 45 days advance notice to the Principal Regulator for any significant changes to the information filed in the Application and any supporting documents to the extent that such changes materially change the FDAS Service as described to the Principal Regulator.

BB. The Filer will deliver to the Principal Regulator, in a form and format acceptable to the Principal Regulator, within 30 days of the end of each March, June, September and December a report that includes, for every type of Crypto Asset traded with FCC during the prior quarter, the total number of trades the Filer executed with FCC during that quarter, the aggregate value of those trades, and an indication of the number and aggregate value of such trades that were filled through the FDAS Matching Service.

CC. The Filer shall promptly notify the Principal Regulator of any of the following:

a. any material system failure of the FDAS Service (including cybersecurity breaches) that adversely impacts FCC's use of the FDAS Service;

b. any problem with the clearing and settlement of trades executed through the FDAS Service that could materially affect the safety and efficiency of the FDAS Services provided to FCC;

c. any material event of default by one of the Filer's approved counterparties that has affected, or is expected to affect, the settlement of trades executed through the FDAS Service;

d. any known investigation of, or regulatory action against, the Filer by a regulatory authority in any jurisdiction in which it operates;

e. details of any material litigation instituted against the Filer;

f. notification that the Filer has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Filer or has a proceeding for any such petition instituted against it; and

g. the appointment of a receiver or the making of any voluntary arrangement with creditors.

DD. The Filer will provide FCC with notice as soon as practicable if any new regulation or change to an existing regulation is proposed that will materially impact the FDAS Service provided to FCC.

EE. In addition to any other reporting required herein and subject to the application of solicitor-client privilege, the Filer will provide to the Principal Regulator, on a timely basis, any report, data, document or information about the FDAS Service provided to FCC, that may be requested by the Principal Regulator from time to time. Unless otherwise prohibited under applicable law, the Filer will share with the Principal Regulator information relating to regulatory and enforcement matters that will materially impact the FDAS Service provided to FCC.

Trade Reporting Data

FF. In connection with the Filer's obligations under the Local Trade Reporting Rules, the Filer has agreed with FCC that FCC will be delegated the responsibility to report, or will be the reporting counterparty, under the Local Trade Reporting Rules, as applicable, which obligations can be satisfied by FCC providing the same type and frequency of reporting as required under condition (y) of the FCC Decisions.

Submission to jurisdiction

GG. With respect to a proceeding brought by a securities regulatory authority in a province or territory arising out of, related to, concerning or in any other manner connected with the securities regulatory authority's regulation and oversight of the activities of the Filer in the applicable province or territory, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals in, and (ii) an administrative proceeding in, the applicable province or territory.

HH. The Filer will file with each Coordinated Review Decision Maker a valid and binding appointment of an agent for service in the Coordinated Review Decision Maker's province or territory upon whom the applicable securities regulatory authority 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 or relating to or concerning the applicable securities regulatory authority's regulation and oversight of the Filer's activities in the province or territory.

Amendments and expiry

II. This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.

This Decision shall expire five years from the date of this Decision.

In respect of the Requested Coordinated Relief and the Requested Prospectus Relief

Date: January 18, 2023

"Susan Greenglass"
Director, Market Regulation
Ontario Securities Commission

APPENDIX A

MARKETPLACE RULES,
CLEARING RECOGNITION REQUIREMENT,
CLEARING RULES AND
LOCAL TRADE REPORTING RULES

In this Decision,

a) the "**Marketplace Rules**" collectively means each of the following:

   (i) National Instrument 21-101 – *Marketplace Operation* (**NI 21-101**) in whole;

   (ii) National Instrument 23-101 – *Trading Rules* (**NI 23-101**) in whole; and

   (iii) National Instrument 23-103 – *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) in whole;

b) the "**Clearing Recognition Requirement**" means each of the following:

   (i) the requirement to be recognized as a clearing agency in section 67 of the *Securities* Act (Alberta);

   (ii) the requirement to be recognized as a clearing agency in section 25 of the *Securities Act* (British Columbia);

   (iii) the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the *Securities Act* (Ontario);

   (iv) the requirement to be recognized as a settlement system under section 169 of the *Securities Act* (Québec); and

   (v) the requirement to be recognized as a clearing agency in section 21.2 of *The Securities Act* (Saskatchewan);

c) the "**Clearing Agency Rules**" mean National Instrument 24-102 – *Clearing Agency Requirements* (**NI 24-102**) in whole; and

d) the "**Local Trade Reporting Rules**" means each of the following:

   (i) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of OSC Rule 91-507;

   (ii) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of MSC Rule 91-507; and

   (iii) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**), and the power to grant exemption orders set out in Section 43 of MI 96-101.

B.3.2 Harvest Portfolios Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by an investment fund manager granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 to permit references to Lipper Awards and Lipper Leader Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the Lipper Awards being referenced have not been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), and 19.1.

October 26, 2022

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

AND

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

AND

IN THE MATTER OF
HARVEST PORTFOLIOS GROUP INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of existing and future mutual funds of which the Filer or an affiliate of the Filer is, or in the future will be, the investment fund manager and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 19.1 of NI 81-102 from the requirements set out in paragraphs 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

1. the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and

2. the rating or ranking is to the same calendar month end that is:

   (a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

   (b) not more than three months before the date of first publication of any other sales communication in which it is included

   in order to permit the Lipper Awards (as defined below) and Lipper Leader Ratings to be referenced in sales communications relating to the Funds (together, the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

The Filer and the Funds

1. The Filer is a corporation established under the laws of the province of Ontario. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is, or will be, the promoter, trustee and manager of the Funds and is registered as: (i) a portfolio manager in Ontario and (ii) an investment fund manager in Newfoundland and Labrador, Ontario and Quebec.

3. Each of the Funds is, or will be, an open-ended mutual fund trust established under the laws of Ontario. The securities of each of the Funds are, or will be, qualified for distribution pursuant to one or more prospectuses or simplified prospectuses, as the same may be amended or renewed from time to time. Each of the Funds is, or will be, a reporting issuer in each of the Jurisdictions.

4. Each of the Funds is, or will be, subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

5. Neither the Filer nor any of the existing Funds is in default of the securities legislation in any of the Jurisdictions.

Lipper Leader Ratings and Lipper Awards

6. The Filer wishes to include in sales communications of the Funds references to the Lipper Leader Ratings (which are performance ratings or rankings for funds issued by Lipper and include the Lipper Ratings for Consistent Return, Lipper Ratings for Total Return, Lipper Ratings for Preservation and the Lipper Ratings for Expense, which are described below) and references to the Lipper Awards (as described below), where such Funds have been awarded a Lipper Award.

7. Lipper, Inc. (**Lipper**) is a "mutual fund rating entity" as that term is defined in NI 81-102. Lipper is part of the Refinitiv group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

8. One of Lipper's programs is the Lipper Fund Awards from Refinitiv program (the **Lipper Awards**). This program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently, the Lipper Awards take place in approximately 17 countries.

9. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which were awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in a number of individual fund classifications for three-, five- and ten-year periods. For the Lipper ETF Awards, Lipper designates award-winning funds in a number of individual fund classifications for the three and five year periods, and it is expected that awards for the ten-year period will be given in the future.

10. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three or five years of performance history, as applicable) will claim a Lipper ETF Award.

11. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

12. In Canada, the Lipper Leader Rating System includes Lipper Ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), Lipper Ratings for Total Return (reflecting funds' historical total return performance relative to funds in the same classification), Lipper Ratings for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification) and Lipper Ratings for Expense (reflecting funds' expense minimization relative to funds with similar load structures). In each case, the categories for

fund classification used by Lipper for the Lipper Leader Ratings are those maintained by the CIFSC (or a successor to the CIFSC). Lipper Leader Ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an unweighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

13. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short-- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 and 60 month periods only) wins a Lipper Award.

Sales Communication Disclosure

14. The Lipper Leader Ratings are performance ratings or rankings under NI 81-102 and Lipper Awards may be considered to be performance ratings or rankings under NI 81-102 given that the awards are based on the Lipper Leader Ratings as described above. Therefore, references to Lipper Leader Ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

15. In Canada and elsewhere, Lipper Leader Ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one-year period. This means that a sales communication referencing a Lipper Leader Rating cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102 because a rating is not available for the one-year period. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader Ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader Ratings and the Lipper Awards, which are based on the Lipper Leader Ratings, must disclose the corresponding Lipper Leader Rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one-year period is not available for the Lipper Leader Ratings, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards also cannot comply with the matching requirement contained in paragraph 15.3(4)(c) of NI 81-102.

17. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader Ratings or Lipper Awards in sales communications for the Funds because subsection 15.3(4.1) of NI 81-102 is available only if a sales communication otherwise complies with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying Lipper Leader Ratings are not available for the one-year period, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for the Funds to reference overall Lipper Leader Ratings and the Lipper Awards in sales communications.

18. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. The paragraph provides that in order for a rating or ranking such as a Lipper Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a fund receives an award in November, paragraph 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for the Lipper Leader Ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards and Lipper Leader Ratings provide important tools for investors, as they provide them with context when evaluating investment choices.

22. The Lipper Awards and Lipper Leader Ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis and alleviates any concern that references to them may be misleading and therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader Ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Awards or Lipper Leader Ratings complies with Part 15 of NI 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:

   (a) the name of the category for which the Fund has received the award or rating;

   (b) the number of mutual funds in the category for the applicable period;

   (c) the name of the ranking entity, i.e., Lipper;

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader Rating is based;

   (e) a statement that Lipper Leader Ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Award, as applicable;

   (g) in the case of a Lipper Leader Rating (other than Lipper Leader Ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader Rating, as applicable;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader Rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader Rating is referenced, the Lipper Leader Ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader Ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category), as applicable; and

   (k) reference to Lipper's website for greater detail on the Lipper Awards and Lipper Leader Ratings, which includes the rating methodology prepared by Lipper;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader Ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

Application File #: 2022/0454
SEDAR File #s: 3481058; 3481059; 3481065

B.3.3 Purpose Investments Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exchange traded mutual funds granted exemption from the concentration restriction in subsections 2.1(1) and (1.1) of NI 81-102 to permit exchange-traded funds to invest in accordance with its fundamental investment objective of seeking to provide long-term capital appreciation through the purchasing and holding the NASDAQ or New York Stock Exchange listed and traded equity securities of a single US public issuer specified in the exchange traded fund's investment objectives, including, in the case of alternative mutual funds, by using leverage in accordance with NI 81-102, of up to 25% of the ETF's unlevered net asset value solely through cash borrowing for purchasing the specified securities, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), (1.1) and 19.1.

December 14, 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
PURPOSE INVESTMENTS INC.
(the Filer)

AND

APPLE (AAPL) YIELD SHARES PURPOSE ETF
AMAZON (AMZN) YIELD SHARES PURPOSE ETF
TESLA (TSLA) YIELD SHARES PURPOSE ETF
BERKSHIRE HATHAWAY (BRK) YIELD SHARES PURPOSE ETF
ALPHABET (GOOGL) YIELD SHARES PURPOSE ETF
MICROSOFT (MSFT) YIELD SHARES PURPOSE ETF
EXXON MOBIL (XOM) YIELD SHARES PURPOSE ETF
JPMORGAN CHASE (JPM) YIELD SHARES PURPOSE ETF
JOHNSON & JOHNSON (JNJ) YIELD SHARES PURPOSE ETF
UNITEDHEALTH GROUP (UNH) YIELD SHARES PURPOSE ETF
(the Proposed ETFs, and similar future ETFs managed by the Filer
(the Future ETFs, together with the Proposed ETFs, the ETFs))

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the ETFs for exemptive relief from subsections 2.1(1) and 2.1(1.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Concentration Restriction**) to permit each ETF to invest in a single Specified US Public Issuer (as defined below) in excess of the investment restrictions contained in such sections, in accordance with its fundamental investment objective (the **Exemption Sought**). The fundamental investment objective of the ETFs will include providing unitholders with long-term capital appreciation through the purchase and holding of a single Specified US Public Issuer, including, in the case of alternative mutual funds, by using leverage in accordance with NI 81-102, through cash borrowing.

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 all of the provinces and territories of Canada other than the Jurisdiction (together with the Jurisdiction, the **Canadian Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* (**NI 14-101**), National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) or in NI 81-102 have the same meaning if used in this decision unless otherwise defined herein:

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with the Filer to perform certain duties in relation to the ETF, including the posting of a liquid two-way market for the trading of the ETF Securities on an Exchange or another Marketplace.

ETF Security means an exchange-traded unit or share of an ETF.

Exchange means the Toronto Stock Exchange or Neo Exchange Inc., as applicable.

Marketplace means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operations* that is located in Canada.

NASDAQ means Nasdaq Global Select Market.

NYSE means New York Stock Exchange.

US means United States of America.

Specified US Public Issuer means a public company that is (i) incorporated in the US; (ii) listed in the S&P 500 Index, Dow Jones Industrial Average Index and/or the Nasdaq-100® Index; (iii) has a market capitalization in excess of US$20 billion; (iv) whose Portfolio Securities are listed on the NASDAQ or the NYSE; and (v) whose Portfolio Securities have an average daily trading volume of the Portfolio Securities in the month before the date that the ETF Securities are listed on an Exchange must exceed US$100 million (collectively, the **US Public Issuer Requirements**).

Securityholders means beneficial or registered holders of ETF Securities.

Representations

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

The Filer and the ETFs

1. The Filer is a corporation incorporated under the laws of the Province of Ontario, with its head office located at 130 Adelaide St. West, Suite 3100, Toronto, Ontario.

2. The Filer is registered as (a) an investment fund manager, exempt market dealer, portfolio manager and commodity trading manager in the province of Ontario, (b) an investment fund manager and exempt market dealer in the provinces of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan, and (c) an investment fund manager, exempt market dealer and portfolio manager in British Columbia and Quebec.

3. The Filer, or an affiliate of the Filer, will be the registered investment fund manager and registered portfolio manager of the ETFs. The Filer will apply to list the ETF Securities of the ETFs on an Exchange.

4. The Filer and the Proposed ETFs are not in default of securities legislation in any of the Canadian Jurisdictions.

5. Each Proposed ETF will be an exchange-traded mutual fund that is a trust. Each Future ETF will be an exchange-traded mutual fund that is a trust, corporation or separate class of shares of a mutual fund corporation governed by the laws of a Canadian Jurisdiction.

6. Each Proposed ETF will be an open-ended alternative mutual fund (as defined in NI 81-102) and each Future ETF will be an open-ended investment fund subject to NI 81-102.

7. The ETFs will be subject to NI 81-102, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

8. The Filer will file a final long form prospectus in respect of each of the ETFs which will be prepared and filed in accordance with NI 41-101 or National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

9. Each ETF will be a reporting issuer under the laws of one or more of the Canadian Jurisdictions.

10. ETF Securities will be (subject to satisfying the original listing requirements of the applicable Exchange) listed on an Exchange.

11. Designated Brokers will act as intermediaries between investors and the ETFs, performing a market-making function, including by standing in the market with bid and ask prices for the ETF Securities to maintain a liquid market for the ETF Securities. The majority of trading in ETF Securities will occur in the secondary market.

12. The fundamental investment objective of each ETF will be to seek to provide:

    (a) long-term capital appreciation through purchasing and holding securities of the Specified US Public Issuer (referred to as the **Portfolio Securities**), including, in the case of alternative mutual funds, by using leverage in accordance with NI 81-102, through cash borrowing to purchase Portfolio Securities,

    (b) distributions by writing covered call options and/or cash covered put options on a portion of the ETF's portfolio; and

    (c) may also include, hedging of substantially all of the ETF's US dollar currency exposure back to the Canadian dollar.

13. Specifically, the Portfolio Securities and the Specified US Public Issuer for each of the Proposed ETFs will be as follows:

ETF Name	Portfolio Securities	Specified US Public Issuer
Apple (AAPL) Yield Shares Purpose ETF	Common stock	Apple Inc.
Amazon (AMZN) Yield Shares Purpose ETF	Common stock	Amazon.com, Inc.
Tesla (TSLA) Yield Shares Purpose ETF	Common stock	Tesla Inc.
Berkshire Hathaway (BRK) Yield Shares Purpose ETF	Class A common stock, Class B common stock	Berkshire Hathaway Inc.
Alphabet (GOOGL) Yield Shares Purpose ETF	Class A common stock, Class C capital stock	Alphabet Inc.
Microsoft (MSFT) Yield Shares Purpose ETF	Common stock	Microsoft Corporation
Exxon Mobil (XOM) Yield Shares Purpose ETF	Common stock	Exxon Mobil Corporation
JPMorgan Chase (JPM) Yield Shares Purpose ETF	Common stock	JPMorgan Chase & Co.
Johnson & Johnson (JNJ) Yield Shares Purpose ETF	Common stock	Johnson & Johnson
UnitedHealth Group (UNH) Yield Shares Purpose ETF	Common stock	UnitedHealth Group Incorporated

14. Each ETF will use a ticker symbol the Filer believes is unlikely to be confused with the ticker symbol for the Portfolio Securities and the Specified US Public Issuer for the ETF.

15. Distribution of ETF Securities (**Distribution**) will be conducted without the knowledge or consent of the Specified US Public Issuers and the Filer will as a general matter not have direct knowledge or access to material information regarding the Specified US Public Issuers or Portfolio Securities other than publicly available information.

Disclosure

16. The prospectus of each ETF (the **Prospectus**) will disclose:

    (a) the name of each ETF using the convention reflected in this decision for the Proposed ETFs;

(b) the investment objective and investment strategy of each ETF as well as the risk factors associated therewith, including concentration risk;

(c) the fact that the ETF has obtained the Exemption Sought to permit the purchase of the Portfolio Securities on the terms described in this decision;

(d) the ways in which, and the extent to which, purchasing and holding the ETF Securities can be expected to be different from directly purchasing and holding the Portfolio Securities and the factors influencing these differences (such as the ETF's cash-borrowing, option-writing and currency-hedging strategies), including in respect of performance, returns and securityholder rights;

(e) that the ETF's investment in the Portfolio Securities will be a passive investment; and

(f) the Filer's specific policies and procedures for making proxy voting and tender decisions in respect of the Specified US Public Issuer and the expected outcomes for the ETF of such decisions in potential scenarios, such as merger or other restructuring of the Specified US Public Issuer, a sale of part or all of its business, or bankruptcy of the Specified US Public Issuer and other scenarios.

17. The Prospectus will provide only abbreviated disclosure in respect of the Portfolio Securities and the Specified US Public Issuer based on publicly available information.

18. The Filer intends to meet the full, true and plain disclosure requirement of the Legislation in connection with the ETF Securities without having responsibility for the accuracy of disclosure issued by the Specified US Public Issuer in respect of the Portfolio Securities. The Prospectus will direct investors to public disclosure made available by the Specified US Public Issuer in respect of the Portfolio Securities in accordance with applicable US legislation. The Prospectus will also clarify that such disclosure and other information made publicly available about the Portfolio Securities and the Specified US Public Issuer on the Filer's website and otherwise cannot be expected to contemplate the Distribution. The Prospectus will clearly state that the Filer is not the source of disclosure relating to the Portfolio Securities and the Specified US Public Issuer and will clearly disclaim the Filer's responsibility both for verifying the accuracy of such disclosure and for updating such disclosure.

19. To meet the full, true and plain disclosure requirement, the Prospectus will disclose that the Specified US Public Issuer will not receive a direct or indirect financing benefit from the Distribution.

Reasons for the Exemption Sought

20. The ETFs cannot pursue their fundamental investment objectives without the Exemption Sought.

21. The Filer submits that each ETF's strategy to acquire Portfolio Securities will be transparent, passive and fully disclosed to investors. An ETF will not invest in securities other than Portfolio Securities.

22. The Filer submits that an ETF that relies on the Exemption Sought would be analogous to an investment fund that relies on the exception to the Concentration Restriction in subsection 2.1(2) of NI 81-102 for purchases of equity securities by a "fixed portfolio investment fund", as defined in NI 81-102, in accordance with its investment objectives. The Filer submits that the only difference would be that the ETFs are in continuous distribution and the ETF Securities are redeemable on each trading day, accordingly, the ETFs will buy and sell Portfolio Securities as may be required in connection with subscription and redemption requests received by the ETF. However, the Filer submits that the existence of the ETF's Designated Broker should mean that the ETF Securities (which are listed on an Exchange) will not trade at a discount to the net asset value per ETF Security which may more likely be the case for a "fixed portfolio investment fund".

23. The Specified US Public Issuers will be among the largest public issuers in the US. The Portfolio Securities will be some of the most liquid equity securities listed on the NASDAQ or NYSE and will be less likely to be subject to liquidity concerns than the securities of other issuers.

24. The Filer believes that any risks associated with an investment in only a single Specified US Public Issuer in reliance on the Exemption Sought will be mitigated by the fact that the Portfolio Securities are highly liquid and that there is a robust liquid options market for these securities.

25. The Filer submits that, given the market price per publicly listed security of the US Public Issuers, many investors would be unable to achieve meaningful exposure to these US Public Issuers through direct investment. The ETFs would provide investors with the ability to get access and obtain meaningful exposure to the Portfolio Securities given the ETF size.

Decision

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

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

(a) but for the fact that ETF Securities may be subscribed for or redeemed on each trading day (i.e. the ETFs being in continuous distribution), the ETF otherwise meets the definition of "fixed portfolio investment fund" in NI 81-102;

(b) any purchase by the ETF of the Portfolio Securities is in accordance with the investment objectives of the ETF;

(c) at the time that the ETF Securities are listed on an Exchange, the Specified US Public Issuer and its Portfolio Securities satisfy the US Public Issuer Requirements;

(d) the ETF will not purchase Portfolio Securities if the ETF would, as a result of such purchase, become an insider of the Specified US Public Issuer;

(e) the ETF's prospectus contains the disclosure referred to in representations 16 through 19 above; and

(f) the Filer will not permit the ETFs to be used as a financing vehicle by a Specified US Public Issuer or to permit an indirect offering of Portfolio Securities into a jurisdiction of Canada.

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

Application File #: 2022/0499
SEDAR File #: 3475373

B.3.4 Pharmasave Drugs (East) Ltd.

Headnote

Securities Act (Ontario), section 53 and subsection 74(1) – application for exemption from the prospectus requirements in connection with certain issuances, sales, and transfers of shares of the Filer – Filer's shares subject to restrictions on issuance, ownership, and transfer – Filer's shares evidence membership.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, and 74(1).

January 19, 2023

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
PHARMASAVE DRUGS (EAST) LTD.
("Pharmasave")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Pharmasave for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an order pursuant to subsection 74(1) of the *Securities Act,* R.S.O. 1990, c. S.5 (the **Act**) that the prospectus requirements of section 53 of the Act (the **Prospectus Requirements**) shall not apply to certain trades in securities of Pharmasave, as described below. Pharmasave has also applied to revoke and replace the Ontario Securities Commission's (**OSC**) ruling dated April 24, 1998 (the **Ruling**) with this decision.

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

(a) The OSC is the principal regulator for this decision, and

(b) Pharmasave 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, Nova Scotia, Saskatchewan and Yukon**.**

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 Pharmasave:

1. Pharmasave is a corporation formed by the filing of Articles of Incorporation (**Articles**) under the *Business Corporations Act*, R.S.O. 1990, c. B.16. Its head office is located at 3100 Steeles Avenue East, Suite 404 in Markham, Ontario, Canada.

2. Pharmasave operates as a franchisee of Pharmasave Drugs (National) Ltd. (**National**). There are currently two franchised corporate regions operating under the National umbrella: Pharmasave and Pharmasave Drugs (West) Ltd.

3. Pharmasave previously operated as Pharmasave Drugs (Ontario) Ltd. Its corporate name was changed to Pharmasave Drugs (East) Ltd. following the consolidation of regions between the Ontario Region and the Eastern Canada Region.

4. Pharmasave and its franchisees are all engaged directly or indirectly in the pharmacy or drug store business. Pharmasave is a member-owned organization whose operations are not carried on primarily with a view to making a profit but rather to facilitate the promotion of its franchisee business on a collective basis under the control of the franchisees.

5. Pharmasave is not, and does not intend to become, a reporting issuer under the securities legislation of any jurisdiction in Canada.

6. Pharmasave's shares are not listed or posted for trading on any stock exchange and Pharmasave does not intend to list or post its shares for trading on any stock exchange.

7. Pharmasave is not a "private company" within the meaning of the Act but its Articles provide that the transfer of its shares (including the proposed class of shares) will be subject to approval from its board of directors.

8. There is no active trading market for Pharmasave's shares and none is expected to develop. Pharmasave's Articles restrict the issuance, transfer and ownership of its shares to and among its franchisees. Pharmasave will only issue shares to franchisees being:

   a. Individuals who have an interest in a franchise agreement with Pharmasave or its subsidiaries, as an individual franchisee;

   b. Individuals who are shareholders of a corporation which is a party to a franchise agreement with Pharmasave or its subsidiaries, except where that shareholder is a corporation (in which case, shares will be issued to an individual who is a shareholder of that corporation); and

   c. Individuals who are members of a partnership which is a party to a franchise agreement with Pharmasave or its subsidiaries, except where that partnership includes partners who are corporations (in which case, shares will be issued to an individual who is a shareholder of one of the corporations).

9. Pharmasave has previously been granted exemptive relief substantially identical to the relief requested in this decision. On April 24, 1998, the OSC issued the Ruling exempting National and Pharmasave from sections 25 and 53 of the Act provided that Pharmasave's Articles and each franchise agreement contain:

   a. The aforementioned restrictions on share issuance, transfer and ownership in subparagraph 8 of this decision; and

   b. A provision requiring each franchisee to "subscribe for or acquire an equal number of common shares of Pharmasave", among other requirements.

10. At the time of the Ruling, there was only one class of common shares. The operative intention in including the aforementioned subparagraph 9(b) of this decision in both the Ruling and Pharmasave's franchise agreements was to ensure all franchisees have an equal number of voting common shares per franchise.

11. The authorized share capital of Pharmasave currently consists of 535,000 common shares and Pharmasave is authorized to issue an unlimited number of common shares. The holders of common shares are entitled to receive notice of and to attend all meetings of the shareholders of Pharmasave and are entitled to one vote for each common share held.

12. National's franchise agreement with its five original regions gave each region the right to limit the total number of stores a shareholder could hold voting shares in to limit the influence a single shareholder could exert in each region. The limit varied between region to region. National presently has consolidated into two regions: Pharmasave East and Pharmasave West. The articles of incorporation for Pharmasave (West) permit non-voting common shares.

13. Pharmasave intends to amend its Articles to add a new non-voting, fully-participating common share class to deal with franchisee issues following the consolidation of regions (the **Proposed Amendment**). The Proposed Amendment would create a voting Class A Common Share and a non-voting Class B Common Share. Pharmasave's franchise agreement currently disentitles any one individual or group that owns more than five franchises from exercising their voting rights for any franchise over five. This is a significant issue after the Eastern Canada region was absorbed by the Ontario Region. Post-merger, Pharmasave requires a prospectus exemption to continue operating as it did under the original Ruling.

14. Since the Ruling:

   a. The Articles were amended to change the name of the corporation from Pharmasave Drugs (Ontario) Ltd. to Pharmasave Drugs (East) Ltd. to reflect the post-merger reality. There have been no other amendments to Pharmasave's Articles and by-laws;

   b. Pharmasave's Franchise Agreement has been subtly amended since the Ruling in non-material respects. The form of Franchise Agreement used in 1998 was amended in 2005 to introduce a table of contents, headings,

definition section, appendices section and conversion of legal language to plain language. Other changes included further restrictions on the transfer of shares and right of first refusal; and

c. After the addition of Pharmasave East franchises, the Franchise Agreement was amended to effect administrative changes and ensure language in the Franchise Agreement was consistent with franchises outside of Ontario. In addition, while there was no change made to the value and subscription cost of the common shares, the annual requirement that said value of the shares was to be determined after the Board received a report from its auditors was removed. Currently, the Board of Directors annually fix the value of each common share at $1.00.

15. Paragraph 14 of the Ruling refers to voting common shares but does not prohibit or exclude the creation of non-voting common shares provided Franchisees still "subscribe for or acquire an equal number of Common Shares" per franchise.

16. All existing shareholders and owners of common shares in Pharmasave would have their common shares reclassified as Class A Common Shares. Non-voting Class B Common Shares would only be issued, as applicable to those franchises, when an owner or ownership group owned more than five franchises.

17. Pharmasave believes that the requested relief is necessary as:

a. Pharmasave is not a "private issuer" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106). Pharmasave would otherwise benefit from the "private issuer" exemption under section 73.4 of the Act and section 2.4 of NI 45-106 but it has over 50 shareholders. Unlike shareholders in publicly traded companies, Pharmasave's shareholders are not subject to market volatility and external factors that the Act intends to guard against;

b. The trades outlined in paragraphs (a) and (b) below will not be made to "accredited investors" (as such term is defined in NI 45-106) in every case where such a trade is made, and it does not appear that any of the other exemptions set forth in NI 45-106 will be available in respect of the trades outlined in paragraphs (a) and (b) below; and

c. Pharmasave's ability to sell Class A and B Common Shares to new and existing shareholders is essential to the continued operation of Pharmasave. The creation of non-voting Class B Common Shares preserves the spirit of paragraph 14 of the Ruling while allowing franchisees who own six or more franchises to continue participating.

18. The exemptive relief requested in this decision would not be prejudicial to the public interest and would have minimal (if any) impact on the public while promoting a fair and efficient capital structure for Pharmasave, its regional affiliate corporations and a specific market sector interested in the drug store business.

19. Pharmasave is not in default of securities legislation in any jurisdiction.

Decision

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

IT IS ORDERED, pursuant to subsection 74(1) of the Act, that the Prospectus Requirements shall not apply to:

(a) The issue of any Class A Common Shares or Class B Common Shares by Pharmasave; and

(b) The sale or transfer of any Class A Common Shares or Class B Common Shares by Pharmasave to new and existing franchisees;

for so long as:

(c) The representations in paragraphs 2-17 above, continue to apply;

(d) Prior to the initial trade to a franchisee of any Class A Common Share or Class B Common Share, Pharmasave shall deliver to each franchisee a copy of:

i. Pharmasave's Articles and by-laws, and all amendments thereto;

ii. Pharmasave's most recent annual audited financial statements, and a copy of any subsequent interim financial statements;

iii. this decision; and

iv. a written statement to the effect that as a consequence of this decision certain protections, rights and remedies provided by the Act, including statutory rights of rescission and damages, will not be available to purchasers of any Class A Common Shares or Class B Common Shares and that certain restrictions are imposed on the disposition or transfer of any Class A Common Shares or Class B Common Shares;

(e) At the time of the specific trade, the Articles and each franchise agreement contain the provisions described in paragraphs 7, 8 and 9, above;

(f) Pharmasave has not issued any securities from treasury since the Ruling other than common shares;

(g) All share certificates for Class A Common Shares or Class B Common Shares issued after the date of this decision, and prior to making the specific trade, bear a legend describing the restrictions on the transfer of shares;

(h) The Articles, by-laws and any franchise agreement of Pharmasave, as specifically relating to this decision, are not amended, without notice to, and the consent of, the Director (as defined in the Act);

(i) The first trade of any Class A Common Shares or Class B Common Shares purchased or acquired pursuant to paragraphs (a) or (b) will be a distribution; and

(j) The amendment of the Articles in the manner described in representation 12 hereof is or has been approved by the required shareholder vote.

AND IT IS ORDERED that the Ruling is revoked.

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File # : 2022/0326

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B.4
Cease Trading Orders

B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
0755461 B.C. Ltd. (formerly, Pro Minerals Inc.)	September 12, 2012	September 24, 2012	September 24, 2012	January 19, 2023

Failure to File Cease Trade Orders

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

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

Company Name	Date of Order	Date of Lapse
Mednow Inc.	January 4, 2023	January 19, 2023

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	
iMining Technologies Inc.	September 30, 2022	
PNG Copper Inc.	November 30, 2022	
Mednow Inc.	January 4, 2023	January 19, 2023
Luxxfolio Holdings Inc.	January 5, 2023	

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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:
IG Mackenzie Global Consumer Companies Fund
IG Mackenzie Global Health Care Fund
IG Mackenzie Global Infrastructure Fund
IG Mackenzie Global Precious Metals Fund
Principal Regulator – Manitoba
Type and Date:
Preliminary Simplified Prospectus dated Jan 16, 2023
NP 11-202 Preliminary Receipt dated Jan 17, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3480675

Issuer Name:
Power Sustainable China Ascent Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 16, 2023
NP 11-202 Final Receipt dated Jan 17, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3468758

Issuer Name:
1832 AM Canadian Dividend LP
1832 AM Canadian Growth LP
1832 AM Global Completion LP
1832 AM Global Low Volatility Equity LP (formerly Scotia Global Low Volatility Equity LP0
1832 AM International Equity LP
1832 AM Tactical Asset Allocation LP
1832 AM Total Return Bond LP (formerly Scotia Total Return Bond LP)
1832 AM U.S. Dividend Growers LP (formerly Scotia U.S. Dividend Growers LP)
1832 AM U.S. Low Volatility Equity LP (formerly Scotia U.S. Low Volatility Equity LP)
Type and Date:
Final Simplified Prospectus dated Jan 20, 2023
NP 11-202 Final Receipt dated Jan 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3472080

Issuer Name:
Invesco 1-10 Year Laddered Investment Grade Corporate Bond Index ETF (formerly, PS 1-10 Yr Laddered Invmt Gr Corp Bond)
Invesco 1-3 Year Laddered Floating Rate Note Index ETF (formerly, PowerShares 1-3 Year Laddered Floating Rate Note Index
Invesco 1-5 Year Laddered All Government Bond Index ETF (formerly, PowerShares 1-5 Year Laddered All Government Bond Ind
Invesco 1-5 Year Laddered Investment Grade Corporate Bond Index ETF (formerly, PS 1-5 Yr Laddered Invmt Gr Corp Bond)
Invesco Canadian Dividend Index ETF (formerly, PowerShares Canadian Dividend Index ETF)
Invesco Canadian Preferred Share Index ETF (formerly, PowerShares Canadian Preferred Share Index ETF)
Invesco ESG Canadian Core Plus Bond ETF (formerly, Invesco Tactical Bond ETF)
Invesco ESG Global Bond ETF
Invesco ESG NASDAQ 100 Index ETF
Invesco ESG NASDAQ Next Gen 100 Index ETF
Invesco FTSE RAFI Canadian Index ETF (formerly, PowerShares FTSE RAFI Canadian Fundamental Index ETF)
Invesco FTSE RAFI Canadian Small-Mid Index ETF (formerly, PS FTSE RAFI Canadian Small-Mid Fundamental Index ETF)
Invesco FTSE RAFI Global Small-Mid ETF (formerly, PowerShares FTSE RAFI Global Small-Mid Fundamental ETF)
Invesco FTSE RAFI Global+ Index ETF (formerly, PowerShares FTSE RAFI Global+ Fundamental Index ETF)
Invesco FTSE RAFI U.S. Index ETF (formerly, PowerShares FTSE RAFI U.S. Fundamental Index ETF)
Invesco FTSE RAFI U.S. Index ETF II (Formerly, PowerShares FTSE RAFI U.S. Fundamental Index ETF II)
Invesco Fundamental High Yield Corporate Bond Index ETF (formerly, PowerShares Fundamental High Yield Corporate Bond Ind
Invesco Global Shareholder Yield ETF (formerly, PowerShares Global Shareholder Yield ETF)
Invesco LadderRite U.S. 0-5 Year Corporate Bond Index ETF (formerly, PowerShares LadderRite U.S. 0-5 Yr Corp Bond Index
Invesco Long Term Government Bond Index ETF (formerly, PowerShares Ultra Liquid Long Term Government Bond Index ETF)
Invesco Low Volatility Portfolio ETF (formerly, PowerShares Low Volatility Portfolio ETF)
Invesco NASDAQ 100 Equal Weight Index ETF
Invesco NASDAQ 100 Index ETF (formerly, Invesco QQQ Index ETF)
Invesco NASDAQ Next Gen 100 Index ETF
Invesco S&P 500 Equal Weight Index ETF
Invesco S&P 500 ESG Index ETF
Invesco S&P 500 ESG Tilt Index ETF
Invesco S&P 500 High Dividend Low Volatility Index ETF (formerly, PowerShares S&P 500 High Dividend Low Vol Index ETF)
Invesco S&P 500 Low Volatility Index ETF (formerly, PowerShares S&P 500 Low Volatility Index ETF)
Invesco S&P 500 Momentum Index ETF (formerly, Invesco DWA Global Momentum Index ETF)
Invesco S&P Emerging Markets Low Volatility Index ETF (formerly, PowerShares S&P Emerging Markets Low Vol Index ETF)
Invesco S&P Europe 350 Equal Weight Index ETF
Invesco S&P Global ex. Canada High Dividend Low Volatility Index ETF (formerly, PowerShares S&P Global ex. Can High Div
Invesco S&P International Developed ESG Index ETF
Invesco S&P International Developed ESG Tilt Index ETF
Invesco S&P International Developed Low Volatility Index ETF (formerly, PowerShares S&P International Dev Low Vol Index)
Invesco S&P US Total Market ESG Index ETF
Invesco S&P US Total Market ESG Tilt Index ETF
Invesco S&P/TSX 60 ESG Tilt Index ETF
Invesco S&P/TSX Composite ESG Index ETF
Invesco S&P/TSX Composite ESG Tilt Index ETF
Invesco S&P/TSX Composite Low Volatility Index ETF (formerly, PowerShares S&P/TSX Composite Low Volatility Index ETF)
Invesco S&P/TSX REIT Income Index ETF (formerly, PowerShares S&P/TSX REIT Income Index ETF)
Invesco Senior Loan Index ETF (formerly, PowerShares Senior Loan Index ETF)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 17, 2023
NP 11-202 Final Receipt dated Jan 19, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3457441

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Issuer Name:
BMO Aggregate Bond Index ETF
BMO All-Equity ETF
BMO Balanced ESG ETF
BMO Balanced ETF
BMO BBB Corporate Bond Index ETF
BMO Canadian Bank Income Index ETF
BMO Canadian Dividend ETF
BMO Canadian High Dividend Covered Call ETF
BMO Canadian MBS Index ETF
BMO Clean Energy Index ETF
BMO Conservative ETF
BMO Corporate Bond Index ETF
BMO Corporate Discount Bond ETF
BMO Covered Call Canadian Banks ETF
BMO Covered Call Dow Jones Industrial Average Hedged to CAD ETF
BMO Covered Call Energy ETF
BMO Covered Call Health Care ETF
BMO Covered Call Technology ETF
BMO Covered Call US Banks ETF
BMO Covered Call Utilities ETF
BMO Discount Bond Index ETF
BMO Dow Jones Industrial Average Hedged to CAD Index ETF
BMO Emerging Markets Bond Hedged to CAD Index ETF
BMO Equal Weight Banks Index ETF
BMO Equal Weight Global Base Metals Hedged to CAD Index ETF
BMO Equal Weight Global Gold Index ETF
BMO Equal Weight Industrials Index ETF
BMO Equal Weight Oil & Gas Index ETF
BMO Equal Weight REITs Index ETF
BMO Equal Weight US Banks Hedged to CAD Index ETF
BMO Equal Weight US Banks Index ETF
BMO Equal Weight US Health Care Hedged to CAD Index ETF
BMO Equal Weight US Health Care Index ETF
BMO Equal Weight Utilities Index ETF
BMO ESG Corporate Bond Index ETF
BMO ESG High Yield US Corporate Bond Index ETF
BMO ESG US Corporate Bond Hedged to CAD Index ETF
BMO Europe High Dividend Covered Call ETF
BMO Europe High Dividend Covered Call Hedged to CAD ETF
BMO Floating Rate High Yield ETF
BMO Global Agriculture ETF
BMO Global Communications Index ETF
BMO Global Consumer Discretionary Hedged to CAD Index ETF
BMO Global Consumer Staples Hedged to CAD Index ETF
BMO Global High Dividend Covered Call ETF
BMO Global Infrastructure Index ETF
BMO Government Bond Index ETF
BMO Growth ETF
BMO High Quality Corporate Bond Index ETF
BMO High Yield US Corporate Bond Hedged to CAD Index ETF
BMO High Yield US Corporate Bond Index ETF
BMO International Dividend ETF
BMO International Dividend Hedged to CAD ETF
BMO Japan Index ETF
BMO Junior Gold Index ETF
BMO Laddered Preferred Share Index ETF
BMO Long Corporate Bond Index ETF
BMO Long Federal Bond Index ETF
BMO Long Provincial Bond Index ETF
BMO Long-Term US Treasury Bond Index ETF
BMO Low Volatility Canadian Equity ETF
BMO Low Volatility Emerging Markets Equity ETF
BMO Low Volatility International Equity ETF
BMO Low Volatility International Equity Hedged to CAD ETF
BMO Low Volatility US Equity ETF
BMO Low Volatility US Equity Hedged to CAD ETF
BMO Mid Corporate Bond Index ETF
BMO Mid Federal Bond Index ETF
BMO Mid Provincial Bond Index ETF
BMO Mid-Term US IG Corporate Bond Hedged to CAD Index ETF
BMO Mid-Term US IG Corporate Bond Index ETF
BMO Mid-Term US Treasury Bond Index ETF
BMO Monthly Income ETF
BMO MSCI ACWI Paris Aligned Climate Equity Index ETF
BMO MSCI All Country World High Quality Index ETF
BMO MSCI Canada ESG Leaders Index ETF
BMO MSCI Canada Value Index ETF
BMO MSCI China ESG Leaders Index ETF
BMO MSCI EAFE ESG Leaders Index ETF
BMO MSCI EAFE Hedged to CAD Index ETF
BMO MSCI EAFE Index ETF
BMO MSCI Emerging Markets Index ETF
BMO MSCI Europe High Quality Hedged to CAD Index ETF
BMO MSCI Fintech Innovation Index ETF
BMO MSCI Genomic Innovation Index ETF
BMO MSCI Global ESG Leaders Index ETF
BMO MSCI India ESG Leaders Index ETF
BMO MSCI Innovation Index ETF
BMO MSCI Next Gen Internet Innovation Index ETF
BMO MSCI Tech & Industrial Innovation Index ETF
BMO MSCI USA ESG Leaders Index ETF
BMO MSCI USA High Quality Index ETF
BMO MSCI USA Value Index ETF
BMO Nasdaq 100 Equity Hedged to CAD Index ETF
BMO Nasdaq 100 Equity Index ETF
BMO Premium Yield ETF
BMO Real Return Bond Index ETF
BMO S&P 500 Hedged to CAD Index ETF
BMO S&P 500 Index ETF
BMO S&P US Mid Cap Index ETF
BMO S&P US Small Cap Index ETF
BMO S&P/TSX Capped Composite Index ETF
BMO Short Corporate Bond Index ETF
BMO Short Federal Bond Index ETF
BMO Short Provincial Bond Index ETF
BMO Short-Term Bond Index ETF
BMO Short-Term Discount Bond ETF
BMO Short-Term US IG Corporate Bond Hedged to CAD Index ETF
BMO Short-Term US TIPS Index ETF
BMO Short-Term US Treasury Bond Index ETF
BMO Ultra Short-Term Bond ETF
BMO Ultra Short-Term US Bond ETF
BMO US Aggregate Bond Index ETF
BMO US Dividend ETF

BMO US Dividend Hedged to CAD ETF
BMO US High Dividend Covered Call ETF
BMO US High Dividend Covered Call Hedged to CAD ETF
BMO US Preferred Share Hedged to CAD Index ETF
BMO US Preferred Share Index ETF
BMO US Put Write ETF
BMO US Put Write Hedged to CAD ETF
BMO US TIPS Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 17, 2023
NP 11-202 Final Receipt dated Jan 18, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3470945

Issuer Name:
Mackenzie Balanced Allocation ETF
Mackenzie Conservative Allocation ETF
Mackenzie Growth Allocation ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 19, 2023
NP 11-202 Final Receipt dated Jan 20, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3390833

Issuer Name:
Mackenzie FuturePath Canadian Balanced Fund
Mackenzie FuturePath Canadian Equity Balanced Fund
Mackenzie FuturePath Global Balanced Fund
Mackenzie FuturePath Global Equity Balanced Fund
Mackenzie FuturePath Monthly Income Balanced Portfolio
Mackenzie FuturePath Monthly Income Conservative Portfolio
Mackenzie FuturePath Monthly Income Growth Portfolio
Mackenzie FuturePath Global Neutral Balanced Portfolio
Mackenzie FuturePath Global Fixed Income Balanced Portfolio
Mackenzie FuturePath Canadian Fixed Income Portfolio
Mackenzie FuturePath Global Equity Portfolio
Mackenzie FuturePath Global Equity Balanced Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Annual Information dated January 19, 2023
NP 11-202 Final Receipt dated Jan 20, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3352477

Issuer Name:
Mackenzie Balanced ETF Portfolio
Mackenzie Conservative ETF Portfolio
Mackenzie Conservative Income ETF Portfolio
Mackenzie Cundill Canadian Balanced Fund
Mackenzie Global Macro Fund
Mackenzie Global Sustainable Balanced Fund
Mackenzie Greenchip Global Environmental Balanced Fund
Mackenzie Growth ETF Portfolio
Mackenzie Ivy Canadian Balanced Fund
Mackenzie Ivy Global Balanced Fund
Mackenzie Moderate Growth ETF Portfolio
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie Monthly Income Growth Portfolio
Mackenzie Multi-Strategy Absolute Return Fund
Mackenzie Private Global Income Balanced Pool
Mackenzie Private Income Balanced Pool
Symmetry Balanced Portfolio
Symmetry Conservative Income Portfolio
Symmetry Conservative Portfolio
Symmetry Equity Portfolio
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Moderate Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Annual Information Form dated January 19, 2023
NP 11-202 Final Receipt dated Jan 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3414600

Issuer Name:
Hamilton Enhanced Canadian Bank ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 13 ,2023
NP 11-202 Final Receipt dated Jan 17, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3412165

Issuer Name:
Canada Life Short-Term Bond Fund
Canada Life Canadian Low Volatility Fund
Canada Life U.S. Low Volatility Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated January 19, 2023
NP 11-202 Final Receipt dated Jan 20, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3394907

Issuer Name:
Mackenzie Conservative Income ETF Portfolio
Mackenzie Global Sustainable Balanced Fund
Mackenzie Greenchip Global Environmental Balanced Fund
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie Monthly Income Growth Portfolio
Mackenzie Private Global Income Balanced Pool
Mackenzie Private Income Balanced Pool
Symmetry Balanced Portfolio
Symmetry Conservative Income Portfolio
Symmetry Conservative Portfolio
Symmetry Equity Portfolio
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Moderate Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Annual Information Form dated January 19, 2023
NP 11-202 Final Receipt dated Jan 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3445059

NON-INVESTMENT FUNDS

Issuer Name:
CubicFarm Systems Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated January 18, 2023
NP 11-202 Preliminary Receipt dated January 19, 2023
Offering Price and Description:
$100,000,000.00 - COMMON SHARES, DEBT SECURITIES, SUBSCRIPTION RECEIPTS, CONVERTIBLE SECURITIES, WARRANTS, UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3481575

Issuer Name:
Talon Metals Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 20, 2023
NP 11-202 Preliminary Receipt dated January 20, 2023
Offering Price and Description:
$150,000,000.00 - Common Shares, Debt Securities, Subscription Receipts Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3481987

Issuer Name:
G Mining Ventures Corp.
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated January 18, 2023
NP 11-202 Receipt dated January 19, 2023
Offering Price and Description:
$500,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3478567

Issuer Name:
Vox Royalty Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated January 23, 2023
NP 11-202 Receipt dated January 23, 2023
Offering Price and Description:
US$100,000,000 Common Shares Debt Securities Subscription Receipts Warrants Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3448291

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	BridgeMe Securities Inc.	Exempt Market Dealer	January 17, 2023
New Registration	Tall Oak Capital Advisors Inc.	Exempt Market Dealer, Portfolio Manager, and Investment Fund Manager	January 18, 2023

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B.12
Other Information

B.12.1 Approvals

B.12.1.1 Sun Life Sustainable Canadian Fixed Income Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from subsection 2.1(2) of NI 81-101 to file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1(2), 6.1.

VIA SEDAR

January 19, 2023

Borden Ladner Gervais LLP

Attention: Kathryn Fuller

Re: **Sun Life Sustainable Canadian Fixed Income Fund (the Fund)**

Preliminary Simplified Prospectus and Fund Facts dated October 21, 2022

Exemptive Relief Application under Section 6.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101)

Application No. 2023/0027; SEDAR Project No. 3447520

By letter dated January 13, 2023 (the **Application**), SLGI Asset Management Inc., the investment fund manager of the Fund, applied to the Director of the Ontario Securities Commission (the **Director**) under section 6.1 of NI 81-101 for relief from the operation of subsection 2.1(2) of NI 81-101, which prohibits an issuer from filing a prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the Fund's prospectus, subject to the condition that the prospectus be filed no later than **May 23, 2023**.

Yours very truly,

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

Application File #: 2023/0027
SEDAR File #: 3447520

B.12.2 Consents

B.12.2.1 Shoal Point Energy Ltd. – s. 21(b) of Ont. Reg. 398/21 under the OBCA

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (British Columbia).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 398/21, as am., s. 21(b).

IN THE MATTER OF
ONTARIO REGULATION 398/21,
AS AMENDED
(the "REGULATION")

MADE UNDER
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c.B.16,
AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
SHOAL POINT ENERGY LTD.

CONSENT
(subsection 21(b) of the Regulation)

UPON the application of Shoal Point Energy Ltd. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting the consent of the Commission, pursuant to subsection 21(b) of the Regulation, for the Applicant to continue into another jurisdiction pursuant to section 181 of the OBCA (the "**Continuance**");

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was formed by articles of amalgamation under the laws of Ontario on October 10, 2012 pursuant to the amalgamation of Shoal Point Energy Ltd. and Shoal Point Energy Inc. under the name Shoal Point Energy Ltd. The registered office of the Applicant is located at 100 King Street West, Suite 3400, 1 First Canadian Place, Toronto, Ontario M5X 1A4.

2. The authorized capital of the Applicant consists of an unlimited number of common shares (the "**Common Shares**") and an unlimited number of special shares, of which 90,703,141 Common Shares are issued and outstanding and no special shares are issued and outstanding as at January 3, 2023.

3. The Applicant intends to apply to the Director pursuant to section 181 of the OBCA for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia) (the "**BCBCA**").

4. Pursuant to subsection 21(b) of the Regulation, where a corporation is an offering corporation under the OBCA, its application for continuance under the laws of another jurisdiction must be accompanied by a consent from the Commission.

5. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act* (Ontario) (the "**Act**") and under the *Securities Act* (British Columbia) (the "**BC Act**", and together with the Act, the "**Legislation**").

6. The Applicant's Common Shares are listed on the Canadian Securities Exchange (the "**CSE**") and trade under the symbol SHP.

7. The principal reason for the Continuance is that the Applicant’s head office and management are located in British Columbia and the Applicant no longer has any connection to Ontario.

8. Immediately following the Continuance, the Applicant will remain a reporting issuer in Ontario and in British Columbia, where it is currently a reporting issuer.

9. The Applicant is not in default under any provision of the OBCA or the Legislation, including the regulations or rules made thereunder.

10. The Applicant is not subject to any proceeding under the OBCA or the Legislation.

11. The proposed Continuance was approved by the shareholders of the Applicant at the Applicant’s annual and special meeting of shareholders held on November 22, 2022 (the “**Meeting**”). The special resolution authorizing the proposed Continuance required the approval of not less than two-thirds of the aggregate votes cast by the shareholders present in person or by proxy at the Meeting, and was approved by 99.3% of the votes cast by the shareholders of the Applicant in person or represented by proxy at the Meeting.

12. The management information circular dated October 24, 2022 (the **“Circular”**) and filed on SEDAR was provided to all registered shareholders in connection with the Meeting. The Circular advised shareholders of their dissent rights in respect of the Continuance, described the Continuance, disclosed the reason for the Continuance and its implications and included a summary comparison of the differences between the OBCA and the BCBCA. No dissent rights were exercised by any shareholders of the Applicant in connection with the Continuance.

13. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA

14. Following the Continuance, the Applicant's registered office will change to Suite 2500 Park Place, 666 Burrard Street, Vancouver, British Columbia V6C 2X8.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the BCBCA.

DATED at Toronto, Ontario this 20th day of January, 2023.

“David Surat”
Manager (Acting), Corporate Finance
Ontario Securities Commission

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