The Ontario Securities Commission

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The Ontario Securities Commission carries out the powers, duties and functions given to it pursuant to the *Securities Commission Act, 2021* (S.O. 2021, c. 8, Sched. 9).

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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FOR IMMEDIATE RELEASE
June 28, 2023

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

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

A copy of the Reasons and Decision dated June 27, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

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A.2.2 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
June 28, 2023

CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.,
File No. 2022-24

TORONTO – The Moving Parties, Cormark Securities Inc. and William Jeffrey Kennedy, withdraws portions of the relief sought on the Motion for Disclosure of Additional Documents returnable on June 28, 2023, in the above named matter.

A copy of the Notice of Withdrawal dated June 28, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.3 Cormark Securities Inc. et al.

File No. 2022-24

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER AND
SALINE INVESTMENTS LTD.

NOTICE OF WITHDRAWAL

The Moving Parties, Cormark Securities Inc. and William Jeffrey Kennedy, withdraw the relief sought on the Motion for Disclosure of Additional Documents under Rules 26 and 28 of the Capital Markets Tribunal *Rules of Procedure and Forms* returnable on June 28, 2023 set out in the following paragraphs of their Amended Notice of Motion dated April 21, 2023: 1, 2, 3, 4(i), 5, 6, 7, 8, 9, 11.

DATED this 28th day of June, 2023

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A.2.4 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
June 28, 2023

CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.,
File No. 2022-24

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

A copy of the Order dated June 28, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.5 Amin Mohammed Ali

FOR IMMEDIATE RELEASE
June 28, 2023

AMIN MOHAMMED ALI,
File No. 2022-6

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

A copy of the Order dated June 28, 2023 is available at capitalmarketstribunal.ca.

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inquiries@osc.gov.on.ca

A.2.6 Kallo Inc. et al.

FOR IMMEDIATE RELEASE
June 29, 2023

KALLO INC.,
JOHN CECIL AND
SAMUEL PYO,
File No. 2023-12

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

A copy of the Order dated June 29, 2023 is available at capitalmarketstribunal.ca.

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A.2.7 Miller Bernstein LLP

FOR IMMEDIATE RELEASE
June 29, 2023

MILLER BERNSTEIN LLP,
File No. 2023-2

TORONTO – Take notice that the attendance in the above named matter scheduled to be heard on June 30, 2023 will be heard on August 3, 2023 at 10:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

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1-877-785-1555 (Toll Free)
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A.2.8 Amin Mohammed Ali

FOR IMMEDIATE RELEASE
June 30, 2023

AMIN MOHAMMED ALI,
File No. 2022-6

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

A copy of the Order dated June 30, 2023 is available at capitalmarketstribunal.ca.

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A.2.9 Mark Odorico

FOR IMMEDIATE RELEASE
July 4, 2023

MARK ODORICO,
File No. 2022-18

TORONTO – Take notice that the continuation of the merits hearing in the above named matter is scheduled to be heard on July 18, 2023 at 10:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

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For General Inquiries:

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A.3
Orders

A.3.1 Cormark Securities Inc. et al.

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.

File No. 2022-24

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

June 28, 2023

ORDER

WHEREAS on June 28, 2023, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Ontario Securities Commission and for each of the respondents;

IT IS ORDERED THAT:

1. by no later than 4:30 p.m. on July 19, 2023, the parties shall provide the Registrar with either an agreed upon schedule or their respective submissions on the appropriate schedule and mode of hearing for each day required for the hearing on the merits;

2. the parties shall disclose any expert evidence according to the following schedule:

   a. the respondents shall serve all parties with any expert report(s) by no later than September 15, 2023;

   b. Staff shall serve any expert response report(s) by no later than November 3, 2023;

   c. the respondents shall serve all parties with any expert reply report(s) by no later than December 1, 2023;

3. by no later than January 19, 2024, each party shall serve the other party with a hearing brief containing copies of the documents, and identifying the other things, that the party intends to produce or enter as evidence at the merits hearing;

4. by 4:30 p.m. on January 24, 2024, each party shall provide to the Registrar a completed copy of the *E-Hearing Checklist*;

5. an attendance shall take place on January 31, 2024 at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat; and

6. by 4:30 p.m. on March 15, 2024, each party shall provide to the Registrar the electronic documents that the party intends to rely on or enter into evidence at the merits hearing, along with an index file containing hyperlinks to the documents in the hearing brief, in accordance with the *Protocol for E-Hearings*.

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"William Furlong"

A.3.2 Amin Mohammed Ali – ss. 8, 21.7

IN THE MATTER OF
AMIN MOHAMMED ALI

File No. 2022-6

Adjudicators: M. Cecilia Williams (chair of the panel)
William Furlong

June 28, 2023

ORDER
(Sections 8 and 21.7 of the
***Securities Act,* RSO 1990, c S.5)**

WHEREAS on June 26, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider a request made by Amin Mohammed Ali to vary the timetable contained in the Tribunal's order dated June 1, 2023;

ON READING the correspondence filed by the parties and hearing the submissions of the representatives for Ali, for Staff of the Canadian Investment Regulatory Organization (formerly MFDA) (**CIRO**) and for Staff of the Ontario Securities Commission and on considering that Staff of CIRO and Staff of the Commission do not oppose the request;

IT IS ORDERED THAT:

1. paragraphs 5 a. and b. of the Tribunal's June 1, 2023 order are varied as follows:
   a. by 4:30 p.m. on July 13, 2023, Ali shall advise which portions of the record of the original proceeding, if any, he is seeking an order to have marked as confidential, along with his position on why such portions should be marked as confidential;
   b. by 4:30 p.m. on July 27, 2023, Staff of CIRO and Staff of the Commission shall advise of their position regarding Ali's confidentiality request; and
2. paragraphs 5 f., g., h., and i. of the Tribunal's June 1, 2023 order are varied as follows:
   a. by 4:30 p.m. on June 29, 2023, Ali shall serve and file his hearing brief, if any, and written submissions;
   b. by 4:30 p.m. on July 28, 2023, Staff of CIRO shall serve and file its hearing brief, if any, and written submissions;
   c. by 4:30 p.m. on August 11, 2023, Staff of the Commission shall serve and file its hearing brief, if any, and written submissions; and
   d. by 4:30 p.m. on August 25, 2023, Ali shall serve and file reply written submissions, if any.

"M. Cecilia Williams"

"William Furlong"

A.3.3 Kallo Inc. et al.

IN THE MATTER OF
KALLO INC.,
JOHN CECIL AND
SAMUEL PYO

File No. 2023-12

Adjudicator: James Douglas

June 29, 2023

ORDER

WHEREAS on June 29, 2023, the Capital Markets Tribunal held a hearing by videoconference;

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

IT IS ORDERED THAT:

1. by October 20, 2023, at 4:30 p.m., the respondents shall serve and file any motion regarding Staff's disclosure to that date or seeking disclosure of additional documents;
2. by October 20, 2023, at 4:30 p.m., Staff shall:
   a. serve and file a witness list,
   b. serve a summary of each witness's anticipated evidence on each respondent, and
   c. indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence; and
3. a further attendance in this matter is scheduled for October 31, 2023, at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"James Douglas"

A.3.4 Amin Mohammed Ali – ss. 8, 21.7 and Rule 22 of the Capital Markets Tribunal Rules of Procedure and Forms

IN THE MATTER OF
AMIN MOHAMMED ALI

File No. 2022-6

Adjudicators: M. Cecilia Williams (chair of the panel)
William Furlong

June 30, 2023

ORDER
(Sections 8 and 21.7 of the *Securities Act,* RSO 1990, c S.5 and rule 22 of the *Capital Markets Tribunal Rules of Procedure and Forms*)

WHEREAS on June 26, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider a motion by Amin Mohammed Ali to stay the decisions of the Mutual Fund Dealers Association (**MFDA**) dated February 11, 2022 and September 20, 2022 pending the disposition of his application for a hearing and review of those decisions; to dismiss the MFDA's penalty decision dated September 20, 2022 in advance of the hearing of the application; to have all aspects of this proceeding be confidential; and to have portions of Ali's Notice of Motion and Amended Application marked as confidential;

AND WHEREAS during the hearing, Ali withdrew his motion to dismiss the MFDA's penalty decision dated September 20, 2022 in advance of the hearing of the application;

AND WHEREAS a portion of the hearing proceeded on a confidential basis at the request of Ali, with the issue of what portion, if any, of the corresponding hearing transcript would be kept confidential subject to further order of the Tribunal after receiving submissions in writing from the parties;

ON READING the materials filed by the parties and hearing the submissions of the representatives for Ali, for Staff of the Canadian Investment Regulatory Organization (formerly MFDA) and for Staff of the Ontario Securities Commission;

IT IS ORDERED, for reasons to follow, that:

1. Ali's motion for a stay is dismissed;

2. Ali's motion to have all aspects of this proceeding be confidential is dismissed;

3. Ali's Notice of Motion, Ali's Amended Application and the Record of Original Proceeding are marked as confidential pending further order of the Tribunal; and

4. the transcript of the confidential portion of the hearing is to remain confidential pending further order of the Tribunal.

"M. Cecilia Williams"

"William Furlong"

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A.4
Reasons and Decisions

A.4.1 Harry Stinson et al. – s. 127(1)

Citation: *Stinson (Re),* 2023 ONCMT 26
Date: 2023-06-27
File No. 2022-3

IN THE MATTER OF
HARRY STINSON,
BUFFALO GRAND HOTEL INC.,
STINSON HOSPITALITY MANAGEMENT INC.,
STINSON HOSPITALITY CORP.,
RESTORATION FUNDING CORPORATION,
BUFFALO CENTRAL LLC, AND
STEPHEN KELLEY

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

Adjudicators:	Russell Juriansz (chair of the panel) Sandra Blake Cathy Singer	
Hearing:	By videoconference, March 27 and 29, 2023; final written submissions received May 8, 2023	
Appearances:	Rikin Morzaria	For Staff of the Ontario Securities Commission
	Macdonald Allen	For Harry Stinson, Buffalo Grand Hotel Inc., Stinson Hospitality Management Inc., Stinson Hospitality Corp., Restoration Funding Corporation, and Buffalo Central LLC

REASONS AND DECISION

1. OVERVIEW

[1] From November 2016 to March 2020 (the **Material Time**) Harry Stinson, Buffalo Grand Hotel Inc. (**Hotel Inc.**), Stinson Hospitality Management Inc. (**Management Inc.**), Stinson Hospitality Corp. (**Hospitality Corp.**), Restoration Funding Corporation (**Restoration**) and Buffalo Central LLC (**Buffalo Central**) (collectively the **Stinson Entities**) raised approximately CAD 13.177 million and USD 364,000 from the sale of securities related to the Buffalo Grand Hotel (the **Hotel**).

[2] Enforcement Staff of the Ontario Securities Commission alleges that:

a. the respondents engaged in the business of trading in securities without registration, contrary to s. 25(1) of the *Securities Act* (***Act***)[1];

b. Stinson, Hotel Inc., Management Inc. and Buffalo Central distributed securities without filing a prospectus, contrary to s. 53(1) of the *Act*;

c. Stinson and Hotel Inc. made false and misleading statements to investors about matters that a reasonable investor would consider relevant to entering into or maintaining a trading relationship, contrary to s. 44(2) of the *Act*;

d. Stinson and Hospitality Corp. breached a temporary cease trade order which prohibited trading in securities related to the Hotel;

[1] RSO 1990, c S.5

e. the respondents also engaged the Tribunal's public interest jurisdiction by failing to segregate investor funds, failing to maintain accurate records of funds received by investors, and failing to properly record the use of investor funds; and

f. Stinson as the sole officer and director of each of the Stinson Entities authorized, permitted or acquiesced in their breaches of ss. 25(1) and 53(1) of the *Act* and of their breaches of Ontario securities law (the temporary cease trade orders).

[3] Prior to this hearing, Stephen Kelley reached a settlement with Staff in which he admitted that he engaged in unregistered trading, made false or misleading representations to investors and traded in breach of a temporary cease trade order. The Tribunal approved the settlement[2] and this matter proceeded against the remaining respondents. Throughout these reasons, our use of the term "the respondents" does not include Kelley.

[4] At the outset of the merits hearing, Staff and the respondents jointly filed an Agreed Statement of Facts. Neither Staff nor the respondents presented any other evidence with respect to Staff's allegations. Accordingly, we rely solely on the facts contained in the Agreed Statement of Facts. While the Agreed Statement of Facts also contained general admissions to breaches of the *Act* by the respondents, this does not displace the Tribunal's obligation to determine whether the facts satisfy the required elements for each of those breaches.

[5] For the reasons set out below, we find that:

a. Stinson, Hotel Inc., Management Inc. and Buffalo Central effected illegal distributions of securities by not filing a preliminary prospectus and a prospectus;

b. Stinson and Hospitality Corp. breached the temporary cease trade order and therefore breached Ontario securities law; and

c. the respondents engaged the Tribunal's public interest jurisdiction by:

i. failing to segregate investor funds;

ii. failing to maintain accurate records of funds received by investors; and

iii. failing to properly record the use of investors' funds.

[6] We dismiss Staff's allegations that the respondents engaged in, or held themselves out to be in, the business of trading in securities without registration and that they made false and misleading statements to investors that would be relevant to entering into or maintaining a trading relationship. Given our findings that Stinson directly breached the *Act*, we did not consider whether he is deemed to have breached the *Act* because he authorized, permitted or acquiesced in the corporate respondents' breaches.

2. THE RESPONDENTS

[7] Stinson is a real estate broker and developer. He founded the Stinson Entities, is their sole officer and director and controlled and operated the Stinson Entities during the Material Time.

[8] Hotel Inc. is the owner of the Hotel and carries on the hotel business. Hotel Inc. entered into subscription agreements with respect to the Hotel.

[9] Management Inc. was formed to conduct hotel-related business and entered into certain subscription agreements with respect to the Hotel.

[10] Hospitality Corp. is involved in hospitality operations at the Hotel. Hospitality Corp. received funds from Ontario residents, acts as a trustee for funds invested in the Hotel and in some cases issued common shares in exchange for those funds.

[11] Restoration received funds from Ontario residents, acts as a trustee for funds invested in the Hotel, and in some cases issued common shares in exchange for those funds.

[12] Buffalo Central entered into subscription agreements with respect to the Hotel.

[2] *Stinson (Re)*, 2023 ONCMT 13

3. MATERIAL FACTS

[13] Stinson planned a hotel-condominium project whereby the Hotel would be purchased, rebranded, remodeled, renovated, and ultimately converted into a hotel and condominium.

[14] Money was raised using three forms of agreement, a unit purchase agreement, an option to purchase agreement, and a wholesale room block agreement, all of which contained promissory notes. Depending on the category of subscription agreement, an investor could also have an obligation or option to acquire a suite in the Hotel on conversion, by rolling over their investment and receiving title to a suite, and to further receive profit participation rights in connection with the leaseback of the suite. Certain subscription agreements involved profit participation rights through wholesale room block purchases of hotel rooms with, in some cases, an option to purchase a suite on conversion.

[15] In cases where investors made contributions through funds from Registered Retirement Savings Plans (**RRSP**s) or Tax-Free Savings Accounts (**TFSA**s), Stinson issued shares in Hospitality Corp. or Restoration to investors in exchange for their contributions.

[16] In or around November 2016, the respondents began actively and regularly soliciting investments in the Hotel including from individuals located in Ontario.

[17] On or around July 10, 2018, Hotel Inc. purchased the Hotel.

[18] The respondents encountered cash flow issues, and in March 2019 entered into forbearance agreements related to the purchase of the Hotel.

[19] On March 20, 2020, the Commission issued an order temporarily ceasing trading in any securities by Hotel Inc., Management Inc., Hospitality Corp., Restoration and Stinson and trading in securities related to the Hotel. The Tribunal extended the temporary cease trade order until the public release of the reasons and the decision at the conclusion of this merits hearing.

[20] A fire at the Hotel on December 30, 2021, disrupted operations.

[21] The conversion has not been completed and the legal authorizations and approvals necessary to complete the conversion have not been obtained.

4. ANALYSIS OF THE MERITS

4.1 Are the admissions to breaches of the *Act* in the Agreed Statement of Facts binding on the respondents and the Tribunal?

[22] The Agreed Statement of Facts contains a recital which states that the respondents "agree that they shall admit the breaches of Ontario securities law and conduct contrary to the public interest set out in this document."[3] Paragraph 37 of the Agreed Statement of Facts states "Throughout the Material Time, the Stinson Respondents engaged in, or held themselves out as engaging in, the business of trading in securities without being registered under subsection 25(1) of the Act."[4]

[23] In oral submissions, which preceded written submissions, the Tribunal squarely put to Staff the question of whether the Tribunal was bound by general admissions or did it need to be satisfied that the general admissions were supported by facts. More specifically, the Tribunal, on its own initiative and referring to the *Threegold Resources Inc. (Re)*[5] decision, canvassed with Staff whether the respondents raised money strictly for the project or whether they were in the business of trading apart from this project.

[24] Perhaps heartened by the Tribunal's questions, the respondents made written submissions setting out why Staff did not meet its burden in establishing the breach of s. 25(1) of the *Act*. In written reply, Staff objected to the respondents' written submissions submitting the respondents had attempted to rely on facts not in the Agreed Statement of Facts, and to resile from the breaches of Ontario securities law and conduct contrary to the public interest they admitted in the Agreed Statement of Facts. Staff submits that to the extent the respondents' submissions are inconsistent with the admissions in the Agreed Statement of Facts, they should be disregarded.

[25] Clearly, we must ignore any assertions of fact that are not set out in the Agreed Statement of Facts. The Agreed Statement of Facts comprises all the evidence admitted at the Merits Hearing and we consider that the respondents are

3 Exhibit 1, Agreed Statement of Facts dated March 24, 2023 at 1
4 Exhibit 1, Agreed Statement of Facts dated March 24, 2023 at para 37
5 2021 ONSEC 30 (***Threegold***)

bound by the agreement they have made and have submitted to the Tribunal. The matter is, however, more complicated than that.

[26] It is our view that general admissions of breaches of the *Act*, without more, are insufficient to satisfy Staff's burden of proving those breaches. Where an agreed statement of facts contains nothing more than a general admission of a particular breach of the *Act* without setting out the acts done by the respondent, can the Tribunal conclude the *Act* has been breached? We think not. Before concluding that the *Act* has been breached, we must first find the specific facts necessary to establish the essential ingredients of the alleged breach. Consequently, in a case where the only evidence is an agreed statement of facts, it is our statutory duty to consider whether that agreed statement of facts sets out the specific facts necessary to establish each breach alleged. In carrying out that duty, the Tribunal is bound by the facts to which the parties have agreed. As noted, those facts are the only evidence before the Tribunal. The Tribunal, however, is not bound by what are, in effect, legal conclusions in the Agreed Statement of Facts. The parties, by agreement, cannot displace the Tribunal's obligation to make legal conclusions that the *Act* has been breached.

4.2 Were the investments "securities"?

[27] The term "security" is defined in s. 1(1) of the *Act* and includes a "bond, debenture, note or other evidence of indebtedness" and therefore includes a promissory note. In addition, the term "security" includes in subsection (n) of the definition, an "investment contract".[6]

[28] Promissory notes entered into as investments rather than as loans qualify as securities both as "evidence of indebtedness" and as "investment contracts."[7]

[29] An "investment contract" will be found where:

a. there is an investment of money;

b. with an intention or expectation of profit;

c. in a common enterprise in which the fortunes of the investor are interwoven with and dependent on the efforts and success of third parties; and

d. where the efforts made by those other than the investor are significant and managerial, thereby affecting the failure or success of the enterprise.[8]

[30] We find that all three categories of subscription agreements are securities as each category of agreement contains a promissory note which acts as evidence of indebtedness during the interim period between the investor's initial investment and the transfer of title and/or the expiry of the note. In addition, all three categories of agreement involved future profit participation rights. The Hotel profits would be dependent solely on the efforts of the respondents. Therefore, we find that the subscription agreements also qualify as securities by virtue of being investment contracts.

4.3 Did the respondents engage in, or hold themselves out as engaging in, the business of trading securities?

[31] Subsection 25(1) of the *Act* requires that a person or company must be registered to engage in, or hold themselves out to be engaged in, the business of trading in securities unless an exemption applies.

[32] The registration requirement is one of the cornerstones of securities regulation. It acts as an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.[9]

[33] During the Material Time, none of the respondents were registered in any capacity under the *Act*, and they admit that no exemptions from the registration requirements applied to their activities.

[34] We must determine whether the respondents engaged in the business of trading in securities rather than trading that was permissible capital raising activities for their business.

[35] The respondents, in words that mirror s. 25(1) of the *Act*, admitted in the Agreed Statement of Facts that during the Material Time they "engaged in, or held themselves out as engaging in, the business of trading in securities without being registered under subsection 25(1) of the Act."[10] Despite this general admission, as explained above, we must determine whether the specific facts set out in the Agreed Statement of Facts establish that the respondents engaged in the

6 *Act*, s 1(1)
7 *2196768 Ontario Ltd. (Rare Investments) et al*., 2014 ONSEC 17 (***Rare Investments***) at para 94
8 *Pacific Coast Coin Exchange*, 1977 CanLII 37 (SCC) at p 128
9 *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40 (***Money Gate***) at para 140, citing *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11 at para 81
10 Exhibit 1, Agreed Statement of Facts dated March 24, 2023 at para 37

business of trading in securities rather than permissible capital raising activities, or whether they held themselves out as doing so.

[36] In determining whether the respondents were engaged in the business of trading, we look for guidance to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Policy**), which sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.

[37] While the Policy is not part of Ontario securities law, and therefore is not binding on the respondents or the Tribunal, the business purpose test in s. 1.3 (also referred to as the "business trigger") includes various factors on which Staff relies and which the Tribunal has adopted in other proceedings.[11] These factors include whether:

a. the respondent undertook activities similar to a registrant;

b. the respondent directly or indirectly solicited securities transactions;

c. the respondent received or expected to receive compensation for the activity; and

d. the respondent carried on these activities with repetition or regularity, whether or not the trading was the sole or primary endeavour.

[38] Similar to the findings in *Threegold*[12] the respondents engaged in the following activities:

a. ongoing efforts to solicit investors to purchase subscription agreements;

b. preparing and modifying the documents setting out the terms of Subscription Agreements; and

c. receiving funds from investors.

[39] In *Threegold*, the Tribunal found that while the factors of the business trigger test in the Policy are useful, a holistic view must be taken to determine if the respondent was acting like a securities dealer in the business of trading securities or was seeking to raise capital for the advancement of an underlying business.[13]

[40] It was determined that Threegold was pursuing a strategy to further its mineral exploration business activities and the capital raising was ancillary to these activities.[14] In this case, the respondents were pursuing a strategy to acquire, renovate, convert, and operate the Hotel.

[41] Staff relies on the admitted facts that the respondents entered into Subscription Agreements totalling approximately CAD 19 million and USD 208,000 and received cash of approximately CAD 13.177 million and USD 364,000 from the sale of securities related to the Hotel. These transactions establish only that the respondents engaged in trading. More is needed to establish the respondents engaged in the business of trading.

[42] As we read the Agreed Statement of Facts, the respondents raised money to finance the Project, as defined in the Agreed Statement of Facts. The Project was to purchase, rebrand, remodel, renovate and ultimately convert an existing hotel into a hotel and condominium. It seems to us that the Project was the underlying business of the respondents and their capital raising activities were ancillary to the advancement of that underlying business. The fact situation is similar to that in *Threegold*.

[43] Staff seek to distinguish *Threegold* on the basis that it had an underlying mining exploration business and lacked sufficient funds to conduct ongoing business activities. By contrast, Staff submit that the respondents engaged in capital raising activities for 17 months before Hotel Inc. purchased the Hotel. During that 17-month period there was no other underlying business.

[44] While Hotel Inc. did not purchase the Hotel until mid-2018, like most large-scale real estate projects the process to acquire the Hotel began much earlier. The plan was formulated, and in or around November 2016 Stinson began to receive funds towards the acquisition, renovations, conversion and operations of the Hotel. We note that the Policy provides similar examples of businesses that are in the start-up phase who have not yet begun to produce a product or deliver a service, but who have a *bona fide* business plan to do so. We find that the respondents had a *bona fide* business plan in place with respect to the Hotel during the start-up phase.

11 *Meharchand (Re),* 2018 ONSEC 51 at para 111; *Money Gate* at paras 144-145
12 *Threegold* at paras 44-45
13 *Threegold* at para 40
14 *Threegold* at paras 45, 48-49, 50, 57

[45] In *Blue Gold Holdings Ltd. (Re)*,[15] the panel held that raising capital while the respondent attempted to conduct a legitimate business of manufacturing water treatment equipment may not have crossed the line but over time that business no longer existed and instead the respondents' efforts were devoted primarily to capital raising which crossed the line.[16] In this case, there is no evidence that the underlying business ceased to exist while funds were being raised. Instead, the redevelopment of the Hotel was underway and then the business ran into financial challenges due in part to the COVID-19 pandemic and later a fire that disrupted the Hotel's operations.

[46] In *Money Gate Mortgage Investment Corporation (Re)*, the respondents' activities were found to have met the business trigger test. The principal basis for that conclusion was the Tribunal's finding that the respondents "were simultaneously engaged in the business of trading in securities and the business of investing the proceeds in mortgages".[17] The Tribunal also found that the respondents' "capital-raising activities were not confined to a start-up phase" but were continuous.[18] In this case Stinson did not engage in capital-raising activities other than to redevelop the Hotel, which was still in the start-up phase.

[47] We further distinguish *Money Gate* as there were multiple individuals with the core responsibility to promote securities which was a large part of Money Gate's overall business. The same cannot be said in this case as the funds raised were used for the acquisition, ancillary acquisition costs and operational costs of the Hotel. At its core the business was the redevelopment and operation of the Hotel.

[48] Staff points out that the Agreed Statement of Facts indicates that the respondents failed to properly segregate the Project's funds and keep appropriate records. The Agreed Statement of Facts, however, does not state that any of the funds raised were used for any purpose other than the Project.

[49] We note, further, that the Agreed Statement of Facts does not state that any of the respondents received, or expected to receive, compensation for trades they made in the course of raising funds for the redevelopment and operation of the Hotel.

[50] Staff submits that for the purpose of the business trigger test, compensation includes the receipt of investor funds through capital raising. In support of this submission Staff cites *Miner Edge Inc (Re)*,[19] where the Tribunal held that by accepting investor funds for the purchase of profit participation rights, the respondents received financial compensation, being the funds from investors.[20]

[51] We do not accept this interpretation on the facts of this case, otherwise this factor for the business trigger test would always be met where a respondent engages in capital raising. In *Miner Edge* the investment that was offered related to a purported cryptocurrency mining company that never existed and a purported right to participate in profits in the form of shares, tokens or initial coin offerings.[21] In this case, the funds received were for an underlying business and any potential profit participation rights (which were contingent upon the conversion occurring) were directly related to revenues generated by the underlying Hotel business.

[52] We therefore find that on a holistic view the respondents did not cross the line from capital raising for a specific underlying business to engaging in the business of trading.

[53] We employ the same reasoning in relation to the general admission in the Agreed Statement of Facts that the respondents held themselves out as engaging in trading. Specific facts are required to support this legal conclusion. The Agreed Statement of Facts sets out no specific act or communication of the respondents by which they held themselves out as engaging in the business of trading. The Agreed Statement of Facts recounts that the respondents actively and regularly promoted investments in the Hotel, posted on social media, sent mass emails, hosted investment seminars, disseminated promotional flyers and brochures, met with potential investors, and gave tours of the Hotel. The representations listed in the Agreed Statement of Facts relate to soliciting investments in the Hotel business and establish that the respondents clearly held themselves out as ready and eager to engage in trades to finance their underlying business. Those facts fall short of establishing the respondents held themselves out as engaging in the business of trading.

4.4 Did Stinson, Hotel Inc., Management Inc. and Buffalo Central engage in an illegal distribution of securities?

[54] A person or company must not distribute a security without a prospectus, unless an exemption applies.[22]

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15 2016 ONSEC 24 (***Blue Gold***)
16 *Blue Gold* at paras 20-21
17 *Money Gate* at para 160
18 *Money Gate* at para 163
19 2021 ONSEC 31 (***Miner Edge***)
20 *Miner Edge* at para 27
21 *Miner Edge* at paras 7-8
22 *Act,* s 53(1)

[55] The prospectus requirement is another cornerstone of Ontario's securities regulatory regime. It is important because it seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.[23]

[56] The term "distribution" is defined in s. 1(1) of the *Act* and includes "a trade in securities of an issuer that have not been previously issued."

[57] Each issuance of a subscription agreement by Hotel Inc., Management Inc. and Buffalo Central constituted the issuance of a security that had not been previously issued. As a result, the trades constituted distributions. The Tribunal reached a similar finding in *Rare Investments.*[24]

[58] Stinson prepared the subscription agreements, modified them over the Material Time and was a party to the agreements, which constitute acts in furtherance of a trade.

[59] Stinson, Hotel Inc., Management Inc. and Buffalo Central admit that they distributed subscription agreements without filing a preliminary prospectus or a prospectus and without an applicable exemption available.

[60] We find that the Stinson, Hotel inc., Management Inc. and Buffalo Central engaged in distributions of securities without filing a preliminary prospectus or prospectus, and without an applicable exemption from the prospectus requirement, and therefore contravened s. 53(1) of the *Act*.

4.5 Did the Stinson and Hotel Inc. make false or misleading statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship?

[61] A person or company must not make a false or misleading statement about a matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship.[25]

[62] Stinson and Hotel Inc. admit they made false or misleading statements. They specifically admit that:

a. Stinson drafted and/or approved promotional material that stated or conveyed that the investments were qualified investments for RRSPs and TFSAs and that not all of the investment were qualified (in particular, the individually titled suites in the Hotel);

b. certain early Subscription Agreements stated that investor funds would be collectively secured by a USD 40 million mortgage against the Hotel property but such security did not exist; and

c. some of the early Subscription Agreements stated that one or more of the Stinson Entities would maintain an interest reserve equal to 10% of the value of investor funds in the Hotel but no interest reserve was created.

[63] The representations that existed in the early subscription agreements were removed from later versions once it became apparent that financial circumstances would not allow for those measures to be taken.

[64] The next question is whether a reasonable investor would consider any of the false representations as relevant in deciding whether to enter into or maintain a trading relationship with the respondents. In *Solar Income Fund (Re),*[26] the Tribunal noted that a "trading or advising relationship" under s. 44(2) "is of a nature typically provided by registrants, *i.e.*, to act on behalf of investors to assist with their trading, and to advise investors on investment decisions they may make."[27]

[65] The Tribunal went on to find "that it would take something more than a trade, and associated administrative and information-conveying steps, to create a trading relationship."[28] Further, "if s. 44(2) were to apply in the circumstances of this case, then every issuer might be said to be in a trading relationship with every holder of that issuer's securities. That cannot be the correct interpretation of s. 44(2)."[29]

[66] Applying the reasoning in *Solar Income Fund*, we find the facts before us do not establish the existence of a trading relationship between the respondents and investors.

[67] We acknowledge that in *Solar Income Fund*, investors purchased securities of the issuer through an exempt market dealer. The only case in which a non-registrant has successfully been found to have breached s. 44(2) of the *Act* is *Black Panther (Re).*[30] However, the respondents in *Black Panther* had effectively taken the place of a dealer and were found

23 *Money Gate* at para 168
24 *Rare Investments* at para 130
25 *Act,* s 44(2)
26 2022 ONSEC 2 (***Solar Income Fund***)
27 *Solar Income Fund* at para 51
28 *Solar Income Fund* at para 68
29 *Solar Income Fund* at para 40
30 2017 ONSEC 1 (***Black Panther***)

to have been carrying on the business of trading or advising without being properly registered.[31] In the proceeding before us, we have not found the respondents to have been carrying on the business of trading.

[68] To be found liable for making false or misleading statements, the respondents would need to be held liable under other provisions of Ontario securities law more relevant to issuers.

4.6 Did Stinson and Hospitality Corp. breach the cease trade order?

[69] The temporary cease trade order was first effective on March 20, 2020, has remained in effect through subsequent extensions and will continue in effect until the conclusion of this merits hearing. The temporary cease trade order prohibits trading by Hotel Inc., Management Inc., Hospitality Corp., Restoration and Stinson and prohibits trading in securities related to the Hotel.

[70] In January and February 2021, Stinson signed share certificates in his capacity as President of Hospitality Corp. and Hospitality Corp. issued approximately 50,944 shares to approximately nine individuals.

[71] The respondents submit that the nine individuals were existing investors who had a contractual right to receive shares in lieu of interest payments. That may be so, but it does not change the fact that trades were made. The Agreed Statement of Facts acknowledges that Hospitality Corp. issued shares to these individuals in January and February of 2021 while the temporary cease trade order was in effect.

[72] While the trading was limited and there may not have been active solicitation, the issuance of further shares while the temporary cease trade order is in effect constitutes a breach of the temporary cease trade order. We find that Stinson and Hospitality Corp. breached the temporary cease trade order and therefore contravened Ontario securities law, which by definition includes a decision of the Commission or Tribunal to which the person or company is subject.[32]

4.7 Did the respondents engage the Tribunal's public interest jurisdiction?

[73] The opening words of s. 127 of the *Act* give the Tribunal broad authority to make "orders if in its opinion it is in the public interest to make the…orders".

[74] The Tribunal may exercise its jurisdiction to find that conduct, which does not constitute a breach of Ontario securities law, nevertheless attracts the Tribunal's public interest jurisdiction. The Tribunal has done so where it finds that the conduct is abusive of the capital markets or engages an animating principle of the *Act*.[33]

[75] The fundamental animating principles of securities regulation, set out in s. 2.1 of the *Act*, include:

a. requirements for timely, accurate and efficient disclosure of information;

b. restrictions on fraudulent and unfair market practices and procedures; and

c. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[76] The Agreed Statement of Facts affirms that the respondents failed to:

a. segregate funds related to this project from funds related to Stinson's other real estate projects or from Stinson's own bank accounts or credit card accounts;

b. maintain accurate records of funds received from investors; and

c. properly record the use of investors' funds.

[77] We find that these important record-keeping failures by the respondents offend the animating principles of the *Act* and the conduct in this regard engages the Tribunal's public interest jurisdiction.

4.8 Did Stinson authorize, permit or acquiesce in the respondents' misconduct?

[78] Because we have found that Stinson directly breached s. 53(1) of the *Act* and breached the temporary cease trade order, we do not need to consider whether he authorized, permitted or acquiesced in the respondent's misconduct and we decline to do so.

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31 *Black Panther* at paras 110-112
32 *Act*, s 1(1)
33 *Agueci (Re)*, 2015 ONSEC 2 at paras 121-126, 174-175, 715-717

5. CONCLUSION

[79] For the above reasons we do not find that the respondents breached s. 25(1) or s. 44(2) of the *Act*, nor do we make a finding that Stinson authorized, permitted or acquiesced in the respondent's misconduct. However, we find that:

a. Stinson, Hotel Inc., Management Inc. and Buffalo Central distributed securities without a prospectus, and without any applicable exemptions from the prospectus requirement, contrary to s. 53(1) of the *Act*;

b. Stinson and Hospitality Corp. breached a temporary cease trade order and therefore breached Ontario securities law; and

c. the respondents engaged the Tribunal's public interest jurisdiction by:

i. failing to segregate investor funds;

ii. failing to maintain accurate records of funds received by investors; and

iii. failing to properly record the use of investors' funds.

[80] We therefore require that the parties contact the Registrar by 4:30pm on July 12, 2023 to arrange an attendance, the purpose of which is to schedule a hearing regarding sanctions and costs, and the delivery of materials in advance of that hearing. The attendance is to take place on a mutually convenient date that is fixed by the Governance & Tribunal Secretariat, and that is no later than August 4, 2023.

[81] If the parties are unable to present a mutually convenient date to the Registrar, each party may submit to the Registrar, for consideration by a panel of the Tribunal, a one-page written submission regarding a date for the attendance. Any such submission shall be submitted by 4:30pm on July 12, 2023.

Dated at Toronto this 27th day of June, 2023

"Russell Juriansz"

"Sandra Blake"

"Cathy Singer"

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B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 81-336 Guidance on Crypto Asset Investment Funds That Are Reporting Issuers

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 81-336
GUIDANCE ON CRYPTO ASSET INVESTMENT FUNDS THAT ARE REPORTING ISSUERS

July 6, 2023

1. Purpose of this Notice

Staff of the Canadian Securities Administrators (**CSA staff** or **we**) are publishing this notice (the **Notice**) concerning investment funds that seek to invest in crypto assets, either directly or indirectly[1] under National Instrument 81-102 *Investment Funds* (**NI 81-102**) (**Public Crypto Asset Funds**). This Notice is intended to provide guidance to stakeholders and to outline CSA staff's views and expectations regarding the operations of Public Crypto Asset Funds within the framework of NI 81-102.

This Notice will

- provide an overview of the Public Crypto Asset Funds market in Canada and clarify the current securities regulatory requirements applicable to Public Crypto Asset Funds;
- discuss key findings from reviews of Public Crypto Asset Funds conducted by CSA staff, including fund liquidity, exchange-traded mutual fund (**ETF**) structural matters and custody; and
- outline CSA staff expectations for stakeholders with respect to matters that could impact existing and future Public Crypto Asset Funds, specifically concerning
    - liquidity, valuation and other considerations with respect to potentially investing in crypto assets other than bitcoin and ether, which are currently the only crypto assets accepted as investments for Public Crypto Asset Funds;
    - expectations for custodians of crypto assets (**Crypto Custodian**) to meet standard of care obligations under NI 81-102;
    - issues relating to staking of crypto assets or other similar yield-generating activities within Public Crypto Asset Funds; and
    - know-your-product (**KYP**), know-your-client (**KYC**) and suitability obligation issues with respect to Public Crypto Asset Funds.

Guidance provided in this Notice is based on existing securities regulatory requirements and does not create any new legal requirements or modify existing ones.

2. Background

The first prospectus receipt for a Canadian Public Crypto Asset Fund was issued on April 1, 2020, following a panel decision of the Ontario Securities Commission (the **Bitcoin Decision**).[2] The Bitcoin Decision resulted in a prospectus receipt being issued with respect to the Bitcoin Fund, a non-redeemable investment fund that invests substantially all of its assets directly in bitcoin.

1 For example, through the use of derivatives or fund of fund investing.
2 *3iQ Corp (Re)*, 2019 ONSEC 37, available at https://www.osc.ca/sites/default/files/pdfs/proceedings/rad_20191029_3iq-2.pdf.

The Bitcoin Decision also led to the launch of several other Public Crypto Asset Funds, including the first ETFs in the world that invest directly in bitcoin and ether.

As of April 30, 2023, there are 22 Public Crypto Asset Funds in Canada that collectively have approximately $2.86 billion in net assets. The Public Crypto Asset Funds currently invest only in bitcoin and/or ether and achieve this primarily through direct holdings of those crypto assets (including through fund of fund structures). More detailed market data concerning Public Crypto Asset Funds is provided in the Appendix to this Notice.

3. Regulatory Framework for Public Crypto Asset Funds

Public Crypto Asset Funds are subject to the same regulatory framework as other publicly distributed investment funds in Canada.

This framework includes having a registered investment fund manager (**IFM**) and portfolio manager(s) under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), distributing securities of the fund by way of a prospectus prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) or National Instrument 81-101 *Mutual Fund Prospectus Requirements* (**NI 81-101**), as well as being subject to the operational framework of NI 81-102, among other rules and instruments. Public Crypto Asset Funds must also compute a net asset value (**NAV**) on a daily basis that must be calculated in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).

The existing Public Crypto Asset Funds that are structured as ETFs or conventional mutual funds are classified as "alternative mutual funds" under NI 81-102 and accordingly have a greater ability to borrow cash or provide a security interest over their assets, engage in short selling or use specified derivatives applicable to alternative mutual funds, subject to the limits set out in that rule.[3] They are also subject to issuer concentration and control restrictions, restrictions on holding illiquid assets,[4] and other investment restrictions set out in Part 2 of NI 81-102.

The Public Crypto Asset Funds have appointed custodians and sub-custodians to hold their portfolio assets, each of which is required to meet the applicable qualification criteria set out in Part 6 of NI 81-102.

4. Oversight by CSA Staff

As part of the CSA's general oversight role, and in response to issues that have arisen in crypto asset markets, CSA staff have conducted reviews of Public Crypto Asset Funds that directly hold crypto assets,[5] focused on liquidity, ETF structure, and custody. Our findings are described below.

(a) Liquidity

Liquidity reviews of the Public Crypto Asset Funds structured as ETFs were initiated in May 2021. CSA staff noted that the Public Crypto Asset Funds had not experienced any material difficulties in meeting redemption requests since their respective inceptions. IFMs reported using various approaches for liquidity risk management of Public Crypto Asset Funds, which included ongoing portfolio management and continuous liquidity assessments of the underlying crypto asset, in addition to ongoing monitoring of relationships with liquidity providers and ensuring that alternative sources of liquidity are available.

(b) ETF Structure

In May 2021, CSA staff conducted a review of Public Crypto Asset Funds structured as ETFs to better understand how they managed their subscription and redemption activities, where they sourced their crypto assets, and how they continued to accurately calculate their Public Crypto Asset Funds' NAV. CSA staff found that most of the ETFs traded very closely to their NAV.

In June 2022, CSA staff made further inquiries to understand how certain Public Crypto Asset Funds structured as ETFs were able to meet large redemption requests including whether extraordinary measures were needed to meet the redemption requests. We found that in those cases, the ETFs were able to meet the redemption requests as part of their normal operating procedures, with all redeemed securities paid in cash at NAV based on their respective valuation index, with settlement the next business day. We also found that none of the ETFs needed to borrow cash to meet the redemption requests.[6]

(c) Custody

In November 2022, CSA staff conducted a review of the custody arrangements for several Public Crypto Asset Funds that directly held crypto assets. We confirmed, among other things,

[3] See subsection 2.6(2) and sections 2.6.1, 2.6.2 and 2.9.1 of NI 81-102.
[4] See sections 2.1, 2.2 and 2.4 of NI 81-102 respectively. Public Crypto Asset Funds structured as non-redeemable investment funds are permitted to invest a higher proportion of their portfolio in illiquid assets but are otherwise subject to the same investment restrictions as alternative mutual funds under NI 81-102.
[5] As is noted in the Appendix, the existing Public Crypto Asset Funds that directly hold crypto assets in their portfolios are primarily structured as ETFs.
[6] An investment fund can borrow cash as a temporary measure to accommodate redemption requests pursuant to subparagraph 2.6(1)(a)(i) of NI 81-102.

- the segregation of the Public Crypto Asset Fund's crypto assets from those of the Crypto Custodian and other clients of the Crypto Custodian;
- the use of offline or "cold wallet" storage of crypto assets held by the Crypto Custodian;
- the listing of Public Crypto Asset Fund as the beneficial owner of its crypto assets in the Crypto Custodian's books and records;
- the existence of controls and procedures that validate security, segregation and ownership of the crypto assets including verification on the blockchain; and
- the maintenance by the Crypto Custodian of insurance over custodied crypto assets.

5. Stakeholder Considerations Regarding Public Crypto Asset Funds

The nature of crypto assets can create unique challenges for funds that hold these assets directly, which may require specific regulatory consideration. We have identified a number of areas for which we believe greater guidance regarding CSA staff expectations may be warranted, for both existing and possible future offerings of Public Crypto Asset Funds. One or more of the identified areas may also become the subject of future policy work by the CSA.

(a) Crypto Asset and Crypto Asset Market Characteristics

The unique features of each crypto asset and its market are key to determining whether the crypto asset is a suitable investment for a publicly distributed investment fund under NI 81-102. Among the most important considerations are (i) the ability to determine a fair value of the crypto asset, (ii) liquidity of the crypto asset and (iii) the classification of the crypto asset and the implications arising from its classification, each of which is discussed further below.

(i) Valuation

Markets for various crypto assets have been evolving rapidly over the course of the last several years and now fall on a wide spectrum in terms of maturity. CSA staff are of the view that the more efficient and transparent the facilities provided by a market, the more such a market can support the operations of Public Crypto Asset Funds. Less mature markets may offer less efficient facilities and institutional support for Public Crypto Asset Funds to operate without compromising investor protection.

The market for any crypto asset in which a Public Crypto Asset Fund seeks to invest should support the fund's ability to calculate its NAV in accordance with NI 81-106. CSA staff will take into consideration the particulars of a given crypto asset's market in their analysis of whether to recommend the issuance of a receipt for the prospectus for an investment fund that seeks to directly invest in the crypto asset. These particulars will include

- sufficient evidence of an active market for the crypto asset comprising actual and regularly occurring market transactions on an arm's length basis;
- the presence of a regulated futures market for that crypto asset; and
- publicly available indices administered by a regulated index provider for the crypto asset.

Active markets

Under NI 81-106, an investment fund's NAV must be calculated using the "fair value" of its assets and liabilities. "Fair value" in this context means either the market value based on reported prices and quotations in an active market or, if the market is not an "active market", a value that is fair and reasonable in all the relevant circumstances.[7] A market is generally considered an active market when the quoted prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency and those prices reflect actual and regularly occurring market transactions on an arm's length basis.[8]

There is data that suggests evidence of market manipulation in some unregulated segments of existing crypto asset markets[9] such that the markets for certain crypto assets may not be considered "active markets". CSA staff think that this would impair or limit an IFM's ability to determine a fair value for the crypto asset in question for the purpose of calculating a NAV. Crypto asset markets that are active markets provide more accurate and legitimate information and, therefore, a fair and reasonable market value.

7 See subsection 14.2(1.2) of NI 81-106.
8 See subsection 9.4(1) of Companion Policy 81-106CP *Investment Fund Continuous Disclosure*.
9 See for example Cong, L. W., Li, X., Tang, K., and Yang, Y. "Crypto Wash Trading" (July 1, 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3530220 and Paz, J., "More Than Half Of All Bitcoin Trades Are Fake" (August 26, 2022), available at https://www.forbes.com/sites/javierpaz/2022/08/26/more-than-half-of-all-bitcoin-trades-are-fake/?sh=17f7f7666681.

To accurately value a crypto asset, an IFM should consider whether the market for that crypto asset has real and substantial trading volume, in large size, both in absolute terms and when compared to other markets for commodities and equities.[10] These types of markets will generally provide enough liquidity to promote accurate price discovery.[11] Additionally, markets that have a significant volume of transactions on regulated exchanges as opposed to unregulated exchanges will promote more reliable price discovery due to the lower risk of market manipulation.

Regulated Futures

CSA staff are also of the view that the presence of a regulated futures market for a crypto asset provides support for the proper valuation of a Public Crypto Asset Fund that invests in that crypto asset, along with other operational benefits. First CSA staff consider that the presence of a regulated futures market for a particular crypto asset promotes greater price discovery, a view that is supported by recent research.[12] We note that there is some evidence of market manipulation in crypto asset futures markets, which highlights the importance of relying on a regulated futures market rather than an unregulated futures market.[13] Accordingly, in their analysis of whether to recommend the issuance of a receipt for the prospectus of an investment fund that seeks to directly invest in a crypto asset, CSA staff would consider a crypto asset for which there is a regulated futures market where anti-manipulation rules allow for a fair and transparent value of that crypto asset to be more accurately determined, to raise fewer investor protection concerns.[14]

Additionally, market makers for ETFs use different tools, including derivatives, to hedge against market price fluctuations in the ETFs' underlying assets. The presence of a regulated futures market can support the ability of authorized dealers and market makers to properly carry out their market making duties with respect to Public Crypto Asset Funds that are ETFs. Regulatory expectations relating to the proper functioning of these ETFs include the ability for market makers of an ETF to be able to carry out their duties under their agreements with the ETF, including being able to make liquid markets for the ETF's units.[15] We further note that the presence of a regulated futures market for a given crypto asset generally correlates with institutional support for that particular crypto asset.

Use of Pricing Indices

CSA staff note that several existing Public Crypto Asset Funds base their valuations on spot pricing from available crypto asset indices.[16] Selecting publicly available indices that aggregate pricing from a variety of sources to determine a spot price, and that are administered by regulated index providers using transparent, auditable and replicable calculation methodologies that comply with industry best practices as well as International Organization of Securities Commissions standards, will help mitigate the risks of inaccurate pricing of a particular crypto asset.[17] In addition, an IFM may be better able to confirm the ongoing accuracy and reliability of the index by referring to other widely used and reputable pricing sources for the crypto asset.[18]

Crypto Assets that Best Support Fair Valuation

Considering the above criteria, CSA staff are of the view that the markets for bitcoin and ether best support the operations of Public Crypto Asset Funds at this time without compromising investor protection. In the future, greater institutional support and mainstream adoption of other crypto assets may result in those crypto assets becoming suitable investments for publicly distributed investment funds.

(ii) Liquidity of Underlying Assets and Factors to Consider in Assessing Liquidity

Under NI 81-102, investment funds are subject to restrictions on the proportion of "illiquid assets" that can be held in their portfolios.[19] When contemplating an investment in a particular crypto asset, a fund must conduct the necessary due diligence to determine if that crypto asset is of sufficient liquidity to comply with the requirements in NI 81-102. A crypto asset may be an "illiquid asset" within the meaning of NI 81-102 if, among other things, it is a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the NAV of the investment fund.[20]

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10 See the Bitcoin Decision, par. 47 and 49 to 51.
11 See the Bitcoin Decision, par. 50.
12 See for example Sharma et al., "Investigating the Efficiency of Bitcoin Futures in Price Discovery" (2022), available at International Journal of Economics and Financial Issues: https://www.econjournals.com/index.php/ijefi/article/view/12783.
13 Cong, L. W., Li, X., Tang, K., and Yang, Y. "Crypto Wash Trading" (2021), p. 5, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3530220.
14 CSA staff note that the Australian Securities and Investments Commission has expressed a similar view. See *Report 705 Response to Submissions on CP 343 Crypto-assets as Underlying Assets for ETPs and Other Investment products*, 29 October 2021, p. 8, available at https://download.asic.gov.au/media/p3tnevtt/rep705-published-29-october-2021.pdf.
15 See *Exchange Traded Funds – Good Practices for Consideration Consultation Report* by the International Organization of Securities Commissions, p. 24, available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD701.pdf.
16 This is the primary approach taken by existing Public Crypto Asset Funds that directly hold bitcoin or ether.
17 See also the Bitcoin Decision, par. 65.
18 See also the Bitcoin Decision, par. 141.
19 See section 2.4 of NI 81-102.
20 Under NI 81-102, an "illiquid asset" may also be a restricted security held by an investment fund. See the section of this Notice titled "Classification of Crypto Asset" for further guidance about when a crypto asset may be a security.

The markets for many crypto assets are generally volatile and price movements can be accompanied by significant inflows or outflows of capital due to changes in investor sentiment. Recent events[21] have also highlighted that crypto asset businesses may not always have sufficient liquidity to facilitate significant redemption and withdrawal requests, resulting in their collapse and increased market volatility. In some cases, the market for a crypto asset may become significantly one-sided to the point that it is not possible to liquidate existing holdings of that crypto asset in a timely fashion, or at a fair and reasonable price.

Public Crypto Asset Funds that hold crypto assets directly often acquire their underlying crypto assets from a variety of liquidity providers, including crypto asset trading platforms (**CTP**). Previous CSA staff guidance noted concerns may arise where there is a potential mismatch between the liquidity of an investment fund's underlying portfolio assets and the redemption terms offered to investors, and that IFMs are expected to regularly measure, monitor and manage the liquidity of the investment fund's underlying portfolio assets, considering the time to liquidate each underlying portfolio asset, the price the asset may be sold at and the pattern of redemption requests.[22] Given the observed volatility in crypto asset markets and the failure of some large firms that engaged in crypto asset trading, CSA staff emphasize the need for Public Crypto Asset Funds to have effective liquidity risk management programs that include the use of stress testing and ongoing monitoring of underlying crypto asset market liquidity and encourage regular review of such programs.

(iii) Classification of Crypto Asset

The CSA has stated in previous CSA guidance[23] and announcements,[24] that certain crypto assets may be considered to be securities or derivatives. CSA staff expect Public Crypto Asset Funds to conduct appropriate due diligence to determine whether or not the crypto assets they propose to invest in are securities or derivatives. Depending on how a given crypto asset is characterized, various provisions of NI 81-102, including concentration[25] and issuer control restrictions,[26] may limit an investment fund's ability to buy and hold a single crypto asset, as is currently done by existing Public Crypto Asset Funds holding bitcoin or ether.

Public Crypto Asset Funds that invest in crypto assets that are characterized as securities also need to consider the restrictions in NI 81-102 related to securities lending.[27] CSA staff are aware of various investors engaging in "crypto lending". Under these arrangements, investors typically deposit crypto assets onto crypto lending platforms. The crypto assets are then lent out to borrowers in return for regular interest payments. We expect that a Public Crypto Asset Fund that proposes to engage in such activity conduct appropriate due diligence to ensure compliance with applicable securities laws. We also note that Public Crypto Asset Funds are generally prohibited from lending portfolio assets that are not securities.[28]

CSA staff also note that in addition to the requirements applicable to investment funds subject to NI 81-102, there are general securities law requirements that would apply to crypto assets that are securities or derivatives. These include the prospectus requirement for securities, as well as restrictions on secondary trades.[29]

Recognizing that the properties of a crypto asset may materially change over time, such as through updates to the prevailing network protocols, CSA staff also expect that Public Crypto Asset Funds will regularly update their due diligence on crypto assets they invest in to ensure that their investments remain in compliance with applicable securities laws.

(b) Custody Requirements

Public Crypto Asset Funds are subject to the custody requirements set out in Part 6 of NI 81-102. Their portfolio assets (including crypto assets) must be held by custodians or sub-custodians that qualify under sections 6.2 and 6.3 of NI 81-102 as applicable. In addition to the usual consideration of trust law principles that apply to all types of assets held on behalf of clients, crypto assets present unique custodial considerations, including expertise and infrastructure specifically tailored to the safekeeping of this type of asset. This is reflected in the additional practices that have developed concerning the custody of crypto assets held by a Crypto Custodian on behalf of a Public Crypto Asset Fund. These include the following practices, which we would consider to be the minimum expectations for practices pertaining to the custody of crypto assets of a Public Crypto Asset Fund by a Crypto Custodian, consistent with existing legal obligations under Part 6 of NI 81-102, including the standard of care for custodians and sub-custodians:

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21 See the examples of the bankruptcies of crypto asset exchange platform FTX, the crypto asset lender Genesis and the collapse of the algorithmic value-referenced crypto asset (commonly referred to as a stablecoin) and crypto asset UST/LUNA pair.

22 See CSA Staff Notice 81-333 *Guidance on Effective Liquidity Risk Management for Investment Funds*.

23 See CSA Staff Notice 46-307 *Cryptocurrency Offerings*, CSA Staff Notice 46-308 *Securities Law Implications for Offerings of Tokens*, CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto assets*, Joint CSA-IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* and CSA Staff Notice 21-332 *Crypto Asset Trading Platforms: Pre-Registration Undertakings, Changes to Enhance Canadian Investor Protection* (**CSA Staff Notice 21-332**).

24 Per CSA Staff Notice 21-332, CSA staff are of the view that value-referenced crypto assets may constitute securities and/or derivatives.

25 See section 2.1 of NI 81-102.

26 See section 2.2 of NI 81-102.

27 Among these restrictions include those in section 2.12 of NI 81-102.

28 See paragraph 2.6(1)(f) of NI 81-102.

29 In particular, where the crypto asset is a security, the requirement that the issuer is a reporting issuer or that the secondary trade is conducted in accordance with National Instrument 45-102 *Resale of Securities*.

- *Crypto Custodian Expertise*. The IFM, consistent with its fiduciary obligations to the Public Crypto Asset Fund, should satisfy itself that a proposed Crypto Custodian has the necessary expertise and experience to safely custody the crypto assets to be held on behalf of the Public Crypto Asset Fund;

- *Primary storage of crypto assets in "cold wallets"*. Crypto assets held on behalf of a Public Crypto Asset Fund should be held in online storage or "hot wallets" only as is necessary to facilitate purchases and redemptions by the fund. Otherwise, crypto assets are to be held in offline storage or "cold wallets" in secured facilities maintained by the Crypto Custodian;

- *Segregation of assets, visible on the blockchain*. Assets of an investment fund held by a custodian or sub-custodian are required to be segregated under Part 6 of NI 81-102. In the context of a Public Crypto Asset Fund, this will generally include the use of segregated wallets that confirm the fund's ownership of the applicable crypto assets or in an omnibus wallet visible on the blockchain so long as in each case the Crypto Custodian's books and records clearly reflect the fund's ownership of the crypto assets held by it;

- *Website security measures*. Crypto Custodians should be using website protection measures such as two-factor authentication, strong password requirements that are cryptographically hashed, and encryption of user information, among other measures to secure client information and protect the Crypto Custodian's website from hacking attempts;

- *Maintenance of insurance for corporate crime/theft relating to the storage of crypto assets*. The Crypto Custodians for the existing Public Crypto Asset Funds should each maintain appropriate insurance for the crypto assets in their custody; and

- *SOC-2 Type-2 Reports of the crypto custodian provided to the Fund's auditors*. The Crypto Custodians will generally provide or make available for review, on an annual basis, by the Public Crypto Asset Fund's auditor in connection with its audit of the Public Crypto Asset Fund, System and Organization Control (**SOC**) reports prepared on the Crypto Custodian's behalf by a public accountant, which assess a service organization's security, availability, processing integrity, confidentiality and privacy controls. Where a SOC report is not available, we expect the Crypto Custodian to permit the Public Crypto Asset Fund's auditor to directly examine its controls for similar purposes.

CSA staff note that these practices and expectations are substantially similar to the proposed terms and conditions for entities that seek to act as custodians for CTPs in Canada as is set out in CSA Staff Notice 21-332.

(c) Staking Crypto Assets

In this Notice, "staking" refers to the act of committing or locking crypto assets in smart contracts to permit the owner or the owner's agent to act as a validator for a particular proof-of-stake consensus algorithm blockchain. A validator, in connection with a particular proof-of-stake consensus algorithm blockchain, is an entity that operates one or more nodes that meet protocol requirements for a crypto asset and participates in consensus by broadcasting votes and committing new blocks to the blockchain. Validators are incentivized to add legitimate transactions to a proof-of-stake blockchain through rewards and can be penalized for breaching protocol requirements, including through having staked crypto assets "slashed" (i.e., removed from the offending validator).

CSA staff continue to monitor and assess the presence and role of staking in the crypto asset industry. As a result of this ongoing work, CSA staff are of the view that, depending on how it is conducted, staking may involve the issuance of a security or derivative. CSA staff would therefore expect Public Crypto Asset Funds interested in staking crypto assets held in their portfolios to have established policies and procedures to assess whether any staking or similar activity involves the issuance of a security and/or derivative. Our view is that such policies and procedures should include a process for independent analysis of the staking activities and consideration of statements made by any regulator or securities regulatory authority about whether staking conducted in the contemplated manner involves the issuance of a security and/or a derivative.

We note that there are circumstances in which a Public Crypto Asset Fund's participation in staking may result in a portfolio crypto asset that may otherwise be liquid, becoming an "illiquid asset" within the meaning of NI 81-102. This could occur for example, if a staked crypto asset is subject to any lock-up, unbonding, unstaking, or similar periods imposed by the crypto asset protocol, custodian or validator, where such crypto asset would not be accessible to the Public Crypto Asset Fund or would be accessible only after payment of additional fees, penalties or forfeiture of any rewards. CSA staff expect a Public Crypto Asset Fund to conduct appropriate due diligence with respect to the effect on the crypto asset's liquidity within the fund's portfolio as a result of the fund's participation in staking and in turn how this impacts the Public Crypto Asset Fund's compliance with the illiquid asset restrictions in section 2.4 of NI 81-102.

Public Crypto Asset Funds interested in staking should also consider the prohibitions in section 2.6 of NI 81-102 related to lending and other investment practices by an investment fund. Specifically, investment funds are prohibited from lending portfolio assets and guaranteeing securities or obligations of a person or company. Depending on how it is proposed to be conducted, staking

could be viewed as akin to lending portfolio assets to or even guaranteeing obligations of a person or company engaged to act as validator.[30] If the underlying staked crypto assets are themselves securities, staking such assets could also be viewed as akin to securities lending. Public Crypto Asset Funds should therefore also be mindful of the restrictions on securities lending transactions detailed in section 2.12 of NI 81-102.

Consistent with the definition of "non-redeemable investment fund" in NI 81-102 and the CSA's discussion in section 1.2 of Companion Policy 81-106CP *Investment Funds Continuous Disclosure*, CSA staff regard an investment fund as an issuer that does not seek to exercise control over, or become involved in the management of, investee companies. Since staking requires a validator to actively participate in consensus of a proof of stake network protocol by broadcasting votes and committing new blocks to the blockchain, this could be viewed as exerting control over or being involved in the management of the proof of stake protocol (which can be viewed as being akin to an investee company). To mitigate this concern CSA staff would expect that neither a fund nor its IFM would act as its own validator. Rather, a Public Crypto Asset Fund would be expected to engage a third party to act as validator (i.e., "staking as a service").

The expectation that a Public Crypto Asset Fund would not act as its own validator is also consistent with requirements imposed on registered CTPs that engage in certain staking activity.[31] CSA staff would expect that any staking activity permitted to be engaged in by a Public Crypto Asset Fund would be done within a framework similar to the terms and conditions imposed on registered CTPs, where applicable. CSA staff would expect that the practices relating to staking by Public Crypto Asset Funds include that

- the fund will engage in staking only for (i) crypto assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked crypto assets that are used to guarantee the legitimacy of new transactions the validator adds to the blockchain;
- the IFM must be proficient and knowledgeable about staking crypto assets;
- the IFM must enter into written agreements with one or more third parties to stake the fund's crypto assets and each such third party is proficient and experienced in staking crypto assets. The IFM must also consider the application of securityholder approval requirements under Part 5 of NI 81-102 concerning any fees that may be payable by the fund under those agreements;
- the fund's Crypto Custodian will remain in possession, custody and control of the staked crypto assets at all times;
- the fund's staked crypto assets be held in offline storage or "cold wallets" in secured facilities maintained by the Crypto Custodian, where applicable;
- the IFM will monitor validators retained on behalf of the fund for downtime, jailing and slashing events and take any appropriate action to protect crypto assets staked by the fund; and
- the IFM will appropriately manage any liquidity risk and other risks to the fund's financial viability that may arise because of the fund's staking activities.

IFMs of Public Crypto Asset Funds are expected to engage in their own due diligence to determine whether proposed staking activity by a Public Crypto Asset Fund will comply with applicable securities legislation.

We also encourage Public Crypto Asset Funds interested in staking portfolio assets to contact their principal regulator to discuss the applicability of securities legislation and possible approaches to compliance.

(d) Know-Your-product, Know-Your-Client and Suitability Obligations

Registrants have to comply with obligations under securities legislation related to KYC, KYP, and suitability determinations in connection with purchases or sales of securities of Public Crypto Asset Funds for, or recommendations of Public Crypto Asset Funds to, their clients.

To comply with their KYC obligations, registrants must collect certain information from clients, take reasonable steps to have clients confirm the accuracy of the information and keep the information current.[32] For KYP compliance, registered firms are required to take reasonable steps to assess and understand any securities that are made available to clients and in particular, are

[30] See paragraphs 2.6(1)(f) and 2.6(1)(g) of NI 81-102.

[31] Consult National Registration Search https://info.securities-administrators.ca/nrsmobile/nrssearch.aspx for terms and conditions imposed on the registrations of CTPs that engage in certain staking activity.

[32] See section 13.2 of NI 31-103. Registrants that are members of the Canadian Investment Regulatory Organization (**CIRO**) must also comply with all applicable CIRO rules relating to KYC, including Rule 3200 of the Corporation Investment Dealer and Partially Consolidated Rules (the **ID Rules**) and/or Rule 2.2.1 of the Mutual Fund Dealers Association of Canada Rules (the **MFD Rules**).

required to assess and monitor on an ongoing basis all relevant aspects of the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs.[33]

Once a registrant has complied with its KYC and KYP obligations, it is expected to have sufficient information to make a reasonable determination of whether an investment action[34] is suitable for a client and registrants must put their clients' interests first when taking any investment action.[35]

When conducting KYC, KYP and suitability determinations in connection with recommending Public Crypto Asset Funds to clients, registrants should be cognizant that holding crypto assets, including Public Crypto Asset Fund securities, comes with elevated levels of risk that may not be suitable for many investors.

6. Questions

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

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British Columbia Securities Commission
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[33] See section 13.2.1. of NI 31-103. Registrants that are members of the CIRO must also comply with all applicable CIRO rules relating to KYP, including Rule 3300 of the ID Rules and/or Rule 2.2.5 of the MFD Rules.

[34] An investment action includes opening an account for a client, purchasing, selling, depositing, exchanging or transferring securities for a client's account, taking any other investment action for a client, making a recommendation or exercising discretion to take any such action.

[35] See sections 13.3 and 13.3.1 of NI 31-103.

APPENDIX

Select Public Crypto Asset Fund Market Data

The following charts provide key market data[36] about Public Crypto Asset Funds in Canada. The information provided is current to April 30, 2023.

By Fund Structure

Public Crypto Asset Funds are structured as non-redeemable investment funds, ETFs and open-ended mutual funds, with the ETF structure being the most common, as is illustrated below:

Fund Structure	No. of Funds	Net Assets ($Millions)
Non-redeemable investment fund	2	$576
ETFs	12	$2,289
Open-ended mutual fund[37]	8	
Total	**22**	**$2,865**

By Crypto Asset Type

The existing Public Crypto Asset Funds seek exposure only to bitcoin and/or ether, with funds focused on bitcoin representing the majority of net assets in this space as is illustrated below:

Crypto Asset	No of Funds	Net Assets ($millions)
Bitcoin	11	$1,860
Ether	8	$1,005
Bitcoin and Ether	3	n/a
Total	**22**	**$2,865**

By Fund Strategy

The existing Public Crypto Asset Funds employ 3 main strategies for achieving the desired exposure to bitcoin or ether, namely:

- directly holding bitcoin or ether in a “buy and hold” strategy;
- indirectly holding bitcoin or ether through a fund of fund structure; or
- indirect exposure through investment in bitcoin or ether futures that trade on regulated derivatives exchanges.

[36] The information was collected internally by CSA staff through publicly available sources, including SEDAR, fund company websites and other third-party data providers.

[37] The open-ended mutual funds invest their assets in securities of one or more of Public Crypto Asset Investment funds that are ETFs. As such, their net assets are part of the total assets under management for the ETFs listed above.

Direct investment remains the most common strategy as is illustrated below:

Strategy	No of Funds	Net Assets ($millions)
Direct investment	12	$2,838
Fund of fund	8[38]	
Investment in listed futures	2	$27
Total	**22**	**$2,865**

[38] The Public Crypto Asset Funds that employ a fund of fund strategy invest their assets in one or more of the "direct investment" Public Crypto Asset Funds structured as ETFs. The net assets of the "fund of fund" strategies are therefore included as part of the net asset of the "direct investment" funds.

B.2
Orders

B.2.1 Voyager Metals 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.

Applicable Legislative Provisions

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

June 28, 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
VOYAGER METALS 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, Alberta and Saskatchewan.

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2023/0258

B.2.2 First Choice Products Inc. – s. 144

Headnote

Application for partial revocation of a cease trade order – issuer cease traded due to failure to file certain continuous disclosure documents required by Ontario securities law – issuer has applied for partial revocation of the cease trade order to permit the issuer to proceed with a private placement and debt settlement with accredited investors – issuer will use proceeds from private placement to prepare and file continuous disclosure documents and pay related fees – partial revocation granted subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.
National Policy 12-202 Revocation of Certain Cease Trade Orders.

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

AND

IN THE MATTER OF
FIRST CHOICE PRODUCTS INC.

ORDER
(Section 144)

WHEREAS the securities of First Choice Products Inc. (the **Applicant**) are subject to a cease trade order issued by the Director dated February 22, 2013 (the **Cease Trade Order**"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(4.1) of the *Securities Act* (Ontario) (the **Act**), directing that all trading in the securities of the Applicant cease until the Cease Trade Order is revoked by the Director;

AND WHEREAS the Applicant has applied to the Ontario Securities Commission (the **Commission**) for a partial revocation of the Cease Trade Order pursuant to section 144 of the Act;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated in the province of Alberta under the *Companies Act* (Alberta) on January 12, 1989 and continued into the Province of British Columbia on April 4, 2014.

2. The Applicant's registered office and principal place of business is located at Simpson Tower, 401 Bay Street, Suite 2100, Mailbox #55, Toronto, Ontario, M5H 2Y5.

3. The Applicant is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia, and Alberta. The Applicant is not a reporting issuer in any other jurisdiction in Canada.

4. The Applicant's authorized share capital consists of 200,000,000 common shares, voting and participating without par value (the **Common Shares**). The Applicant currently has 30,800,214 Common Shares issued and outstanding.

5. The Applicant's Common Shares are not listed on any stock exchange or quotation system.

6. The Cease Trade Order was issued against the Applicant, pursuant to paragraph 2 of subsection 127(1) and subsection 127(4.1) of the Act, as a result of the Applicant's failure to file (i) audited financial statements for the year ended September 30, 2012, (ii) management's discussion and analysis (**MD&A**) relating to the audited annual financial statements for the year ended September 30, 2012, and (iii) certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (collectively, the **Unfiled Documents**).

7. The Unfiled Documents were not filed in a timely manner as a result of financial difficulties.

8. Subsequent to the failure to file the Unfiled Documents, the Applicant also failed to file the following documents:

    i. annual audited financial statements for the year ended September 30, 2013 and each of the periods ended on September 30 of each year to September 30, 2022;

ii. interim unaudited financial statements for the interim periods ended December 31, 2012 to March 31, 2023;

iii. MD&A relating to the financial statements referred to in subparagraphs i and ii above; and

iv. Certificates required to be filed in respect of the financial statements referred to in subparagraphs i, ii and iii above under National Instrument 52-109 *Certification of Disclosure in Filing Annual and Interim Filings*

(together, with the Unfiled Documents, the **Unfiled Continuous Disclosure**).

9. The Applicant is also subject to a cease trade order dated February 4, 2013, issued by the British Columbia Securities Commission (the **BCSC**), pursuant to subsection 164(1) of the *Securities Act* (British Columbia) (the **BC Act**), directing that all trading in the securities of the Applicant cease until the order is revoked by the Executive Director (the **BC Cease Trade Order**)

10. In addition, the Applicant's securities are also subject to a cease trade order dated May 15, 2013 issued by the Alberta Securities Commission (the **ASC**), pursuant to paragraph 2, subsection 172(1) of the *Securities Act* (Alberta) (the **Alberta Act**), directing that all trading in the securities of the Applicant cease until the order is revoked or varied (the **AB Cease Trade Order**, together with the BC Cease Trade Order and Cease Trade Order, are collectively referred to as the **Cease Trade Orders**).

11. Other than the failure to file the Unfiled Continuous Disclosure, the Applicant is not in default of any of the requirements of the Cease Trade Orders or of the Act or the rules and regulations made pursuant thereto. The Applicant's SEDAR and SEDI profiles are up to date.

12. During the period where the Cease Trade Order was effect and between January to March 2014, the then directors of the Applicant distributed Common Shares to 19 investors for proceeds of $105,500 under a private placement. These distributions breached the BC Cease Trade Order, prohibiting any person from trading the Applicant's securities. The BC Cease Trade Order remains in force and a settlement was reached between the BCSC and such directors under the Order and Settlement Agreements: *2017 BCSECCOM 95, 2017 BCSECCOM 94*. Although Common Shares were not issued by the Applicant to the investors, the Applicant acknowledges that this amount remains outstanding and owed to such investors.

13. The Applicant has accumulated debt of approximately $32,809 as of the date hereof (the **Advanced Funds**) owed to Gregory Prekupec (Chief Executive Officer, Chief Financial Officer, and director of the Applicant) and Jason Atkinson (a director of the Applicant) (together, the **Purchasers**). The Purchasers paid the Advanced Funds on behalf of the Applicant for the necessary accounting, audit, and filing fees in furtherance of seeking a partial revocation of the Cease Trade Order. No instruments were issued by the Applicant in connection with the Advanced Funds; however, such advances are reflected in the financial statements of the Applicant.

14. The Applicant is seeking a partial revocation of the Cease Trade Order to be able to complete a private placement (the **Private Placement**) in the province on Ontario, whereby the Purchasers will purchase unsecured convertible debentures (the **Convertible Debentures**) of the Applicant in the amount of up to $118,000. Each Convertible Debenture will be issued in principal amount of $1,000, bearing the interest at an annual rate of 5% payable in arrears in equal installments semi-annually, and maturing on the date that is 24 months from the date of issuance. The principal sum of the Convertible Debentures, or any portion thereof, will be convertible at the holder's option into Common Shares at a price of $0.00190 per Common Share. The Convertible Debentures may only be converted after the full revocation of the Cease Trade Order.

15. The Applicant is also seeking a partial revocation of the Cease Trade Order to be able to issue Common Shares in satisfaction of the debt accumulated from the Advanced Funds at a deemed price of $0.00190 per share owed to Purchasers referred to in paragraph 13 (the **Debt Conversion**).

16. The Private Placement and Debt Conversion are intended to take place in Ontario. Each distribution made in respect of the Private Placement and Debt Conversion with comply the accredited investor prospectus exemption contained in section 73.3 of the Act and section 2.3 of National Instrument 45-106 *Prospectus Exemptions*.

17. Each of the Purchasers, being directors and officers of the Applicant, is a "related party", as such term is defined in in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) and each of the Private Placement and Debt Conversion constitutes a "related party transaction" pursuant to paragraphs (g) and (l) of the definition of that term in MI 61-101. The issuance of the Convertible Debentures to the Purchasers pursuant to the Private Placement is subject to the formal valuation and minority approval requirements in MI 61-101. The Debt Conversion is not subject to the formal valuation requirements in MI 61-101 however, it is subject to the minority approval requirement of MI 61-101. Regarding the Private Placement, the Applicant will rely on the exemption from the formal valuation requirement contained in paragraph 5.5(b) of MI 61-101, since the securities of the Applicant are not listed on any stock exchange. Regarding both the Private Placement and Debt Conversion, the Applicant will rely on the exemption

from the minority approval requirement contained in paragraph 5.7(1)(e) of MI 61-101, the financial hardship exemption, which provides an exemption where the financial hardship criteria set out in paragraph 5.7(1)(g) of MI 61-101 are met and where there is no other requirement, corporate or otherwise, to hold a meeting to obtain any approval of the holders of any class of affected securities and (i) the Applicant is insolvent or in serious financial difficulty, ii) the Private Placement and Debt Conversion are designed to improve the financial position of the Applicant, iii) the provisions of paragraph 5.5(f) are inapplicable to the Applicant, iv) the Applicant has one or more independent directors in respect of the transaction, and v) the Applicant's board of directors, acting in good faith, determines, and at least two-thirds of the Applicant's independent directors, acting in good faith, determine that (A) subparagraphs (i) and (ii) apply, and (B) the terms of the Private Placement and Debt Conversion are reasonable in the circumstances of the Applicant. The foregoing shall be disclosed in the disclosure document for the Private Placement and Debt Conversion, being the news release and material change report which material change report will be in compliance with section 5.2 of MI 61-101.

18. The Purchasers currently own no shares or debt of the Applicant. Following the Private Placement and Debt Conversion and on a fully diluted basis, each of the Purchasers will own 39,686,578 Common Shares (individually 36% and in aggregate 72%), which is calculated based on the sum of 62,105,263 Common Shares that are issuable to the Purchasers (31,052,631 Common Shares to each of the Purchasers) upon conversion of the Convertible Debentures under the Private Placement and 17,267,895 Common Shares that will be issued to the Purchasers in connection with the Debt Conversion (8,633,947 Common Shares to each of the Purchasers).

19. The Applicant intends to prepare and file the continuous disclosure documents and pay all outstanding fees within a reasonable period of time following the completion of the Private Placement and Debt Conversion. The Applicant also intends to apply to the Commission, the BCSC, and the ASC to have the Cease Trade Orders fully revoked.

20. The Applicant intends to allocate the proceeds from the Private Placement as follows:

Description	**Cost**
Accounting, audit and legal fees associated with the preparation and filing of the relevant continuous disclosure documents, as well as the preparation of the materials for the annual meeting, the Private Placement and the applications for the partial revocation order and the full revocation order;	$38,595.50
Filing fees associated with obtaining the partial revocation order and the full revocation order, including fees payable to the applicable regulators, including the Commission;	$68,595.50
Legacy accounts payable, including accounting and legal fees, consulting fees and outstanding transfer agent fees; and	$5,000
Working capital and general and administrative expenses.	$5,809
Total:	$118,000.00

21. The Applicant reasonably believes that the Private Placement will be sufficient to bring its continuous disclosure obligations up to date and pay all related outstanding fees and provide it with sufficient working capital to advance its business.

22. As the Private Placement and Debt Conversion would involve a trade of securities and acts in furtherance of trades, the Private Placement and Debt Conversion cannot be completed without a partial revocation of the Cease Trade Order.

23. The Private Placement and Debt Conversion will be completed in accordance with all applicable laws.

24. Prior to completion of the Private Placement and Debt Conversion, the Applicant will:

    (a) provide each of the Purchasers with:

        (i) a copy of the Cease Trade Order;

        (ii) a copy of the partial revocation order for which the application has been made; and

    (b) obtain from each of the Purchasers a signed and dated acknowledgment which clearly states that all of the Applicant's securities, including the securities issued in connection with the Private Placement and Debt Conversion, respectively, will remain subject to the Cease Trade Orders, and that the issuance of a partial revocation order does not guarantee the issuance of full revocation orders in the future.

25. Upon issuance of the partial revocation order, the Applicant will issue a press release announcing the order and the intention to complete the Private Placement and Debt Conversion. Upon completion of the Private Placement and Debt Conversion, the Applicant will issue a press release and file a material change report. As other material events transpire, the Applicant will issue appropriate press releases and file material change reports as applicable.

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

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

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order is partially revoked solely to permit the trades in securities of the Applicant (including for greater certainty, acts in furtherance of trades in securities of the Applicant) that are necessary for and are in connection with the Private Placement and Debt Conversion, provided that:

(a) prior to completion of the Private Placement and Debt Conversion, the Applicant will:

(i) provide to each of the Purchasers a copy of the Cease Trade Order;

(ii) provide to each of the Purchasers a copy of this order; and

(iii) obtain from each of the Purchasers a signed and dated acknowledgment, which clearly states that all of the Applicant's securities, including the securities issued in connection with the Private Placement and Debt Conversion, will remain subject to the Cease Trade Orders and that the issuance of a partial revocation order does not guarantee the issuance of full revocation orders in the future.

(b) The Applicant will make available a copy of the written acknowledgements referred to in paragraph (a)(iii) to staff of the Commission on request; and

(c) This order will terminate on the earlier of the closing of the Private Placement and Debt Conversion and 60 days from the date hereof.

DATED this 8th day of May, 2023.

"Michael Balter"
Manager
Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0207

B.2.3 Acerus Pharmaceuticals Corporation – s. 144

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – application for partial revocation of failure-to-file cease trade order – issuer cease traded due to failure to file with the Commission annual financial statements, related management's discussion and analysis and related certifications – issuer has applied for a partial revocation of the cease trade order to permit trades of securities of the issuer in connection with a court-approved transaction under the Companies' Creditors Arrangement Act – partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

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

AND

IN THE MATTER OF
ACERUS PHARMACEUTICALS CORPORATION

ORDER
(Section 144)

BACKGROUND

1. Acerus Pharmaceuticals Corporation (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on April 6, 2023.

2. The Issuer has applied to the Principal Regulator pursuant to section 144 of the *Securities Act* (Ontario) for a partial revocation order of the FFCTO.

INTERPRETATION

3. Terms defined in National Instrument 14-101 *Definitions* or National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

REPRESENTATIONS

4. This decision is based on the following facts represented by the Issuer:

   a. The Issuer was incorporated under the *Business Corporations Act* (Ontario) on July 15, 2009.

   b. The Issuer is a reporting issuer in each of the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. The Issuer is not a reporting issuer in any other jurisdiction in Canada.

   c. The Issuer's registered and head office is located at 7025 Langer Drive, Suite 205, Mississauga, Ontario.

   d. The Issuer is a specialty pharmaceutical company focused on the commercialization and development of prescription products, with a primary focus in the field of men's health.

   e. The authorized capital of the Issuer consists of an unlimited number of common shares (the **Common Shares**). As at the date hereof, there are approximately 7,707,738 Common Shares issued and outstanding. The Issuer also has approximately 559,635 options outstanding (the **Options**). The Issuer has no other outstanding securities (including debt securities).

   f. The Common Shares were listed on the Toronto Stock Exchange (the **TSX**) under the symbol "ASP". The Common Shares were delisted from the TSX effective as of the close of markets on March 3, 2023 as a result of the failure of the Issuer to meet the continued listing requirements of the TSX. The Common Shares are also quoted for trading on the OTC Pink in the United States (the **OTC Pink**) under the symbol "ASPCF". The Issuer

intends to delist the Common Shares from the OTC Pink following completion of the Transaction (as defined herein).

g. The FFCTO was issued as a result of the Issuer's failure to file the following continuous disclosure materials as required by applicable Canadian securities laws:

(i) audited financial statements for the year ended December 31, 2022;

(ii) management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2022;

(iii) annual information form for the year ended December 31, 2022; and

(iv) certifications for the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

(collectively, the **Unfiled Documents**).

h. Except for certain press releases filed by the Issuer, the Issuer has not filed continuous disclosure documents required to be filed by applicable Canadian securities laws since the date of the FFCTO including financial statements, management's discussion and analysis and related certifications for the period ended March 31, 2023 (together with the Unfiled Documents, the **Unfiled Continuous Disclosure Documents**).

i. In light of ongoing financial difficulties, the Issuer and its subsidiaries (the **Acerus Group**) filed for creditor protection under the *Companies' Creditors Arrangement Act* (the **CCAA**) and received an order (the **Initial Order**) for creditor protection under the CCAA from the Ontario Superior Court of Justice (Commercial List) (the **Court**) on January 26, 2023 (the **CCAA Proceedings**).

j. Pursuant to the Initial Order, the Court, *inter alia*, appointed Ernst & Young Inc. as monitor (in such capacity, the **Monitor**) of the Acerus Group under the CCAA Proceedings and authorized the Issuer to obtain a loan from First Generation Capital Inc. (**First Generation**) in the maximum amount of US$7,000,000 in order to fund the CCAA Proceedings and for other short-term working capital requirements of the Issuer (the **DIP Loan**).

k. On February 3, 2023, the Court granted an order, among other things, amending and restating the Initial Order.

l. On February 27, 2023, pursuant to Chapter 15 of the U.S. Bankruptcy Code, the U.S. Bankruptcy Court for the District of Delaware (the **U.S. Court**) granted an order recognizing the CCAA Proceedings as the foreign main proceedings in respect of the Acerus Group and giving full force and effect to the orders entered in the CCAA Proceedings.

m. On March 9, 2023, the Court granted an order (the **SISP Order**) authorizing the Monitor to conduct, with the assistance of the Issuer, a sale and investment solicitation process (the **SISP**) intended to solicit interest in the opportunity for a sale of or investment in all or part of the Issuer's assets and business operations. The Monitor, with oversight on behalf of the Corporation by a committee of independent directors, oversaw the SISP.

n. On March 23, 2023, the U.S. Court granted an order, among other things, recognizing and enforcing the SISP Order.

o. On May 25, 2023, the Issuer announced that a bid by First Generation had been designated as the successful bid under the SISP (the **Successful Bid**) and that in accordance with the SISP Order the Issuer would seek Court approval of the Successful Bid and authority to consummate the transactions provided for therein.

p. On May 30, 2023, the Court granted an order under the CCCA (the **Sale Approval and Vesting Order**) pursuant to which, *inter alia*, (i) the Court vested certain excluded assets and excluded liabilities in "Residual Co. 1" and "Residual Co. 2" and (ii) the Court authorized the completion of a reorganization transaction (the **Transaction**) partially comprised of the following steps:

(i) the Issuer shall issue to First Generation 1,000,000,000,000,000 Class "A" common shares (the **Purchased Shares**) to be paid by the forgiveness by First Generation of certain secured loan agreements of the Acerus Group owing to First Generation and the DIP Loan, which amount as of April 28, 2023 was US$62,187,732.63 in the aggregate; and

(ii) pursuant to articles of reorganization of the Issuer, all equity interests of the Issuer outstanding prior to the issuance of the Purchased Shares, including the Common Shares and the Options, shall be deemed terminated and cancelled without consideration and the only equity interests of the Issuer that

shall remain outstanding shall be the Purchased Shares such that First Generation shall become the sole shareholder of the Issuer.

q. Pursuant to the Sale Approval and Vesting Order, having been advised of the provisions of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* relating to the requirement for "minority" shareholder approval in certain circumstances, the Court ordered that no meeting of shareholders or other holders of equity interests of the Acerus Group is required to be held in respect of the Transaction.

r. On June 13, 2023, the U.S. Court granted an order, among other things, recognizing and enforcing the Sale Approval and Vesting Order and approving the sale of the Purchased Shares to First Generation pursuant to the Transaction.

s. In connection with carrying out the SISP Order and obtaining the Sale Approval and Vesting Order, the Issuer has engaged in certain acts in furtherance of trades in the securities of the Issuer, including its entry into the subscription agreement, dated May 15, 2023 with First Generation (the **Acts**), which Acts were taken at the direction of, and with the approval of, and under the supervision of, the Court. Except for the Acts and the outstanding filings and continuous disclosure defaults since the issuance of the FFCTO, the Issuer is not in default of any requirements of the FFCTO, the securities legislation of any jurisdiction in which the Issuer is a reporting issuer (the **Legislation**), or the rules and regulations made pursuant thereto.

t. Since the issuance of the FFCTO, there have not been any material changes in the business, operations or affairs of the Issuer that have not been disclosed to the public apart from matters relating to the CCAA Proceedings and the Transaction, materials for which are available through the Monitor and posted on the Monitor's website.

u. As the Transaction will involve trades in securities of the Issuer, the closing of the Transaction is conditional on the partial revocation of the FFCTO.

v. The issuance of the Purchased Shares by the Issuer will occur in Ontario.

w. The Purchased Shares will not be qualified for distribution to the public under any applicable Canadian securities laws and will be subject to restrictions on transfer in Canada.

x. Following completion of the Transaction, all securities of the Issuer will remain subject to the FFCTO until a full revocation of the FFCTO is granted.

y. Other than the Transaction, no further trading in securities of the Issuer will be made by the Issuer unless further relief from the FFCTO is sought by the Issuer.

z. Following completion of the Transaction, the Issuer intends to apply for a full revocation of the FFCTO and a cease to be a reporting issuer order.

ORDER

5. The Principal Regulator is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

6. The decision of the Principal Regulator under the Legislation is that the FFCTO is partially revoked solely to permit the trades in securities of the Issuer (including for greater certainty, acts in furtherance of trades in securities of the Issuer) that are necessary for and are in connection with the Transaction, provided that:

   a. prior to completion of the Transaction, First Generation will receive:

      (i) a copy of the FFCTO;

      (ii) a copy of this order; and

      (iii) written notice from the Issuer, to be acknowledged by First Generation in writing (the **Acknowledgement**), that all of the Issuer's securities, including the securities issued in connection with the Transaction, will remain subject to the FFCTO until a full revocation order is granted, the issuance of which is not certain and that the Issuer intends to apply to cease to be a reporting issuer following closing of the Transaction;

   b. the Issuer undertakes to make available a copy of the Acknowledgement to staff of the Principal Regulator upon request; and

c. this order will terminate on the earlier of:

(i) the completion of the Transaction; and

(ii) 60 days from the date hereof.

DATED this 28th day of June, 2023.

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

OSC File #: 2023/0251

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B.3
Reasons and Decisions

B.3.1 BMO Asset Management Inc. and The Top Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from conflict of interest investment restrictions and management company reporting requirements in ss. 111(2), 111(4) and 117(1) of the Securities Act (Ontario), the self-dealing restriction in s. 13.5(2)(a) of NI 31-103, and the fund-on-fund investment requirements of paragraphs 2.5(2)(a) and (c) of NI 81-102, to permit investment funds that are reporting issuers to invest in related underlying investment funds and collective investment schemes that are not reporting issuers – Relief subject to conditions, including that investment by a Top Fund in securities of an underlying investment fund or scheme be included as part of the calculation for the purposes of the 10% illiquid asset restriction in section 2.4 of NI 81-102 and that the independent review committee of a Top Fund review and provide its approval to the purchase of securities of a related underlying investment fund or scheme.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c)(i) and (ii), 111(4), 113, 117(1)1 and 117(2).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(a) and 15.1.
National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 2.5(2)(c) and 19.1.

June 22, 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
BMO ASSET MANAGEMENT INC.
(the Filer)

AND

THE TOP FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each of the Filer, the Filer's affiliates, the investment funds managed by the Filer or by an affiliate of the Filer that are reporting issuers subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) (the **Existing Top Funds**) and any future investment funds managed by the Filer or an affiliate of the Filer that are, or will be, reporting issuers subject to NI 81-102 and NI 81-107 (the **Future Top Funds**, and together with the Existing Top Funds, the **Top Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

1. exempting the Top Funds from the restrictions in the Legislation which prohibit:

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

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

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

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

      has a significant interest, and

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

2. exempting the Filer and each affiliate that acts as manager of a Top Fund from the requirement to prepare a report in accordance with the requirements of the Legislation of every transaction by a Top Fund involving a purchase of securities from, or sale of securities to, any related person or company (the **Reporting Relief**);

3. exempting the Filer and each affiliate that is a registered adviser from the prohibition in paragraph 13.5(2)(a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) against knowingly causing a Top Fund to invest in securities of any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless the fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase (the **Consent Requirement Relief** and, together with the Related Issuer Relief and the Reporting Relief, the **Self-Dealing and Reporting Relief**);

to permit each Top Fund to invest a portion of its assets in any collective investment scheme that is not an investment fund, and is, or will be, managed by the Filer or an affiliate of the Filer (the **Underlying Investments**); and

4. exempting each Top Fund from the restrictions in paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 that prohibit an investment fund from investing in securities of an investment fund that is not subject to NI 81-102 and is not a reporting issuer in any Jurisdiction (the **Fund-of-Fund Relief**),

to permit each Top Fund to invest a portion of its assets in (i) BMO Georgian Alignment II Access Fund LP, an Ontario limited partnership which is a non-redeemable investment fund that is not a reporting issuer (**BMO Georgian Fund**), and (ii) BMO Partners Group Private Markets Fund, an Ontario trust which is a mutual fund that is not a reporting issuer (**BMO PG Fund**, and together with BMO Georgian Fund, the **Initial Underlying Funds**), and (iii) any future investment fund that is, or will be, managed by the Filer or an affiliate of the Filer that will have similar non-traditional investment strategies (the **Future Underlying Funds** and, together with the Initial Underlying Funds, the **Underlying Funds**).

The Self-Dealing and Reporting Relief and the Fund-of-Fund Relief are collectively referred to as the **Exemption Sought**.

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 81-102, NI 81-107 and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of Ontario with its head office located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager (**IFM**) in each of Ontario, Québec and Newfoundland and Labrador, as a portfolio manager and an exempt market dealer in each of the Jurisdictions, as a derivatives portfolio manager in Québec, and as a commodity trading manager in Ontario.

3. The Filer or an affiliate of the Filer is the IFM of the Existing Top Funds and Initial Underlying Funds, and the Filer or an affiliate of the Filer will be the IFM of the Future Top Funds and Future Underlying Funds. To the extent that the Filer or an affiliate of the Filer is the IFM of any Future Top Fund or Future Underlying Fund, the representations set out in this decision will apply to the same extent to such Future Top Fund or Future Underlying Fund.

4. The Filer or an affiliate of the Filer is, or will be, the manager of the Underlying Investments. To the extent that the Filer or an affiliate of the Filer is the manager of any Future Underlying Investment, the representations set out in this decision will apply to the same extent to such Future Underlying Investment.

5. The Filer or an affiliate of the Filer is, or will be, a "responsible person" (as that term is defined in NI 31-103 of each Top Fund and each Underlying Investment.

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

The Top Funds

7. The securities of each Top Fund are, or will be, distributed to investors pursuant to a prospectus prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* or National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, as applicable.

8. The securities of each Top Fund are, or will be, qualified for distribution in one or more Jurisdictions.

9. Each Top Fund is, or will be, a reporting issuer under the securities legislation of one or more Jurisdictions.

10. Each Top Fund may wish to invest in securities of the Underlying Funds and Underlying Investments, provided the investment is consistent with the Top Fund's investment objectives and strategies.

11. Each Top Fund will comply with the investment restrictions and practices provided in Part 2 of NI 81-102 in making any investment in an Underlying Fund or Underlying Investment and, in particular, will comply with the concentration restriction in section 2.1, the control restriction in section 2.2 and the illiquid assets restriction in section 2.4. Each Top Fund will treat securities of the Underlying Funds and Underlying Investments as illiquid assets for these purposes.

12. Each Top Fund qualifies to invest in securities of the Underlying Funds and Underlying Investments pursuant to applicable exemptions from the prospectus requirement under National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and/or the Legislation.

13. The Existing Top Funds are not in default of securities legislation of any of the Jurisdictions.

14. Each Top Fund is, or will be, subject to NI 81-107 and the manager of each Top Fund has established an independent review committee (the **IRC**) in order to review conflict of interest matters pertaining to its management of the Top Funds as required by NI 81-107.

The Underlying Funds and the Underlying Investments

15. Securities of the Initial Underlying Funds are, and any Future Underlying Funds or Underlying Investments will be, distributed solely to investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 and/or the Legislation.

16. Each Initial Underlying Fund has an offering memorandum which is provided to investors.

17. Each Underlying Fund and Underlying Investment produces, or will produce, audited financial statements on an annual basis, in accordance with generally accepted accounting principles with a qualified auditing firm as the auditor of those financial statements.

<u>BMO Georgian Fund</u>

18. BMO Georgian Fund is a non-redeemable investment fund established as a limited partnership under the laws of Ontario.

19. The investment objective of the BMO Georgian Fund is to invest substantially all of its assets in securities of Georgian Alignment Fund II, LP (the **Georgian Master Fund**), a limited partnership formed under the laws of Ontario. The Georgian Master Fund is managed by a third party that is independent of the Filer.

20. BMO Georgian Fund is an "investment fund" under the securities legislation of the Jurisdictions as it will invest substantially all of its assets in securities of Georgian Master Fund and generally will not invest for the purpose of exercising or seeking to exercise control over Georgian Master Fund or any other issuer.

21. BMO Georgian Fund is not subject to NI 81-102 and is not a reporting issuer in any of the Jurisdictions.

22. The net asset value (the **NAV**) per security of the BMO Georgian Fund is calculated quarterly by a party that is independent of the Filer.

23. BMO Georgian Fund is not in default of securities legislation of any of the Jurisdictions.

24. The investment objective of the Georgian Master Fund is to achieve superior returns principally through long-term capital appreciation, by investing in the equity and equity-related securities of "best-in-class" software as a service and business software companies identified by the portfolio manager of the Georgian Master Fund. Specifically, its criteria for investment in such target companies includes: (i) strong unit economics; (ii) revenue between $50-150 million; (iii) enterprise value between $400 million – $1.5 billion; (iv) projected revenue growth of approximately 25% on a compounded annual growth basis; and (v) positive EBITDA or a clear path to breakeven within 24 months of acquisition.

25. The Georgian Master Fund is not an "investment fund" as such term is defined under Canadian securities legislation as its investment portfolio will include direct investments which may include "control" characteristics including the right to appoint voting or observer members to an issuer's board of directors (or similar).

26. No Top Fund will actively participate in the business or operations of BMO Georgian Fund or Georgian Master Fund.

BMO PG Fund

27. BMO PG Fund is a mutual fund established as a trust under the laws of Ontario.

28. The investment objective of BMO PG Fund is to invest substantially all of its assets directly into non-voting participating shares of Partners Group BMO Master Limited, a Cayman Islands exempted company (**PG BMO Master Fund**). The PG BMO Master Fund is managed by a third party that is independent of the Filer.

29. BMO PG Fund is an "investment fund" under the securities legislation of the Jurisdictions as it will invest substantially all of its assets in securities of PG BMO Master Fund and generally will not invest for the purpose of exercising or seeking to exercise control over PG BMO Master Fund or any other issuer.

30. The NAV per security of the BMO PG Fund is calculated monthly by a party that is independent of the Filer.

31. BMO PG Fund is not subject to NI 81-102 and is not a reporting issuer in any of the Jurisdictions.

32. The investment objective of PG BMO Master Fund is to invest substantially all of its assets, directly or indirectly, into private market investments including: (i) private real estate, (ii) private infrastructure, (iii) private debt, (iv) private equity, and (v) other private market assets, and will do in part through investments in other funds and/or investment vehicles.

33. PG BMO Master Fund is not an "investment fund" as such term is defined under Canadian securities legislation as its investment portfolio will include "control" characteristics including the right to appoint voting or observer members to an issuer's board of directors (or similar).

34. No Top Fund will actively participate in the business or operations of BMO PG Fund or PG BMO Master Fund.

The Future Underlying Funds and Underlying Investments

35. Future Underlying Funds and Underlying Investments may be structured as limited partnerships, trusts or corporations governed by the laws of any of the Jurisdictions.

36. Each Future Underlying Fund will be an "investment fund" as such term is defined under the Legislation and will not be subject to NI 81-102.

37. Each Underlying Investment will not be an "investment fund" as such term is defined under the Legislation.

38. The Future Underlying Funds and Underlying Investments will not be reporting issuers in any of the Jurisdictions.

39. Each Underlying Investment will be operated in a manner similar to how the Filer operates its investment funds, including being administered by the Filer or an affiliate, having its assets managed by a portfolio manager, and calculating a NAV that is used to determine the purchase and redemption price of the securities of the Underlying Investment.

40. The holdings of any Future Underlying Fund or Underlying Investment are expected to consist of securities of a future master fund that is either managed by a third party who is independent of the Filer or by the Filer or an affiliate of the Filer.

Investments by Top Funds in the Underlying Funds and Underlying Investments

41. An investment by a Top Fund in an Underlying Fund or Underlying Investment will only be made if the investment is compatible with the investment objectives of the Top Fund.

42. The Filer believes that an investment by a Top Fund in an Underlying Fund or Underlying Investment will provide the Top Fund with an efficient and cost-effective way for the Top Funds to obtain exposure to diversified alternative and private asset classes (including private equity, private credit, private infrastructure, and private real estate), which are generally not available through investment funds that are reporting issuers or through direct investment. The Top Fund will also gain access to the investment expertise of the portfolio manager to the underlying assets of each Underlying Fund or Underlying Investment, as well as to their investment strategies and asset classes.

43. The Filer believes that a meaningful allocation to private equity, private credit, private infrastructure, private real estate and other alternative investments provides Top Fund investors with unique diversification opportunities and represents an appropriate investment tool for the Top Fund that has not been widely available in the past.

44. The Filer believes that it is in the best interests of the Top Funds to leverage the clone-fund structure and strategy of each Underlying Fund or Underlying Investment in order to access the expertise and strategy of the manager of the collective investment vehicle in which each Underlying Fund or Underlying Investment invests (each, a "**Master Fund**"), to provide the Top Funds with exposure to a diversified array of alternative and private assets. The managers of the existing Master Funds possess, and the managers of future Master Funds will possess, expertise with respect to their focused asset classes that the portfolio management teams of the Top Funds do not have, and employ investment approaches that the Filer cannot replicate internally.

45. Investments by a Top Fund in an Underlying Fund or Underlying Investment will be effected at an objective price. The Filer's policies and procedures provide that an objective price, for this purpose, will be the NAV per security of the applicable class or series of the Underlying Fund or Underlying Investment.

46. Each Top Fund is, or will be, valued and redeemable daily and the Underlying Funds or Underlying Investments may be potentially subject to redemption limitations, including lock-up periods, early redemption penalties and other restrictions on redemptions in a given period of time (collectively, **Redemption Limitations**).

47. An investment by a Top Fund in an Underlying Fund or Underlying Investment will only be made if such investment represents the business judgment of a responsible person uninfluenced by considerations other than the best interests of that Top Fund.

Generally

48. The Filer does not anticipate that any fees or sales charges would be incurred, directly or indirectly, by a Top Fund with respect to an investment in an Underlying Fund or Underlying Investment that, to a reasonable person, would duplicate a fee payable by the Top Fund to the Filer or its investors.

49. In respect of an investment by a Top Fund in an Underlying Fund or Underlying Investment, no management fees or incentive fees will be payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund or Underlying Investment for the same service.

50. Where applicable, a Top Fund's investment in an Underlying Fund or Underlying Investment will be disclosed to investors in that Top Fund's quarterly portfolio holding reports, financial statements, and fund facts or ETF facts documents.

51. Where an investment is made by a Top Fund in an Underlying Fund or Underlying Investment, the annual and interim management reports of fund performance for the Top Fund will disclose the name of the related person in which an investment is made, being an Underlying Fund or Underlying Investment.

52. Where an investment is made by a Top Fund in an Underlying Fund or Underlying Investment, the records of portfolio transactions maintained by the Top Fund will include, separately for every portfolio transaction effected for the Top Fund by the Filer or through any affiliate of the Filer, the name of the related person in which an investment is made, being an Underlying Fund or Underlying Investment.

53. There will be no established, publicly available secondary market for securities of the Underlying Funds or Underlying Investments, nor will there generally be any redemption rights applicable to the Top Funds as investors in the Underlying Funds or Underlying Investments. As such, the Top Funds will not be able to readily dispose of their interests in an Underlying Fund or Underlying Investment and any interest that a Top Fund holds in an Underlying Fund or Underlying Investment will be considered an "illiquid asset" under NI 81-102.

54. The prospectus of each Top Fund will disclose in the next renewal or amendment thereto following the date of a decision evidencing the Exemption Sought, the fact that the Top Fund may invest, directly or indirectly, in an Underlying Fund, which are investment funds managed by the Filer or an affiliate of the Filer, and/or Underlying Investments, which are collective investment vehicles managed by the Filer or an affiliate of the Filer.

55. Each Underlying Fund or Underlying Investment produces, or will produce, audited financial statements on an annual basis, in accordance with generally accepted accounting principles with a qualified auditing firm as the auditor of those financial statements.

56. Subject to compliance with section 2.2 of NI 81-102, the amount invested from time to time in an Underlying Investment by a Top Fund, together with one or more Top Funds, may exceed 20% of the outstanding voting securities of the Underlying Investment. This may result by reason of a group of Top Funds providing initial investments into the Underlying Investment on the start-up of the Underlying Investment. As a result, each Top Fund could, together with one or more other Top Funds, become a "substantial security holder" of an Underlying Investment within the meaning of the Legislation, further to which the Top Fund would be prohibited under the Legislation from knowingly purchasing and holding securities of an Underlying Investment. The Top Funds are, or will be, "related investment funds", as such term is defined in the Legislation by virtue of common management by the Filer or by an affiliate of the Filer.

57. In addition, an officer or director of the Filer or of an affiliate of the Filer may have a "significant interest" in an Underlying Investment and/or a person or company who is a substantial security holder of the Top Fund, the Filer or an affiliate of the Filer may have a "significant interest" in the Underlying Investment within the meaning of the Legislation, which would prohibit the Top Fund from investing in the Underlying Investment.

58. Paragraph 13.5(2)(a) of NI 31-103 prohibits the Filer or an affiliate that acts as portfolio manager of a Top Fund from knowingly causing a Top Fund to invest in an Underlying Investment that is structured as a limited partnership, where the general partner of the Underlying Investment is an affiliate of the Filer and the Filer or its affiliate is a responsible person of the Top Funds unless (i) this fact is disclosed to the client and (ii) the written consent of the client to the purchase is obtained before the purchase. It is impractical for the Filer to obtain the prior written consent from each investor in the Top Fund, given the widely held nature of the Top Funds.

59. Absent the Exemption Sought,

    a. each Top Fund would be prohibited from (i) becoming a substantial securityholder of an Underlying Investment, together with other Top Funds, and (ii) investing in an Underlying Investment in which an officer or director of the Filer or of an affiliate of the Filer has a significant interest or in which a person or company who is a substantial securityholder of the Top Fund or the Filer has a significant interest;

    b. each Top Fund would be prohibited from purchasing or holding securities of an Underlying Fund because such Underlying Fund (i) is not, or will not be, subject to NI 81-102, and (ii) is not, or will not be, a reporting issuer in the Jurisdictions; and

    c. the Filer, or an affiliate of the Filer acting as the management company (as defined in the Legislation) of the Top Funds would be required to file a report of every transaction of purchase or sale of securities between the Top Funds and the Underlying Investments within 30 days after the end of the month in which such purchase or sale occurs (the **Reporting Requirement**).

60. It would be costly and time-consuming for the Top Funds to comply with the Reporting Requirement.

61. The Filer considers that an investment by the Top Funds in the Underlying Funds or Underlying Investments raises "conflict of interest" matters within the meaning of NI 81-107 and, therefore, if the Exemption Sought is granted, the manager of the Top Fund will request approval from the IRC of the Top Funds to permit the investment of the Top Funds in the Underlying Funds and Underlying Investments, including by way of standing instructions. No such investments will be made until the IRC provides its approvals under section 5.2 of NI 81-107. The manager of the Top Funds will comply with section 5.1 of NI 81-107 and the manager of the Top Funds and the IRC of the Top Funds will comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions. If the IRC becomes aware of an instance where the manager of a Top Fund did not comply with the terms of any decision evidencing the Exemption Sought, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Top Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the Jurisdiction under which the Top Fund is organized.

62. Subsection 6.2(3) of NI 81-107 provides an exemption for investment funds from the "investment fund conflict of interest investment restrictions" (as defined in NI 81-102) for purchases of related issuer securities if the purchase is made on an exchange. However, the exemption in subsection 6.2(3) of NI 81-107 does not apply to purchases of non-exchange-traded securities and, therefore, does not apply to purchases of an Underlying Fund or Underlying Investment by a Top Fund.

63. Investments in Underlying Funds and Underlying Investments are considered illiquid investments under NI 81-102 and, therefore, are not permitted to exceed 10% of the NAV of a Top Fund. Such investments are included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of NI 81-102 for a Top Fund. NI 81-102 allows holdings in illiquid investments so long as the aggregate exposure to illiquid investments is within the thresholds of the rule. The Filer has its own liquidity policy and manages each Top Fund's liquidity prudently under the policy. Given the readily available liquidity of the remainder of each Top Fund's investment portfolio, the Filer believes that the risk of a Top Fund needing to liquidate its investment in these illiquid assets when markets are under stress or in other environments where liquidity may be reduced is remote.

Decision

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

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

(a) a direct or indirect investment by a Top Fund in an Underlying Fund or Underlying Investment will be compatible with the investment objective and strategy of such Top Fund and included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of NI 81-102;

(b) at the time of the purchase by a Top Fund of securities of an Underlying Fund or Underlying Investment, either (A) the Underlying Fund or Underlying Investment holds no more than 10% of its NAV in securities of other investment funds, or (B) the Underlying Fund or Underlying Investment:

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

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

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

(c) in respect of an investment by a Top Fund in an Underlying Fund or Underlying Investment, no sales or redemption fees will be paid as part of the investment in the Underlying Fund or Underlying Investment, unless the Top Fund redeems its securities of the Underlying Fund or Underlying Investment during a Redemption Limitation, in which case a fee may be payable by the Top Fund;

(d) in respect of an investment by a Top Fund in an Underlying Fund or Underlying Investment, no management fees or incentive fees will be payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund or Underlying Investment for the same service;

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

(f) where applicable, a Top Fund's investment in an Underlying Fund or Underlying Investment will be disclosed to investors in such Top Fund's quarterly portfolio holding reports, financial statements, and fund facts or ETF facts documents;

(g) the prospectus of a Top Fund discloses, or will disclose, in the next renewal or amendment thereto following the date of this decision, the fact that the Top Fund may invest in an Underlying Fund, which is an investment fund managed by the Filer or an affiliate, or in an Underlying Investment, which is an investment vehicle managed by the Filer or an affiliate;

(h) the IRC of a Top Fund will review and provide its approval, including by way of standing instructions, prior to the purchase of securities of an Underlying Fund or Underlying Investment, directly or indirectly, by the Top Fund, in accordance with subsection 5.2(2) of NI 81-107;

(i) the Filer complies with section 5.1 of NI 81-107, and the Filer and the IRC of the Top Fund comply with section 5.4 of NI 81-107, for any standing instructions the IRC provides in connection with the transactions;

(j) if the IRC becomes aware of an instance where the Filer or an affiliate of the Filer, in its capacity as the manager of a Top Fund, did not comply with the terms of this decision, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Top Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the Jurisdiction under which the Top Fund is organized;

(k) where an investment is made by a Top Fund in an Underlying Investment or Underlying Fund, the annual and interim management reports of fund performance for the Top Fund disclose the name of the related person in which an investment is made, being the Underlying Investment or Underlying Fund, as the case may be;

(l) where an investment is made by a Top Fund in an Underlying Investment or Underlying Fund, the records of portfolio transactions maintained by the Top Fund include, separately for every portfolio transaction effected for a Top Fund by the Filer or through any affiliate of the Filer, the name of the related person in which an investment is made, being the Underlying Investment or Underlying Fund, as the case may be; and

(m) a Top Fund will not invest in an Underlying Fund or Underlying Investment unless the NAV of the Underlying Fund or Underlying Investment is independently calculated by an arm's length third party and the annual financial statements of the Underlying Fund or Underlying Investment are audited and made available to the Top Fund.

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

Application File #: 2023/0230 & 2023/0232
SEDAR File #: 3540275

B.3.2 Frontenac Mortgage Investment Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to non-investment fund reporting issuer for extension of times provided for refiling of a prospectus as if the lapse date was extended by 60 days – extension of times will not affect the current status or accuracy of the information contained in the prospectus – the issuer will not distribute securities under the prospectus until a receipt is issued for the renewal prospectus.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).
National Instrument 41-101 General Prospectus Requirements.

June 26, 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
FRONTENAC MORTGAGE INVESTMENT CORPORATION
(the Filer)

DECISION

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limits pertaining to filing a renewal prospectus in respect of the Filer's long form prospectus dated June 16, 2022 (the **Current Prospectus**) be extended as if the lapse date was August 15, 2023 (the **Requested Relief**).

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

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

(b) The Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan and Manitoba (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

The decision is based on the following facts as represented by the Filer:

1. The Filer is a reporting issuer in each of the Jurisdictions and is not in default of securities legislation in any of the Jurisdictions.

2. Common shares of the Filer are qualified for distribution in each of the Jurisdictions on a continuous monthly basis under the Current Prospectus. The Filer distributes its securities on a continuous basis pursuant to long-form prospectuses in the form of Form 41-101F1 which is renewed annually.

3. The Filer filed an amendment dated June 6, 2023 to the Current Prospectus (**Amendment No. 5**). The Filer is engaged with OSC Staff in the comment process in connection with Amendment No. 5 and discussions remain ongoing as at the date hereof. A receipt has not yet been issued for Amendment No. 5.

4. The lapse date of the Current Prospectus was June 16, 2023.

5. Pursuant to the continuous distribution of the Filer's securities, the Filer filed a pro forma prospectus in the form of Form 41-101F1 on May 17, 2023 (the **Pro Forma Prospectus**). The Filer is engaged with OSC Staff in the comment process in connection with the Pro Forma Prospectus and discussions remain ongoing as at the date hereof.

6. Pursuant to the Legislation, in order to ensure that the Filer's common shares are distributed on a continuous basis in the Jurisdictions, uninterrupted, the Filer must file a prospectus on or before June 26, 2023 for which a receipt is issued by the Jurisdictions on or before July 6, 2023.

7. The Filer has ceased distribution of its common shares on a continuous monthly basis under the Current Prospectus and will not distribute its common shares under the Current Prospectus until the comment process in respect of Amendment No. 5 and the Pro Forma Prospectus have been completed and a receipt has been issued, respectively.

8. The Filer is seeking the Requested Relief to allow it an opportunity to obtain a receipt for Amendment No. 5 and to file a final prospectus and obtain a receipt therefor such that it can continue to offer its common shares on a continuous monthly basis, uninterrupted, in the Jurisdictions pursuant to a final prospectus in the form of Form 41-101F1.

9. There have been no undisclosed material changes in the affairs of the Filer since the date of the receipt issued September 30, 2022 for the last amendment to the Current Prospectus.

10. In the event that any material changes occur, the Filer will file an amendment to the Current Prospectus as required under the Legislation.

11. Given that the Filer has ceased distributing any securities under the Current Prospectus, the Requested Relief will not be prejudicial to the public interest.

Decision

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

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

"Erin O'Donovan"
Manager
Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0287

B.4
Cease Trading Orders

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

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Shiny Health & Wellness Corp.	June 6, 2023	June 29, 2023
Mobi724 Global Solutions Inc.	June 30, 2023	

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

Company Name	Date of Order	Date of Lapse
Canopy Growth Corporation	June 2, 2023	June 27, 2023
Gatos Silver, Inc.	April 1, 2022	June 29, 2023
Gatos Silver, Inc.	April 12, 2022	June 29, 2023
Gatos Silver, Inc.	July 7, 2022	June 29, 2023
Halo Collective Inc.	April 3, 2023	June 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	June 29, 2023
Gatos Silver, Inc.	April 12, 2022	June 29, 2023
Sproutly Canada, Inc.	June 30, 2022	
Gatos Silver, Inc.	July 7, 2022	June 29, 2023
iMining Technologies Inc.	September 30, 2022	
Halo Collective Inc.	April 3, 2023	June 19, 2023
Alkaline Fuel Cell Power Corp.	April 4, 2023	

Company Name	Date of Order	Date of Lapse
mCloud Technologies Corp.	April 5, 2023	
Champion Gaming Group Inc.	May 2, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	
Eddy Smart Home Solutions Ltd.	May 2, 2023	
CareSpan Health, Inc.	May 5, 2023	
Canada Silver Cobalt Works Inc.	May 5, 2023	
XTM Inc.	May 2, 2023	
VOLTAGE METALS CORP.	May 2, 2023	
Voxtur Analytics Corp.	May 5, 2023	
FRX Innovations Inc.	May 2, 2023	
Magnetic North Acquisition Corp.	May 8, 2023	
Canopy Growth Corporation	June 2, 2023	June 27, 2023

B.6
Request for Comments

B.6.1 Ontario Securities Commission (OSC) and Autorité des marchés financiers (AMF) – Notice and Request for Comment – Application for the Designation of Term CORRA as a Designated Interest Rate Benchmark and CanDeal Benchmark Administration Services Inc. as its Designated Benchmark Administrator

OSC AND AMF

NOTICE AND REQUEST FOR COMMENT

APPLICATION FOR THE DESIGNATION OF TERM CORRA AS A DESIGNATED INTEREST RATE BENCHMARK

AND

CANDEAL BENCHMARK ADMINISTRATION SERVICES INC. AS ITS DESIGNATED BENCHMARK ADMINISTRATOR

July 6, 2023

Introduction

The Ontario Securities Commission (the **OSC**)[1] and the Autorité des marchés financiers (**AMF**)[2] have each received an application from CanDeal Benchmark Administration Services Inc. (**CBAS**) for a decision under applicable securities legislation that:

- Term CORRA be designated as a designated interest rate benchmark[3], and
- CBAS be designated as a designated benchmark administrator **(DBA**) of Term CORRA.

OSC staff and AMF staff (collectively, **we**) are publishing this Notice and Request for Comment (the **Notice**), together with the following documents, for a 30-day public comment period:

- Appendix A - Amended and restated application letter from CBAS (the **Application**)[4], and
- Appendix B – Organization and structure of CBAS (the **CBAS Structure**).

In Ontario, the OSC is also publishing for comment Appendix C - Draft OSC designation order (the **Draft OSC Designation Order**).

The comment period for this Notice will close on **August 8, 2023**. Please see the section of this Notice entitled "Comment Process" for information on how to provide comments.

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1 In Ontario, the OSC received an application from CBAS under both the *Securities Act* (Ontario) (the **OSA**) and the *Commodity Futures Act* (Ontario) (the **CFA**) for a designation order.

2 In Québec, the AMF received an application from CBAS under the *Securities Act* (Québec).

3 Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102**) has provisions that apply to designated interest rate benchmarks. In Ontario, Term CORRA will be:
- designated as a designated benchmark under subsection 24.1(3) of the OSA and subsection 21.5(3) of the CFA, and
- assigned as a designated interest rate benchmark for the purposes of MI 25-102 under subsection 24.1(7) of the OSA and for the purposes of Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (**OSC Rule 25-501**) under subsection 21.5(7) of the CFA.

OSC Rule 25-501 contains substantially the same requirements as MI 25-102. OSC Rule 25-501 was enacted in Ontario because MI 25-102 would not apply to Ontario commodity futures law.

4 For the Notice,
- the version of Appendix A published in Ontario is the amended and restated application letter from CBAS to the OSC, and
- the version of Appendix A published in Québec is the amended and restated application letter from CBAS to the AMF.

Background to the Application

The Canadian Dollar Offered Rate (**CDOR**), a designated interest rate benchmark, will cease to be published on June 28, 2024[5].

- It is expected that market participants will use the Canadian Overnight Repo Rate Average (**CORRA**) as the alternative reference rate for most instruments that currently reference CDOR. CORRA is an existing interest rate benchmark administered by the Bank of Canada.
- Term CORRA[6] is a new interest rate benchmark that is intended to replace CDOR for certain instruments or, when appropriate, for related derivatives. Term CORRA will be a forward-looking measurement of CORRA for 1- and 3-month tenors, based on market-implied expectations from CORRA derivatives markets[7]. CBAS is the benchmark administrator of Term CORRA.
- Term CORRA's use will be limited through its licensing agreements to trade finance, loans and derivatives associated with loans.
- It is anticipated that Term CORRA will be important for the successful transition of the Canadian loan and trade finance market from CDOR.

Consequently, we and CBAS believe that:

- Term CORRA should be designated as a designated interest rate benchmark, and
- CBAS should be designated as a DBA of Term CORRA.

However, any decision to so designate Term CORRA and CBAS would be made by the applicable decision maker at each of the OSC and AMF and is subject to their approval.

If Term CORRA and CBAS are so designated, CBAS (as DBA of Term CORRA) will be required to comply with the applicable provisions of MI 25-102 and OSC Rule 25-501 in respect of Term CORRA. In particular, CBAS will be required to have the policies, procedures and controls contemplated by MI 25-102 (including policies, procedures and controls relating to conflicts of interest) and to make the public disclosure required by MI 25-102 in respect of Term CORRA.

We understand that CBAS currently plans to launch Term CORRA for use by market participants at a date (the **Launch Date**) during the period from September 1, 2023 and September 30, 2023. Since MI 25-102 is a "designation regime", rather than a "registration regime" or a "licensing regime", CBAS does not need to have Term CORRA and CBAS designated by the OSC and the AMF as a designated benchmark and a DBA, respectively, prior to the Launch Date.

OSC and AMF as Co-Lead Authorities

The CSA jurisdictions that adopted MI 25-102 also entered into a memorandum of understanding (the **MOU**)[8] respecting the oversight of designated benchmarks and DBAs, including the processing of applications for designation. The MOU outlines the manner in which the jurisdictions will cooperate and coordinate their efforts to oversee designated benchmarks and DBAs in order to achieve consistency, efficiency and effectiveness in the overall oversight approach, as well as the efficient and effective processing of applications for designation.

Under the MOU, we are planning for the OSC and AMF to be co-lead authorities for Term CORRA and CBAS at this time.

- No other CSA jurisdiction plans to designate Term CORRA and CBAS at this time.
- Since MI 25-102 is a "designation regime", rather than a "registration regime" or a "licensing regime", there is no need for Term CORRA and CBAS to be designated in the other CSA jurisdictions.

5 For more information on the cessation of CDOR, see CSA Staff Notice 25-309 *Matters Relating to Cessation of CDOR and Expected Cessation of Bankers' Acceptances* at https://www.osc.ca/sites/default/files/2023-02/csa_20230223_25-309_cessation-of-cdor.pdf

6 The plans for Term CORRA were initially developed by the Canadian Alternative Reference Rate Working Group (**CARR**). For more information on CARR's role in the development of Term CORRA, see https://www.bankofcanada.ca/2023/01/carr-announces-development-term-corra-benchmark/

7 Term CORRA will be derived from transactions and executable bids and offers from CORRA interest rate futures traded on the Montréal Exchange.

8 A copy of the MOU is at https://www.osc.ca/sites/default/files/2021-05/mou_20210527_designated-benchmarks.pdf

Conflicts of Interest

The Application sets out how CBAS plans to identify and manage conflicts of interest.

Appendix B sets out the CBAS Structure provided by CBAS[9].

CBAS will have policies and procedures to restrict trading by its employees and "DBA individuals" (as that term is defined in MI 25-102) in CORRA futures and any securities or derivatives that use CORRA or Term CORRA as a reference rate. In particular, CBAS employees and DBA individuals will be prohibited from trading in the relevant CORRA interest rate futures traded on the Montréal Exchange during the Observation Interval (as that term is defined in Appendix A) or otherwise.

Term CORRA Licensing

We understand that:

- lenders wishing to use Term CORRA in their lending agreements would need to enter into a licensing agreement for Term CORRA,
- borrowers would not normally need to enter into a licensing agreement unless they wanted real-time access to Term CORRA data (rather than viewing it on a website of Group or TMX Group on a delayed basis for free),
- the distribution of Term CORRA to commercial users for revenue is to be effected through a collaboration agreement currently being negotiated at arm's length between TSX and CBAS, and
- the collaboration agreement will provide for licensing fees to be divided between CBAS and TSX.

To address certain matters relating to conflicts of interest, we are considering requiring CBAS to provide[10] that each of the following would need to be reviewed by the oversight committee required by MI 25-102 for a designated interest rate benchmark (the **Oversight Committee**) before being implemented:

- any change to the license fees or license fee arrangements in respect of Term CORRA,
- any amendments to the collaboration agreement between TSX and CBAS, and
- any amendments to an agreement between CBAS and an affiliate of CBAS.

We understand that CBAS has not yet formed an Oversight Committee and plan to finalize the initial arrangements and agreements in advance of the designation order.

Impact on Certain Market Participants

Subsection 21(1) of MI 25-102 provides that if certain specified market participants use a designated benchmark, and if the cessation of the benchmark could have a significant impact on the market participant, a security issued by the market participant or a derivative to which the market participant is a party, the market participant must establish and maintain a written plan setting out the actions that the market participant will take in the event of the cessation of the designated benchmark.[11]

Subsection 21(1) of MI 25-102 only applies to a market participant that is a registrant, a reporting issuer, a recognized exchange, a recognized quotation and trade reporting system or a recognized clearing agency within the meaning of National Instrument 24-102 *Clearing Agency Requirements*.[12]

Fallback Arrangements if Term CORRA Ceases to be Published

Although CARR has endeavoured to create a robust and sustainable benchmark, CARR has noted[13] that the long-term sustainability of Term CORRA is not guaranteed.

- In particular, the ongoing viability of Term CORRA will depend on the liquidity of the underlying CORRA futures contracts that are used to derive Term CORRA.

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9 CBAS is an indirect subsidiary of CanDeal Group Inc. (**Group**). TSX Inc. (**TSX**) owns 14.29% of Group. TSX is a direct subsidiary of TMX Group Limited (**TMX Group**).

10 For example, to address these matters, OSC staff are considering including a term and condition in the OSC designation order and AMF staff may require CBAS to provide an undertaking to the AMF. Alternatively, CBAS may be asked to address these matters in any other type of document that would be binding on CBAS.

11 See section 21 of MI 25-102 for additional requirements that apply in respect of the written plan.

12 In Ontario, there is a similar requirement in section 21 of OSC Rule 25-501 that applies to a market participant that is registrant, a recognized commodity futures exchange, a registered commodity futures exchange or a recognized clearing house under Ontario commodity futures law.

13 See https://www.bankofcanada.ca/2023/01/carr-announces-development-term-corra-benchmark/

- If the depth of liquidity in these contracts is not sufficient, CBAS as the DBA of Term CORRA will be required to amend the methodology of Term CORRA.
- If changes to the methodology are insufficient to result in a sufficiently robust benchmark, CBAS will be required to either (i) take any other steps necessary to ensure that the benchmark accurately and reliably represents that part of the market or the economy that it is intended to represent or (ii) cease the publication of the benchmark with appropriate notice.
- CARR therefore expects any users of Term CORRA to have robust fallback language[14] in place in the relevant contractual documentation that envisages the replacement in appropriate circumstances of Term CORRA with CORRA calculated in-arrears. Users also need to build the operational capacity to transact in these fallback rates should Term CORRA cease to be published in the future.

Comment Process

We are publishing for public comment the Notice, the Application and the CBAS Structure for 30 days. The OSC is also publishing the Draft OSC Designation Order for public comment. We are seeking comment on all aspects of this Notice, the Application, the CBAS Structure and, in the case of the OSC, the Draft OSC Designation Order.

Please submit your comments in writing, via email, on or before **August 8, 2023** to the attention of:

Benchmark Oversight
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
benchmarkoversight@osc.gov.on.ca

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

Your written comments should be submitted in Microsoft Word format.

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions

Questions on the content of the Notice (and, in the case of the OSC, the Draft OSC Designation Order) may be directed to any of the following:

Michael Bennett
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416-593-8079
mbennett@osc.gov.on.ca

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[14] "Fallback language" refers to the contractual provisions in an instrument that set out the process by which a replacement rate is to be used if a benchmark is not available for use.

Questions on the content of the Application and the CBAS Structure may be directed to:

Louise Brinkmann
Compliance Officer
CanDeal Benchmark Administration Services Inc.
647-484-1580
lbrinkmann@candeal.com

APPENDIX A

AMENDED AND RESTATED APPLICATION LETTER

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Toronto-Dominion Bank Tower
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Canada
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Email: mthomas@mccarthy.ca

February 28, 2023, as amended and restated on June 20, 2023

By e-mail

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario
M5H 3S8

Attention: Michael Bennett Senior Legal Counsel, Corporate Finance
Melissa Taylor, Senior Legal Counsel, Corporate Finance and
Darren Sutherland, Accountant, Corporate Finance

Dear Sirs/Mesdames:

Re: Applications (**Applications**) pursuant to section 24.1 of the *Securities Act* (Ontario) (**OSA**) and section 21.5 of the *Commodity Futures Act* (Ontario) (**CFA**) on behalf of CanDeal Benchmark Administration Services Inc. (**CBAS**) for the designation of CBAS as a designated benchmark administrator (**DBA**) and Term CORRA as a designed interest rate benchmark for purposes of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102***)* and OSC Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (**OSC Rule 25-501**)[1]

Introduction

We are counsel for CBAS in connection with the Applications under the OSA and CFA respectively for the DBA designation and IRB[2] designation (collectively, the **Designations**). A separate application is being made for the Designations to the Autorité des marchés financiers (**AMF**)[3].

OSC and AMF will act as Lead Regulators for Applications

Reference is made to section 5 of the *Memorandum of Understanding Respecting the Oversight of Designated Benchmarks and Designated Benchmark Administrators*[4] **(MOU**). We read the MOU as enabling the signatories to decide the manner in which an application will be handled. We understand that the Ontario Securities Commission (the **OSC**) and the AMF will be each selected as co-lead regulators (the **Lead Regulators**) for the purposes of the Applications.

Overview of Designations Sought

We will separately and successively address the IRB Designation and the DBA Designation.

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1 We understand that OSC Rule 25-501 contains substantially the same requirements as MI 25-102 and that OSC Rule 25-501 was enacted in Ontario because MI 25-102 would not apply to Ontario commodity futures law.
2 In this document, "IRB" refers to an interest rate benchmark and "designated IRB" refers to a designated interest rate benchmark.
3 This application will be made under *Regulation 25-102 respecting Designated Benchmarks and Benchmark Administrators*, CQLR, c. V-1.1, r. 8.2 and section 186.2.0.1 of the *Securities Act* (Québec), CQLR, c.V-1.1.
4 https://www.osc.ca/sites/default/files/2021-05/mou_20210527_designated-benchmarks.pdf

IRB Designation

Impetus for adoption of Term CORRA as a new interest rate benchmark

CBAS is applying under the OSA and the CFA to have Term CORRA designated as an IRB.

Term CORRA Methodology

Term CORRA is the term risk-free rate that is to replace the Canadian Dollar Offered Rate (**CDOR**) after June 28, 2024 for certain instruments or, when appropriate, for related derivatives. The following discussion is based on the methodology published on January 11, 2023 by the Canadian Alternative Reference Rate Working Group (**CARR**)[5].

The Term CORRA calculated rate is meant to reflect, at a point in time, the CORRA[6] overnight index swap rate for the 1- and 3-month tenor[7]. It builds on academic work as well as the term risk-free rates already established in other jurisdictions, including the US and UK, and has been developed by CARR and working groups of subject matter experts across the Canadian industry, including the Bank of Canada.

The case for creating a Term CORRA was first mentioned in CARR's 2021 CDOR White Paper, where it was noted that CARR would consult on a potential forward-looking rate. The resulting public consultation found that Canadian non-financial corporates, in particular, had a strong desire for a Term CORRA benchmark, as a term rate would be less operationally complex and facilitate cash flow forecasting.

Calculation of Term CORRA[8]

CBAS will supervise the way Term CORRA is determined and provided following the CARR methodology. This will include some calculation services.

CARR's proposed Term CORRA benchmark comprises two tenors: 1- and 3-months. These rates are calculated using a waterfall methodology comprised of two levels ("**Level 1**" and "**Level 2**"). CARR expects that the majority of time the calculation will be based on the Level 1 approach using CORRA futures transactions and executable bids and offers, with Level 2 acting as a fallback if there is not sufficient liquidity in CORRA futures on a specific day.

Term CORRA rates are calculated in steps as follows:

Step 1

Calculate a single futures mid-price for each individual futures contract (i.e., the first three 1-month CORRA futures and the first two 3-month CORRA futures contracts) using transactions, and a random sample of executable bids and offers in the central limit order book, within a two-hour observation interval between 10:00 am and 12:00 pm Eastern Time (the **Observation Interval**).

Step 2

If there are sufficient transactions and/or limit orders in all the necessary futures contracts to construct the curve, the Level 1 methodology will be used. This methodology constructs the CORRA forecast curve from the futures mid-prices and the 1- and 3-month Term CORRA will be calculated from that curve.

Step 3

If there are not sufficient transactions and/or limit orders to use the Level 1 methodology for a specific tenor (i.e., 1-month or 3-month Term CORRA), the Level 2 methodology will be used.

This methodology is a fallback version of Term CORRA that is calculated using the previous day's published Term CORRA rate adjusted for any move in historical CORRA rates calculated over the specific tenor.

CARR's proposed Term CORRA methodology uses both executed transactions and executable bids and offers in CORRA futures trading on the MX.

Data to calculate Term CORRA are taken during the Observation Interval to ensure a more accurate representation of the rate. The extended observation interval also means that the term rate is not dependent on individual transactions during a short time window. The time of the Observation Interval was chosen specifically to be after the release of the Bank of Canada's policy interest

5 See the CARR publication at https://www.bankofcanada.ca/wp-content/uploads/2023/01/term-corra-methodology.pdf

6 The Canadian Overnight Repo Rate Average (**CORRA**) is a measure of the cost of overnight general collateral funding in Canadian dollars using Government of Canada treasury bills and bonds as collateral for repurchase transactions. See https://www.bankofcanada.ca/rates/interest-rates/corra/methodology-calculating-corra/

7 Term CORRA will be a forward-looking measurement of overnight CORRA for 1- and 3-month tenors, based on market-implied expectations from CORRA derivatives markets. The rate will be calculated from 1- and 3-month CORRA futures trading on the Montréal Exchange (**MX**).

8 *Id* at pp 2 and following from which the description provided here is drawn.

rate decisions, and the publication of most economic news releases to limit the price volatility in CORRA futures during the Observation Interval.

The Observation Interval will be further divided into twelve 10-minute data windows (**slots**) to ensure that a representative rate across the whole interval can be calculated. The DBA will use as input data (i) transaction prices observed during each slot in the Observation Interval and (ii) a snapshot of executable bid/offer CORRA futures prices in the central limit order book (**CLOB**) taken at a random time within the same slot.

If an individual slot meets or exceeds a standard market size, then that slot is considered "valid". The defined standard market size (**SMS**) is $1 billion for 1-month and $750 million for 3-month. These sizes reflect (a) the aggregate of transactions effected over the duration of the slot and (b) that "acceptable" bids and offers are executable provided the total volume weighted bid and offer up to the SMS are within 5 bps or less of each other.

CBAS calculates a mid-price for each slot from the sampled best bid and offer having regard to the following:

1. When the value of the transactions equals or exceeds the SMS in any time slot, then all transactions in the slot will be used in calculating the volume-weighted average price and no sampled order data will be used.

2. When the value of the transactions in the slot is below the SMS, acceptable bids and offers are used alongside transactions to calculate the mid-price.

   A volume-weighted average bid price for the slot is calculated for a standard market sized transaction. The same is done for the offered side of the market. This is done by using the transactions in the slot together with the acceptable bids/offers until the standard market size is reached. The volume-weighted averages are calculated using a weighting system that provides more value to transactions and those bid/offer prices close to the mid-price. This results in a weighted average bid and offer and the mid-price between them is the slot's determined mid-price.

3. When there is insufficient transaction, bid, and offer volume in a slot, then no determined mid-price is available and the slot is invalid for the purposes of calculating a slot price.

Where there are between 4 to 12 valid slots in an observation interval the specific futures price can be used in using the Level 1 methodology. The specific futures price is calculated as the median of all the valid slot mid-prices (median will be defined as the middle slot, or if the range is even then the average between the two central slots will be used). If four slots cannot be filled, this futures price will not be available for use in the curve construction.

Curve Construction

To be considered valid, curves must also use a certain minimum number of futures contracts, as follows:

- For the 1-month tenor, valid fixings must be built using at least the first two 1-month futures prices. If this is not the case, Level 2 methodology will be employed.

- For the 3-month tenor, valid fixings must be built using at least the first two 3-month futures prices and the first three 1-month futures prices. If this is not the case, Level 2 methodology will apply.

Level 1 and Level 2 methodologies can apply separately for 1- and 3-month Term CORRA fixings.

Under Level 1, Term CORRA will be constructed using a methodology developed by the New York Federal Reserve[9]. A path for overnight CORRA rates is determined under the assumption that these rates follow a piecewise constant step function and only move up or down the day after a Bank of Canada Fixed Announcement Date.

CBAS will use MX CORRA futures, which provide an estimated level of overnight CORRA over a given period (1- or 3-months), to estimate an optimal path for overnight rates to calculate 1- and 3-month Term CORRA values.

Under Level 2, a fallback version of Term CORRA is calculated using the previous day's published rate. Specifically, the day's setting will equal the calculated backwards-looking compounded rate for the specific tenor (i.e., 1- or 3-month) for today, plus the difference between (a) the previous day's Term CORRA and (b) the change in the calculated backwards looking rate computed across the previous day for the same tenor.

The fallback methodology can be used for up to 10 business days in a row, after which time CBAS is expected to assess the underlying liquidity in CORRA futures and any potential changes to the calculation method to ensure its robustness.

[9] Heitfield, Erik, and Yang-Ho Park (2019). "Inferring Term Rates from SOFR Futures Prices," Finance and Economics Discussion Series 2019-014. Washington: Board of Governors of the Federal Reserve System, https://doi.org/10.17016/FEDS.2019.014

The use of this fallback rate means that the liquidity in the underlying futures market is not sufficiently robust to calculate a transaction or executable quote-based rate and therefore potentially raises the question about the longer-term viability of the rate. Therefore, after Level 2 calculations are made for 10 consecutive business days, CBAS' oversight committee (**Oversight Committee**), together with CBAS will meet to determine whether it is possible to amend the calculation methodology to ensure that a MI 25-102-compliant rate can be published, or whether the rate should be potentially wound down in an orderly fashion. Any significant amendments to the methodology would require a public consultation under MI 25-102.

Monitoring, reviewing, and updating the IRB

The DBA intends to rely on the governance structure prescribed in MI 25-102 and its associated internal policies for reviewing the IRB to discharge its responsibilities under MI 25-102.

This governance structure prescribes interactions between the DBA board of directors (**DBA Board**) and an Oversight Committee not populated by DBA board members. Supporting staff (including outsourced personnel) and a Compliance Officer (**Compliance Officer**) will have collective responsibility to devise, implement and monitor the efficacy of policies and procedures designed to collectively ensure the integrity and reliability of the designated IRB including ensuring that the calculation methodology for determining the IRB is followed.

The Compliance Officer may be regarded as collector of information for the Oversight Committee and, ultimately, the DBA Board. Information derived from complaints, price challenges, whistle-blower notifications, actual experience with the IRB and the administration of DBA policies are collected and organized by the Compliance Officer as information and decision inputs for the Oversight Committee.

The Oversight Committee will apply independent judgment to these information and decision inputs as well as periodic third-party assurance reports. The Oversight Committee will rely on its independence from the DBA board, applies its expertise with the IRB and the related users and its experience to formulate recommendations and reports to the DBA Board, escalate matters to the Board for decision and in appropriate cases to make reports to the regulators.

The principal focus of the Oversight Committee is ensuring and advancing the reliability, integrity and ongoing usefulness to users of the IRB. In aid of this objective, the Oversight Committee's mandate creates numerous responsibilities for monitoring the IRB.

The DBA Board liaises with TSX Inc. (**TSX**), where appropriate, to address price challenges as to the calculation of the IRB which might originate in the way TSX performed the pre-calculation steps and to assimilate feedback from commercial users of the IRB. The DBA Board also constitutes and acts on recommendations of the Oversight Committee and administers the policies and outsourcing relationships of the DBA. In this capacity it makes decisions on changes to the IRB.

Publication of information relating to IRB

MI 25-102 requires that information be published by CBAS about the methodology for determining Term CORRA and the process for reviewing, correcting and making significant changes to the methodology. Significance will be determined having regard to the magnitude of the change, its potential to compromise benchmark stability and integrity, and the degree to which it will be accepted in the market or depart from existing industry standards.

Separately, a benchmark statement must be published as to its intended uses and applications in understanding the market or economic segment to which the benchmark pertains. That statement needs, among other things, to address the circumstances in which the benchmark might not achieve its intended purpose and stop being published and also indicate whether, to what degree and by whom expert judgment needs to be applied to make the benchmark determination. The relevant information must at least be published on the CBAS website and be accessible at no charge by members of the public.

Information required under Applications

The Companion Policy to MI 25-102 (the **CP**) requires that the Applications contain the same information as that required by Form 25-102F1 *Designated Benchmark Administrator Annual Form* (**FI**) and Form 25-102F2 *Designated Benchmark Annual Form* (**F2**) in a format that is consistent with those forms[10]. To expedite consideration of the Applications, CBAS has prepared and submitted the F1 and F2. Given the fact that CBAS has not been designated yet as DBA, not all of the required information in the forms yet exists but the forms were complete as of the date of the original Applications. The forms will be updated prior to the Designations.

Why Term CORRA should be a designated IRB

For OSC Staff to recommend designation of an IRB, the benchmark needs to be used to set interest rates of debt securities or has to otherwise be used as a reference in derivatives or other instruments[11]. That requirement is expected to be satisfied once

[10] CP under the heading "Categories of Designation".
[11] CP under the heading "Subsection 1(1)—Definition of designated interest rate benchmark".

Term CORRA replaces CDOR for certain purposes and this expectation has already been backed by a public consultation process[12].

As confirmed in the opening passages of the document prepared by CARR describing the Term CORRA methodology[13] and the public consultation that preceded its development:

> "… Based on the results of its consultation, CARR has decided that a Term CORRA benchmark would be important for the successful transition of the Canadian loan and trade finance market from CDOR to CORRA. As a result, CARR is establishing the parameters for the creation of an IOSCO-compliant benchmark with the appropriate stakeholders. While most financial instruments will reference Overnight CORRA, CARR is identifying specific use cases for the use of Term CORRA. These use cases will be embedded in the benchmark administrator's licensing arrangements (for more details see CARR's Term CORRA Use Cases) …"

These use cases include trade finance, loans and derivatives associated with loans[14].

As discussed in the CP[15], designation of Term CORRA as an IRB requires a consideration of whether the IRB has "benchmark contributors"[16] since the activities of such contributors can require their adherence to codes of conduct that are supervised by the DBA.

Whether such regulatory requirements are engaged depends on whether the "input data" used in the computation of the IRB is "contributed"[17]. Input data that is publicly available free or at a reasonable cost is not "contributed"[18]. As discussed above, the Term CORRA rate will be calculated from public 1- and 3-month CORRA futures trading on the MX using both transactions and executable bids and offers in the CLOB over a specific calculation period. Accordingly, the data does not appear to be "contributed" and, in our submission, there is no need for a code of conduct as there is no contributor.

After the January 11, 2023 press release describing the Term CORRA methodology was published, MX invited approved participants (**APs**) and certain other persons[19] to participate in a market making program and submit a proposal outlining their abilities and commitment towards the market making of the MX 1-month CORRA futures (the **contracts**). The duration of the market making program will be up to 3 years. Two APs have since been selected as market makers and were required to sign a standard market making agreement with the MX.

The market makers will be required to post markets at the contracted minimum size and maximum spread (or better), for a predefined percentage of time. The market making agreement will also include other requirements related to the daily settlement of markets, the quarterly roll period and/or other quantitative and/or qualitative requirements.

The MX will monitor the market makers' order book activity to determine compliance with obligations set forth in the market making agreement. The MX will be solely responsible for the monitoring of market makers' compliance with the market making program obligations in accordance with the terms of the market making agreement.

In their capacity as market makers, the two APs will be quoting prices for the designated contracts which will be visible to counterparties on the MX and will lead to publicly visible transactions on an organized exchange: MX. We therefore submit that the addition of the market making feature does not alter the analysis or the conclusion that Term CORRA does not involve contributed data.

Other Considerations

A requirement for the Applications is that they address two additional questions: first, should the IRB be a "regulated-data benchmark"[20] and second, whether it should be a "designated critical benchmark".

We submit that both questions should be answered in the negative and each is briefly examined in the following paragraphs.

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12 See https://www.bankofcanada.ca/wp-content/uploads/2021/12/CARR-Review-CDOR-Analysis-Recommendations.pdf

13 Footnote 3 *supra.*

14 For recent mention of use cases, see: https://www.osc.ca/sites/default/files/2023-02/csa_20230223_25-309_cessation-of-cdor.pdf

15 CP under the heading "Subsection 1(3)—Interpretation of contribution of input data".

16 Under s. 1(1) of the OSA, "benchmark contributor" means a person or company that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark, including a person or company subject to a decision under section 24.2.

17 Footnote 8 *supra.*

18 *Id.*

19 The MX request for proposal was intended for APs and foreign APs, as well as their eligible clients. See: https://www.m-x.ca/f_circulaires_en/009-23_en.pdf

20 CP under the headings "Categories of Designation" and "Subsection 1(1)—Definition of designated regulated-data benchmark": "…As discussed below, we expect a benchmark administrator that applies for designation of a benchmark to provide written submissions on whether the administrator considers the benchmark to be… a regulated-data benchmark."

Term CORRA is not a regulated-data benchmark

We understand that since not all the data used for Term CORRA will be "regulated-data", Term CORRA would not be a regulated-data benchmark.

- The Term CORRA methodology published on January 11, 2023 states: "The rate will be calculated from 1- and 3- month CORRA futures trading on the Montréal Exchange using both transactions and executable bids and offers in the central limit order book (CLOB) over a specific calculation period".
- Executable bids and offers are not "transaction data" within the meaning of subsection 1(1) of MI 25-102 and are therefore not regulated data. See existing guidance in Companion Policy 25-102 under the heading "Subsection 1(1) – Definition of designated regulated-data benchmark".

Term CORRA is not a critical benchmark

Where a designated IRB over time becomes more significant to Canadian financial markets, a regulator may apply for it to be designated as a critical benchmark[21]. To qualify as "critical", the CP provides two illustrational factors[22] neither of which applies to Term CORRA:

(a) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds, having a total value in Canada of at least $400 billion on the basis of the range of maturities or tenors of the benchmark, where applicable; or

(b) the benchmark satisfies all of the following criteria:

  (i) the benchmark is used directly or indirectly within a combination of benchmarks as a reference for instruments or contracts or for measuring the performance of investment funds having a total value in one or more jurisdictions of Canada that is significant, on the basis of all the range of maturities or tenors of the benchmark, where applicable;

  (ii) the benchmark has no, or very few, appropriate market-led substitutes;

  (iii) in the event that the benchmark is no longer provided, or is provided on the basis of input data that is no longer sufficient to provide a benchmark that accurately represents that part of the market or economy the designated benchmark is intended to record, or on the basis of unreliable input data, there would be significant and adverse impacts on

    (A) market integrity, financial stability, the real economy, or the financing of businesses in one or more jurisdictions of Canada, or

    (B) a significant number of market participants in one or more jurisdictions of Canada.

Since Term CORRA has not yet launched, Term CORRA does not meet either of the above two factors and is not expected to meet either of the above two factors in the near future.

Designation of CBAS as DBA

CBAS

CBAS has been incorporated under the *Business Corporations Act* (Ontario) (**OBCA**). Its board of directors currently consists of Jayson Horner, who is also CEO of CanDeal Group Inc. (**Group**), André Craig, President of Data and Analytics division of CanDeal Innovations Inc, (**DNA**), the parent of CBAS and Robert Kowalik, the CFO for Group.

As shown by the organization charts in the F1, CBAS is an indirect subsidiary of Group. Group's shareholders are investment dealer subsidiaries (**Dealers**) of major Canadian banks (collectively, the **Banks**) and the TSX. The Group shareholders all have the same percentage of shares of Group.

Group and DNA

Taken as a group, Group is the holding company for a number of OBCA corporations. Its major businesses consist of CanDeal Markets Inc. (**Markets**) and DNA.

[21] CP under the heading "Categories of Designation".
[22] CP under the heading "Subsection 1(1)—Definition of designated critical benchmark".

Markets operates an over-the-counter electronic marketplace for the trading of fixed income instruments which is regulated as an alternative trading system marketplace and is a marketplace member of the Canadian Investment Regulatory Organization (**CIRO**).

DNA offers consulting services to assist Group shareholders and third parties including to rationalize various regulatory processes for the Dealers and the Banks and other processes for the commercial distribution of data by the Dealers.

Why CBAS should become the DBA

We submit that CBAS should be designated as the DBA because, as is evidenced by the F1, it has put in place a governance structure that is responsive to the requirements and goals of MI 25-102.

The proposed CEO of the DBA is Jayson Horner. Louise Brinkmann has been recruited by CBAS to act as the Compliance Officer of the DBA. The DBA will also receive support on an outsourced basis from Group's Chief Financial Officer, Chief Compliance Officer and Chief Information Officer.

The role of the DBA, broadly speaking, is to protect the integrity of the IRB, ensure the quality and independence of the IRB and evaluate and possibly improve its efficacy.

To promote IRB integrity, the DBA:

1. identifies potential and actual conflicts of interests including those arising from its ownership and adopts policies and procedures for identifying and eliminating or managing them,

2. maintains an outsourcing policy (the **Outsourcing Policy**),

3. receives and investigates complaints about the IRB,

4. receives and investigates, with assistance from TSX where appropriate, price challenges about the prices determined and published for the IRB,

5. maintains a whistleblower policy,

6. appoints members to an Oversight Committee who are not on the DBA Board and have a broad responsibility to supervise the IRB, make recommendations in relation to it to the Board and make reports in appropriate circumstances to the securities regulators with responsibility for the DBA and IRB,

7. appropriately controls the use of confidential information,

8. verifies that the IRB is calculated according to the methodology used to determine the IRB,

9. obtains an assurance report from a public accountant where required under MI 25-102,

10. establishes systems so that the DBA can contract for required services that are outsourced,

11. establishes controls aimed at responding effectively to business disruptions, cybersecurity incidents and data security breaches, and

12. maintains proper books and records.

Of the listed items, those presented above in italic typeface particularly facilitate evaluating the IRB and evaluating its efficacy. The DBA also considers the following in evaluating the quality of the IRB:

1. feedback received from commercial users of the IRB including the Dealers and the Banks,

2. feedback from expert stakeholders such as the Bank of Canada and CARR,

3. feedback from the TSX as distributor of the IRB, and

4. feedback from MX market makers in relation to the designated contracts that are used as inputs for the IRB.

Discussion of conflicts of interest

The DBA has a Conflicts of Interest Policy (**CoIP**) which accompanies the F1. As stated in the CoIP, CBAS uses the services of multiple parties including investors in its ultimate parent company, Group and parties with which it has commercial relationships (collectively, **related parties**) to generate Term CORRA and distribute data to a fee-paying customer base that also includes such

related parties. The MX, an affiliate of one of the investors in Group, TSX, operates the market which generates data used in calculating Term CORRA.

All material actual or potential conflicts of interest should be identified early and managed appropriately. The DBA's regulatory status, reputation, as well as the trust and confidence of its benchmark users depend on the DBA to appropriately identify and eliminate or manage actual or potential conflicts of interest.

To this end, CBAS has prepared the following table which provides information not only on the nature of conflicts but also how the conflict is addressed by particular policies.

Table analyzing DBA Conflicts of Interest

No.	Relationship giving rise to conflict of interest with DBA	Nature of Indirect relationship(s) with DBA	Nature of direct relationship with DBA	Policy/contract/ action that addresses conflict arising from relationship	How conflict addressed	Relationship publicly disclosed
1.	Bank – a direct shareholder of Group, an indirect shareholder of DBA parent[23] or affiliate.	Indirect minority shareholder through Group..	Pays to use IRB and receives distribution revenue.	Public disclosure. Ongoing evaluation of conflict through DBA and IRB designation processes. Distribution-related collaboration agreement negotiated at arm's length between regulated parties.	All Bank users pay and are compensated on basis of arm's length contract with TSX.	Website through a version of this table.
2.	Dealer – a direct shareholder of Group, an indirect shareholder of DBA parent or affiliate.	Indirect minority shareholder through Group[24] and could make revenue as an MX market maker.	Not applicable.	Not applicable.	Market makers appointed under MX request for proposal that conforms with MX market-making practices.	Website through a version of this table.

[23] In this table, "DBA parent" refers to DNA.
[24] Dealers collectively control Group and indirectly control DBA.

No.	Relationship giving rise to conflict of interest with DBA	Nature of Indirect relationship(s) with DBA	Nature of direct relationship with DBA	Policy/contract/ action that addresses conflict arising from relationship	How conflict addressed	Relationship publicly disclosed
3.	TSX – a direct shareholder of Group, an indirect shareholder of DBA parent or affiliate, and commercial relationship.	Indirect minority shareholder through Group; distributor, through TSX, of IRB; and provider, through TSX, of pre-calculation data handling services needed to determine IRB and of assistance as needed with price challenges.	IRB distributor and payer of licence fees to DBA parent; provides pre-calculation data handling services required for DBA parent to calculate IRB and assistance as needed with price challenges.	MI 25-102 structure, regulatory review of DBA and IRB application; compliance with Outsourcing Policy.	Arm's length commercial negotiation with TSX. DBA Board and Oversight Committee assesses.	Website through a version of this table.
4.	TMX Group Limited - parent of TSX and MX, indirect shareholder of Group and DBA parent or affiliate, and commercial relationship.	Indirect relationship exists through TSX and MX; TSX distributes Term CORRA and has other relationships under collaboration agreement. See row 3.	None.	MI 25-102 structure, regulatory review of DBA and IRB application; compliance with Outsourcing Policy.	Arms length commercial negotiation with TSX. DBA Board and Oversight Committee assesses.	Website through a version of this table.
5.	DBA parent or DBA affiliate other than DNA.[25]	Indirect controlling shareholder.	DBA parent provides calculation services and price challenge assistance.	Outsourcing Policy.	DBA Board and compliance with Outsourcing Policy.	Website through a version of this table.
6.	Officer of parent or affiliate and performs outsourced services for DBA.	Not applicable - relationship is direct not indirect.	Group CFO, CTO, perform management services for DBA.	Outsourcing Policy.	DBA Board assesses in compliance with Outsourcing Policy.	Website through a version of this table.

[25] DNA relationship is addressed in row 7 of this table.

No.	Relationship giving rise to conflict of interest with DBA	Nature of Indirect relationship(s) with DBA	Nature of direct relationship with DBA	Policy/contract/ action that addresses conflict arising from relationship	How conflict addressed	Relationship publicly disclosed
7.	DNA - commercial relationship only with DBA.	Affiliate.	Calculation agent and price challenge assistance agreement.	Outsourcing Policy.	DBA Board and Oversight Committee assesses.	Website through a version of this table.
8.	MX - affiliate of minority shareholder of Group.	Operates the market which generates data used by TSX to perform pre-calculation data handling before being passed on to DBA parent to calculate IRB.	Not applicable.	Not applicable.	Regulated exchange. DBA does not influence MX futures contracts.	Website through a version of this table.

The Indirect Owners of CBAS have multiple commercial relationships with the DBA and Input Data Provider

What the table demonstrates is that there are multiple ownership and commercial relationships between CBAS and its affiliates and ultimate shareholders.

A common response to the presence of a perceived conflict is disclosure[26] and this policy approach is itself reflected in MI 25-102[27]. A version of the table will be published so that there is public disclosure of these relationships. Other matters will also be publicly disclosed on the website including the conflict declarations of Oversight Committee members.

Another way of evaluating whether conflicts are handled properly is to ask whether there are sufficient safeguards in the governance processes of MI 25-102 to offset any perception that the relationship between say CBAS and the TSX would tend to foster laxness on the part of the DBA in protecting the integrity of the IRB.

We submit that the following significant safeguards are available:

1. A legislative framework[28] that mandates compliance by the DBA of IRB oversight.
2. The role of the Oversight Committee in controlling the effects of the conflicts and recommending remedial action.
3. The discipline imposed by the complaints and price challenge procedures.
4. The discipline imposed by recurring requirements to prepare the F1 and F2.
5. The incentive for MX, as a regulated exchange, to act in accordance with applicable law.
6. The incentive for TSX as the operator of a data distribution business to distribute a high-quality product for its customers.
7. The fact that Banks need to rely on the accuracy of the IRB in connection with their business and therefore have an interest in its integrity not just its capacity for generating revenue.
8. The involvement of knowledgeable stakeholders like the Bank of Canada and CARR who have insight into the methodology and use cases for the IRB.

[26] For example, see s. 13.4 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*
[27] MI 25-102 s. 10(3).
[28] MI 25-102 s. 8.

Looking specifically at the day-to-day processes of CBAS, the following tools are available to address conflicts:

1. Public disclosure of the conflict of interest by CBAS.

2. Requiring declarations of conflicts by members of the CBAS Board and Oversight Committee members which are published.

3. Requiring conflicted parties to adhere to CBAS policies including the CBAS Governance, Control and Accountability Framework.

4. Requiring conflicted parties involved in determining Term CORRA to submit to verification procedures including as to verification of the methodology TSX should be following in relation to the pre-calculation data steps.

5. Notifications by members of the public of conflicts through complaints process.

6. Regulatory supervision of disclosed conflicts and policies through the Control Framework.

7. Third party assurance processes.

8. Adherence to Outsourcing Policy when contracting for calculation services and services of Group employees.

Commercial Distribution of IRB

The distribution of the IRB to commercial users for revenue is to be effected through a collaboration agreement (**CA**) currently being negotiated at arm's length between TSX and CBAS. TSX already has a well-established data distribution business.

Under the CA, revenues are to be collected from four classes of licensees including a class composed of Tier 1 Banks and a class composed of other financial institutions.

Lenders wishing to use Term CORRA in their lending agreements would need to enter into a licensing agreement for Term CORRA. Borrowers would not normally need to enter into a licensing agreement unless they wanted real-time access to Term CORRA data instead of free but delayed access on a website of Group or TMX Group Limited.

Revenues are divided according to an agreed formula until costs of establishing the DBA and distributing the IRB are first recovered by CBAS and TSX and revenues over this amount are distributed under the CA according to a formula until a 25% mark-up on cost has been collected and distributed.

For the following reasons, the conflicts inherent in the CA are not thought to present a significant impediment to the DBA's intended method of operation:

1. Though TSX is a minority shareholder of Group and the Bank parents of the other Group shareholders are IRB licensees, the arm's length negotiation between TSX and CBAS is likely to produce commercially reasonable terms for the offering of IRB feeds that is aimed first at recovering costs of establishing and operating the DBA and generating and distributing the IRB.

2. TSX is itself regulated as an exchange. Furthermore, TMX Group Limited (the parent company of TSX) is a public company. Consequently, the DBA needs to be sensitive to the regulatory objectives at play in the development of a new benchmark.

3. The DBA Outsourcing Policy has been applied in relation to the CA.

It is submitted that these arrangements do not impinge on the integrity or reliability of the IRB and are in fact necessary for the DBA to operate and discharge its regulatory responsibilities. The DBA will need to have revenue sources to fund the costs of operating in the manner described in the F1.

Why Conflicts are unlikely to distort monitoring of IRB Methodology

A matter that Staff has invited us to address is the degree to which the relationships giving rise to potential conflicts of interest will impede the making of necessary changes to IRB methodology.

The DBA has a commercial interest in making the IRB methodology robust and reliable. These qualities go directly to the attractiveness to commercial users of the IRB. The Banks, apart from their commercial interest in distribution revenue, have a separate business need for a reliable term benchmark that will pass muster with regulators and sophisticated commercial counterparties whose cost of borrowing will be affected by the benchmark.

As reflected in the italicized items below, necessary changes in methodology will be influenced by input from a multiplicity of sources which are free of conflicts:

1. *feedback received from commercial users of the IRB including the Dealers and the Banks,*
2. *feedback from expert stakeholders such as the Bank of Canada and CARR,*
3. feedback from the TSX as distributor of the IRB,
4. feedback from MX market makers in relation to the contracts that are used as inputs for the IRB,
5. *public complaints or price challenges,*
6. *independent input from Oversight Committee members,*
7. *regulatory review of F1 and F2 filings,*
8. *feedback from public comments if proposed changes are so significant that a decision is made by regulators to solicit them.* [29]

These sources of feedback should significantly counteract the possible influence of conflicted parties.

Will Conflicts make IRB Manipulation more likely?

Staff has also invited us to address the degree to which the relationships giving rise to potential conflicts of interest impede robust policing for manipulative behaviour affecting the IRB.

As to potential IRB manipulation, the following factors tend to lessen the risk of manipulation:

1. The input data originates from trades and executable bids and offers in MX derivatives contracts.
2. MX is a regulated exchange which has its own anti-manipulation rules.[30]
3. Market makers appointed to provide quotes for MX contract trades are subject to MX and CIRO regulation.
4. Regulated securities businesses in the Group, TSX, Dealer or Bank orbit have strong incentives not to be associated with manipulative activity on the part of their affiliates because of the adverse legal repercussions and negative reputational implications.
5. The DBA has a public complaints policy and price challenge policy by members of the public.
6. The Oversight Committee mandate requires annual review of the methodology and of proposed changes to the methodology.
7. Requirements in MI 25-102 applicable to DBA that specifically address IRB methodology.[31]

Conclusion

CBAS believes the foregoing information and submissions are sufficient to justify the granting of the Designations under the Applications.

We and CBAS are available to assist with any questions or respond to any comments the regulators may have.

Yours very truly,

"Rene Sorell"

Rene Sorell
Counsel

cc: Serge Boisvert, Analyste expert à la réglementation, Direction de l'encadrement des activités de négociation, AMF
Jayson Horner, CEO, CBAS
André Craig, President, DNA

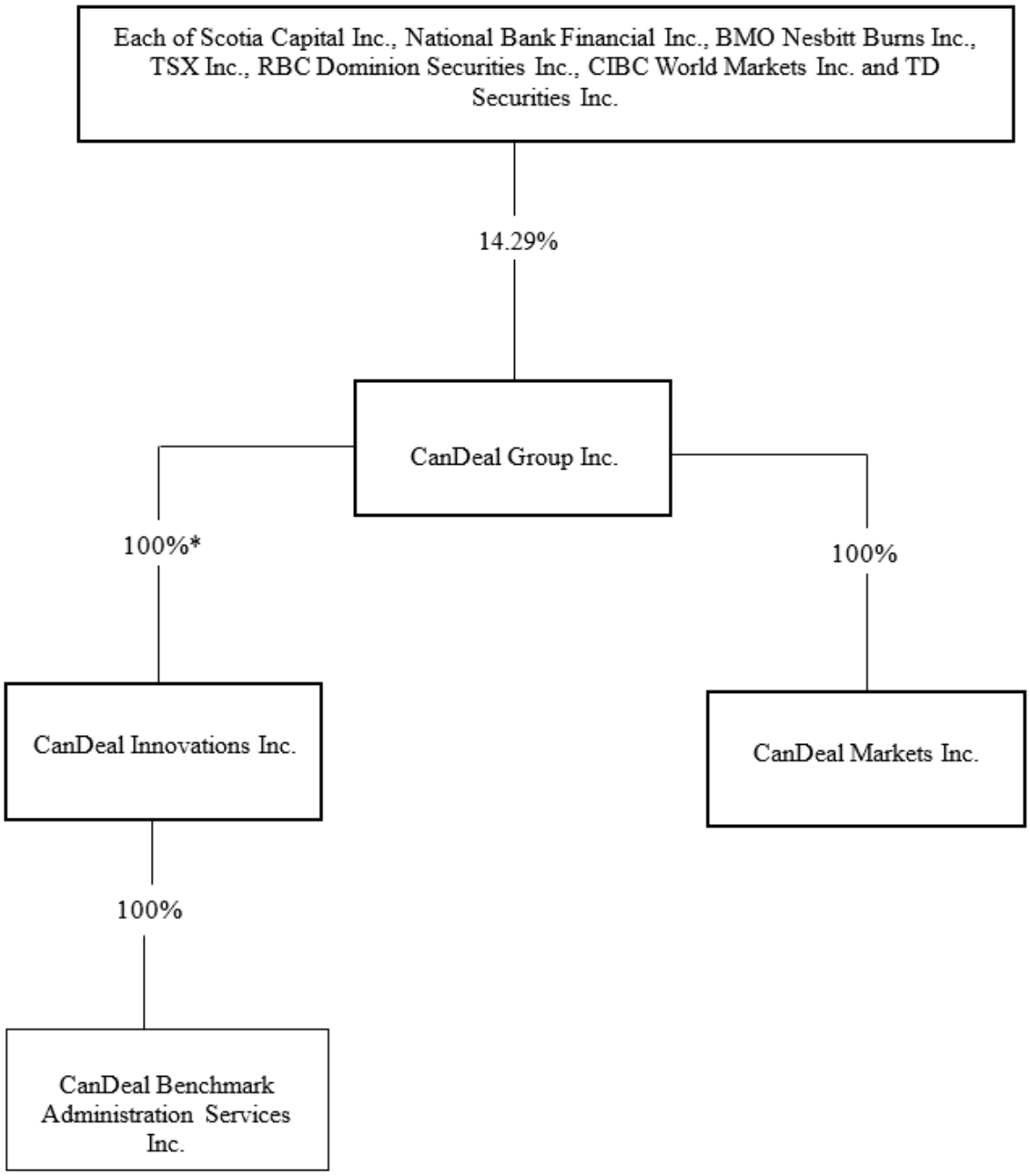
[29] MI 25-102 s. 17.
[30] Rules of the MX Article 7.5.
[31] MI 25-102 s. 16.

APPENDIX B

CBAS STRUCTURE

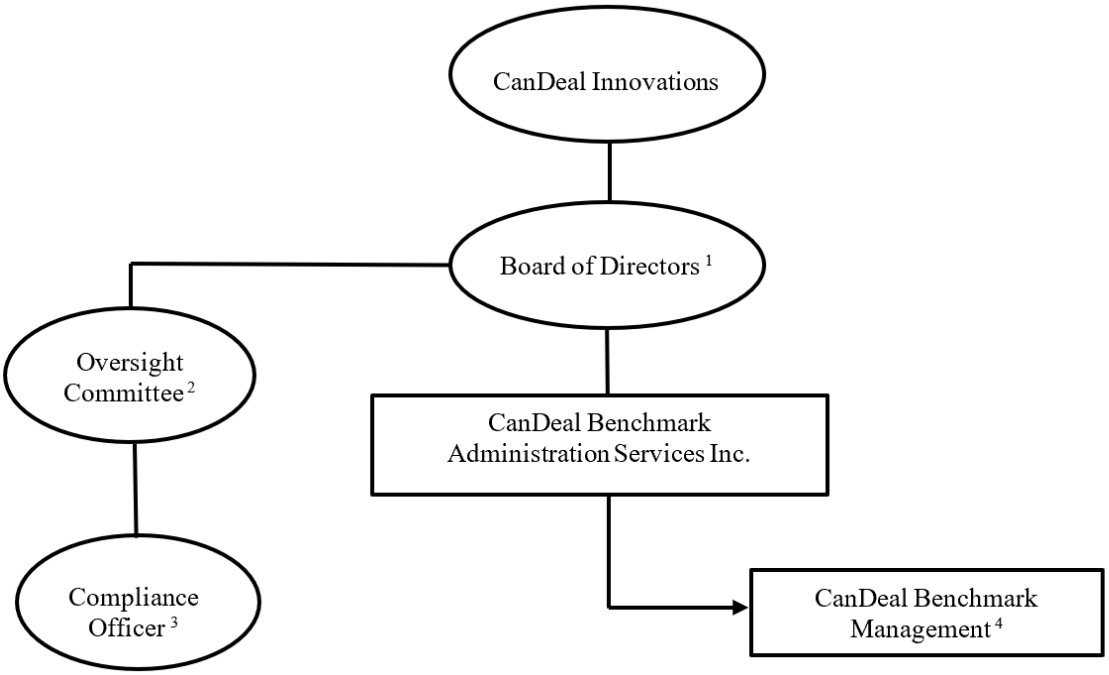
The following charts and accompanying notes present ownership information and information about how the functions of the DBA will be performed by the persons named in MI 25-102 and by certain outsourced personnel.

CanDeal Group Ownership Chart



*CanDeal Markets Inc. holds one non-voting preferred share of CanDeal Innovations Inc.

Organizational Chart for CanDeal Benchmark Administration Services Inc.



Notes re Organizational Chart:

[1] Board of Directors: Section numbers refer to MI 25-102

1. Approves accountability framework: 5(1) and (2)
2. Ensures compliance with securities legislation and methodology pertinent to benchmark: 5(1)(a)
3. Appoints Oversight Committee: 7(6) and sets policies as to its structure and mandate: 7(5)
4. Appoints officers including compliance officer: 6(1)
5. Approves control framework: 8
6. Reviews, approves and publishes methodology: 18(1)(c)
7. Oversees management and operation of benchmark
8. engages audit firm to do assurance reports re designated benchmark administered: 32 or 36

[2] Oversight Committee: Section numbers refer to MI 25-102

1. Cannot include board members: 7(3)
2. Recommends to board how benchmark should be overseen: 7(4)
3. Reviews
   a. benchmark methodology: 7(8)(a)
   b. changes to methodology: 7(8)(b)
   c. management and operation of the benchmark: 7(8)(c)
4. Supervises outsourcing arrangements: 7(8)(e)
5. Reviews assurance reports from auditors on the DBA and, where needed, on contributors under 32 or 33: 7(8)(f)

6. Supervise codes of conduct, if applicable

7. Monitors remedial steps: 7(8)(g)

8. Reports up to directors if contributor conduct codes breached: 7(8)(i)

9. Reports to regulator misconduct of DBA: 7(9)

10. Discloses own conflicts 7(12)

[3] Compliance Officer: Section numbers refer to MI 25-102

a. monitors compliance of DBA with securities legislation: 6(1)(a)

b. reports annually to board: 6(1)(b)

c. reports non-compliance to board: 6(3)(c)

Compliance Officer must abstain from:

a. participating in generating benchmark: 6(4)

b. determining compensation of DBA individuals: 6(4)

[4] The DBA will rely on the services of its own personnel (Compliance Officer) and additional management services provided under a management services agreement with CanDeal Group Inc. and one or more of Group's subsidiaries. The services of a head of technology, chief compliance officer, operations manager and head of finance will be provided under the management services agreement. A CanDeal subsidiary, CanDeal Innovations Inc., will perform calculation services and assist with the resolution of price challenges.

APPENDIX C

DRAFT OSC DESIGNATION ORDER

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

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20,
AS AMENDED
(THE "CFA")

AND

IN THE MATTER OF
TERM CORRA

AND

IN THE MATTER OF
CANDEAL BENCHMARK ADMINISTRATION SERVICES INC.
("CBAS")

DESIGNATION ORDER

Background

The Ontario Securities Commission (the "**Commission**") has received an application (the "**Application**") from CBAS under the OSA and the CFA for a decision under the OSA and the CFA that:

(a) Term CORRA be designated as a designated benchmark,

(b) Term CORRA be assigned as a designated interest rate benchmark for the purposes of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* ("**MI 25-102**") and Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* ("**OSC Rule 25-501**"), and

(c) CBAS be designated as a designated benchmark administrator of Term CORRA.

Interpretation

Terms defined in the OSA, the CFA, National Instrument 14-101 *Definitions,* MI 25-102 or OSC Rule 25-501 have the same meanings in this decision, unless otherwise defined herein.

Representations

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

1. The Canadian Dollar Offered Rate ("**CDOR"**), a designated interest rate benchmark, will cease to be published on June 28, 2024.

2. It is expected that market participants will use the Canadian Overnight Repo Rate Average ("**CORRA"**) as the alternative reference rate for most instruments that currently reference CDOR. CORRA is an existing interest rate benchmark administered by the Bank of Canada.

3. Term CORRA is a new interest rate benchmark that is intended to replace CDOR for certain instruments or, when appropriate, for related derivatives. Term CORRA will be a forward-looking measurement of CORRA for 1- and 3-month tenors, based on market-implied expectations from CORRA derivatives markets. CBAS is the benchmark administrator of Term CORRA.

4. Term CORRA's use will be limited through its licensing agreements to trade finance, loans and derivatives associated with loans.

5. It is anticipated that Term CORRA will be important for the successful transition of the Canadian loan and trade finance market from CDOR.

6. CBAS and Commission staff believe that Term CORRA should be designated as a designated benchmark (and assigned as a designated interest rate benchmark for the purposes of MI 25-102 and OSC Rule 25-501) and CBAS should be designated as a designated benchmark administrator of Term CORRA. After Term CORRA and CBAS are so designated, CBAS (as benchmark administrator of Term CORRA) will be required to comply with the applicable provisions of MI 25-102 and OSC Rule 25-501 in respect of Term CORRA.

Decision

The Commission is satisfied that it is in the public interest to make this decision.

The decision of the Commission, pursuant to section 24.1 of the OSA and section 21.5 of the CFA, is that:

1. Term CORRA is designated as a designated benchmark,

2. Term CORRA is assigned as a designated interest rate benchmark for the purposes of MI 25-102 and OSC Rule 25-501, and

3. CBAS is designated as a designated benchmark administrator of Term CORRA.

Dated this ● day of ●, 2023.

_____

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:
Embark Student Plan
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated June 26, 2023
Received on June 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3459464

Issuer Name:
HSBC AsiaPacific Fund
HSBC Canadian Balanced Fund
HSBC Canadian Bond Fund
HSBC Canadian Bond Pooled Fund
HSBC Canadian Dividend Pooled Fund
HSBC Canadian Equity Pooled Fund
HSBC Canadian Money Market Fund
HSBC Canadian Money Market Pooled Fund
HSBC Canadian Short/Mid Bond Fund
HSBC Canadian Small Cap Equity Pooled Fund
HSBC Chinese Equity Fund
HSBC Dividend Fund
HSBC Emerging Markets Debt Fund
HSBC Emerging Markets Debt Pooled Fund
HSBC Emerging Markets Equity Index Fund
HSBC Emerging Markets Fund
HSBC Emerging Markets Fund II (formerly, HSBC BRIC Equity Fund)
HSBC Emerging Markets Pooled Fund
HSBC Equity Fund
HSBC European Fund
HSBC Global Corporate Bond Fund
HSBC Global Equity Fund
HSBC Global Equity Volatility Focused Fund
HSBC Global High Yield Bond Pooled Fund
HSBC Global Inflation Linked Bond Pooled Fund
HSBC Global Real Estate Equity Pooled Fund
HSBC Indian Equity Fund
HSBC International Equity Index Fund
HSBC International Equity Pooled Fund
HSBC Monthly Income Fund
HSBC Mortgage Fund
HSBC Mortgage Pooled Fund
HSBC Small Cap Growth Fund
HSBC U.S. Dollar Money Market Fund
HSBC U.S. Dollar Monthly Income Fund
HSBC U.S. Equity Fund
HSBC U.S. Equity Index Fund
HSBC U.S. Equity Pooled Fund
HSBC Wealth Compass Aggressive Growth Fund
HSBC Wealth Compass Balanced Fund
HSBC Wealth Compass Conservative Fund
HSBC Wealth Compass Growth Fund
HSBC Wealth Compass Moderate Conservative Fund
HSBC World Selection Diversified Aggressive Growth Fund
HSBC World Selection Diversified Balanced Fund
HSBC World Selection Diversified Conservative Fund
HSBC World Selection Diversified Growth Fund
HSBC World Selection Diversified Moderate Conservative Fund
Principal Regulator – British Columbia
Type and Date:
Final Simplified Prospectus dated Jun 27, 2023
NP 11-202 Final Receipt dated Jun 27, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3536738

Issuer Name:
Phillips, Hager & North $U.S. Money Market Fund
Phillips, Hager & North Balanced Fund
Phillips, Hager & North Balanced Pension Trust
Phillips, Hager & North Bond Fund
Phillips, Hager & North Canadian Equity Fund
Phillips, Hager & North Canadian Equity Pension Trust
Phillips, Hager & North Canadian Equity Plus Pension Trust
Phillips, Hager & North Canadian Equity Underlying Fund
Phillips, Hager & North Canadian Equity Underlying Fund II
Phillips, Hager & North Canadian Equity Value Fund
Phillips, Hager & North Canadian Growth Fund
Phillips, Hager & North Canadian Income Fund
Phillips, Hager & North Canadian Money Market Fund
Phillips, Hager & North Conservative Equity Income Fund
Phillips, Hager & North Conservative Pension Trust
Phillips, Hager & North Currency-Hedged Overseas Equity Fund
Phillips, Hager & North Currency-Hedged U.S. Equity Fund
Phillips, Hager & North Dividend Income Fund
Phillips, Hager & North Global Equity Fund
Phillips, Hager & North Growth Pension Trust
Phillips, Hager & North High Yield Bond Fund
Phillips, Hager & North Inflation-Linked Bond Fund
Phillips, Hager & North LifeTime 2015 Fund
Phillips, Hager & North LifeTime 2020 Fund
Phillips, Hager & North LifeTime 2025 Fund
Phillips, Hager & North LifeTime 2030 Fund
Phillips, Hager & North LifeTime 2035 Fund
Phillips, Hager & North LifeTime 2040 Fund
Phillips, Hager & North LifeTime 2045 Fund
Phillips, Hager & North LifeTime 2050 Fund
Phillips, Hager & North LifeTime 2055 Fund
Phillips, Hager & North LifeTime 2060 Fund
Phillips, Hager & North Long Inflation-linked Bond Fund
Phillips, Hager & North Monthly Income Fund
Phillips, Hager & North Overseas Equity Fund
Phillips, Hager & North Short Term Bond & Mortgage Fund
Phillips, Hager & North Small Float Fund
Phillips, Hager & North Total Return Bond Fund
Phillips, Hager & North U.S. Dividend Income Fund
Phillips, Hager & North U.S. Equity Fund
Phillips, Hager & North U.S. Growth Fund
Phillips, Hager & North U.S. Multi-Style All-Cap Equity Fund
Phillips, Hager & North Vintage Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 26, 2023
NP 11-202 Final Receipt dated Jun 27, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3536306

Issuer Name:
Pender Alternative Absolute Return Fund
Pender Alternative Arbitrage Fund
Pender Alternative Arbitrage Plus Fund
Pender Alternative Multi-Strategy Income Fund
Pender Alternative Special Situations Fund (formerly, Pender Special Situations Fund)
Pender Bond Universe Fund
Pender Corporate Bond Fund
Pender Small Cap Opportunities Fund
Pender Small/Mid Cap Dividend Fund
Pender Strategic Growth and Income Fund (formerly, Pender Enhanced Income Fund)
Pender Value Fund
Principal Regulator – British Columbia
Type and Date:
Final Simplified Prospectus dated Jun 27, 2023
NP 11-202 Final Receipt dated Jun 27, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3540754

Issuer Name:
Balanced 60/40 Fund
Balanced Monthly Income Fund
Canadian Equity Fund
Canadian Fixed Income Fund
Canadian Small Company Equity Fund
Conservative Monthly Income Fund
Emerging Markets Equity Fund
Global Balanced Growth Pool (formerly, Balanced Growth Fund)
Global Equity Pool (formerly, All Equity Fund)
Global Managed Volatility Fund
Global Neutral Balanced Pool (formerly, Neutral Balanced Fund)
Growth 100 Fund
Growth 80/20 Fund
Income 100 Fund
Income 20/80 Fund
Income 40/60 Fund
Income Balanced Pool (formerly, Income Balanced Fund)
International Equity Fund (formerly EAFE Equity Fund)
Long Duration Bond Fund
Money Market Fund
Real Return Bond Fund
Short Term Bond Fund
Short Term Investment Fund
U.S. High Yield Bond Fund
U.S. Large Cap Index Fund
U.S. Large Company Equity Fund
U.S. Small Company Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 29, 2023
NP 11-202 Final Receipt dated Jun 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3541594

Issuer Name:
iShares 0-5 Year TIPS Bond Index ETF
iShares 0-5 Year TIPS Bond Index ETF (CAD-Hedged)
iShares 1-10 Year Laddered Corporate Bond Index ETF
iShares 1-10 Year Laddered Government Bond Index ETF
iShares 1-5 Year Laddered Corporate Bond Index ETF
iShares 1-5 Year Laddered Government Bond Index ETF
iShares 1-5 Year U.S. IG Corporate Bond Index ETF
iShares 1-5 Year U.S. IG Corporate Bond Index ETF (CAD-Hedged)
iShares Canadian Financial Monthly Income ETF
iShares Canadian Fundamental Index ETF
iShares Canadian Growth Index ETF
iShares Canadian HYBrid Corporate Bond Index ETF
iShares Canadian Real Return Bond Index ETF
iShares Canadian Select Dividend Index ETF
iShares Canadian Value Index ETF
iShares China Index ETF
iShares Conservative Short Term Strategic Fixed Income ETF
iShares Conservative Strategic Fixed Income ETF
iShares Convertible Bond Index ETF
iShares Core Balanced ETF Portfolio
iShares Core Canadian Corporate Bond Index ETF (formerly, iShares Canadian Corporate Bond Index ETF)
iShares Core Canadian Government Bond Index ETF (formerly, iShares Canadian Government Bond Index ETF)
iShares Core Canadian Long Term Bond Index ETF
iShares Core Canadian Short Term Bond Index ETF
iShares Core Canadian Short Term Corporate Bond Index ETF
iShares Core Canadian Universe Bond Index ETF
iShares Core Conservative Balanced ETF Portfolio
iShares Core Equity ETF Portfolio
iShares Core Growth ETF Portfolio
iShares Core Income Balanced ETF Portfolio
iShares Core MSCI All Country World ex Canada Index ETF
iShares Core MSCI Canadian Quality Dividend Index ETF
iShares Core MSCI EAFE IMI Index ETF
iShares Core MSCI EAFE IMI Index ETF (CAD-Hedged)
iShares Core MSCI Emerging Markets IMI Index ETF
iShares Core MSCI Global Quality Dividend Index ETF
iShares Core MSCI Global Quality Dividend Index ETF (CAD-Hedged)
iShares Core MSCI US Quality Dividend Index ETF
iShares Core MSCI US Quality Dividend Index ETF (CAD-Hedged)
iShares Core S&P 500 Index ETF
iShares Core S&P 500 Index ETF (CAD-Hedged)
iShares Core S&P U.S. Total Market Index ETF
iShares Core S&P U.S. Total Market Index ETF (CAD-Hedged)
iShares Core S&P/TSX Capped Composite Index ETF
iShares Cybersecurity and Tech Index ETF
iShares Diversified Monthly Income ETF
iShares Emerging Markets Fundamental Index ETF
iShares Equal Weight Banc & Lifeco ETF
iShares ESG Advanced 1-5 Year Canadian Corporate Bond Index ETF
iShares ESG Advanced Canadian Corporate Bond Index ETF
iShares ESG Advanced MSCI Canada Index ETF

iShares ESG Advanced MSCI EAFE Index ETF
iShares ESG Advanced MSCI USA Index ETF
iShares ESG Aware Canadian Aggregate Bond Index ETF (formerly, iShares ESG Canadian Aggregate Bond Index ETF)
iShares ESG Aware Canadian Short Term Bond Index ETF (formerly, iShares ESG Canadian Short Term Bond Index ETF)
iShares ESG Aware MSCI Canada Index ETF
iShares ESG Aware MSCI EAFE Index ETF
iShares ESG Aware MSCI Emerging Markets Index ETF
iShares ESG Aware MSCI USA Index ETF
iShares ESG Balanced ETF Portfolio
iShares ESG Conservative Balanced ETF Portfolio
iShares ESG Equity ETF Portfolio
iShares ESG Growth ETF Portfolio
iShares ESG MSCI Canada Leaders Index ETF
iShares ESG MSCI EAFE Leaders Index ETF
iShares ESG MSCI USA Leaders Index ETF
iShares Exponential Technologies Index ETF
iShares Floating Rate Index ETF
iShares Genomics Immunology and Healthcare Index ETF
iShares Global Agriculture Index ETF
iShares Global Clean Energy Index ETF
iShares Global Government Bond Index ETF (CAD-Hedged)
iShares Global Healthcare Index ETF (CAD-Hedged)
iShares Global Infrastructure Index ETF
iShares Global Monthly Dividend Index ETF (CAD-Hedged)
iShares Global Real Estate Index ETF
iShares Global Water Index ETF
iShares High Quality Canadian Bond Index ETF
iShares India Index ETF
iShares International Fundamental Index ETF
iShares J.P. Morgan USD Emerging Markets Bond Index ETF (CAD-Hedged)
iShares Jantzi Social Index ETF
iShares Japan Fundamental Index ETF (CAD-Hedged)
iShares MSCI EAFE Index ETF (CAD-Hedged)
iShares MSCI Emerging Markets Index ETF
iShares MSCI Europe IMI Index ETF
iShares MSCI Europe IMI Index ETF (CAD-Hedged)
iShares MSCI Min Vol Canada Index ETF
iShares MSCI Min Vol EAFE Index ETF
iShares MSCI Min Vol EAFE Index ETF (CAD-Hedged)
iShares MSCI Min Vol Emerging Markets Index ETF
iShares MSCI Min Vol Global Index ETF
iShares MSCI Min Vol Global Index ETF (CAD-Hedged)
iShares MSCI Min Vol USA Index ETF
iShares MSCI Min Vol USA Index ETF (CAD-Hedged)
iShares MSCI Multifactor Canada Index ETF
iShares MSCI Multifactor EAFE Index ETF
iShares MSCI Multifactor EAFE Index ETF (CAD-Hedged)
iShares MSCI Multifactor USA Index ETF
iShares MSCI Multifactor USA Index ETF (CAD-Hedged)
iShares MSCI USA Momentum Factor Index ETF
iShares MSCI USA Quality Factor Index ETF
iShares MSCI USA Value Factor Index ETF
iShares MSCI World Index ETF
iShares NASDAQ 100 Index ETF (CAD-Hedged)
iShares Premium Money Market ETF
iShares S&P Global Consumer Discretionary Index ETF (CAD-Hedged)
iShares S&P Global Industrials Index ETF (CAD-Hedged)
iShares S&P U.S. Mid-Cap Index ETF
iShares S&P U.S. Mid-Cap Index ETF (CAD-Hedged)
iShares S&P U.S. Small-Cap Index ETF
iShares S&P U.S. Small-Cap Index ETF (CAD-Hedged)
iShares S&P/TSX 60 Index ETF
iShares S&P/TSX Canadian Dividend Aristocrats Index ETF
iShares S&P/TSX Canadian Preferred Share Index ETF
iShares S&P/TSX Capped Consumer Staples Index ETF
iShares S&P/TSX Capped Energy Index ETF
iShares S&P/TSX Capped Financials Index ETF
iShares S&P/TSX Capped Information Technology Index ETF
iShares S&P/TSX Capped Materials Index ETF
iShares S&P/TSX Capped REIT Index ETF
iShares S&P/TSX Capped Utilities Index ETF
iShares S&P/TSX Completion Index ETF
iShares S&P/TSX Composite High Dividend Index ETF
iShares S&P/TSX Global Base Metals Index ETF
iShares S&P/TSX Global Gold Index ETF
iShares S&P/TSX North American Preferred Stock Index ETF (CAD-Hedged)
iShares S&P/TSX SmallCap Index ETF
iShares Short Term Strategic Fixed Income ETF
iShares U.S. Aggregate Bond Index ETF
iShares U.S. Aggregate Bond Index ETF (CAD-Hedged)
iShares U.S. High Dividend Equity Index ETF
iShares U.S. High Dividend Equity Index ETF (CAD-Hedged)
iShares U.S. High Yield Bond Index ETF (CAD-Hedged)
iShares U.S. IG Corporate Bond Index ETF
iShares U.S. IG Corporate Bond Index ETF (CAD-Hedged)
iShares U.S. Small Cap Index ETF (CAD-Hedged)
iShares US Dividend Growers Index ETF (CAD-Hedged)
iShares US Fundamental Index ETF
Principal Regulator – Ontario

Type and Date:
Final Long Form Prospectus dated Jun 29, 2023
NP 11-202 Final Receipt dated Jun 30, 2023

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Project #3538172

Issuer Name:
Mackenzie FuturePath Canadian Balanced Fund
Mackenzie FuturePath Canadian Core Fund
Mackenzie FuturePath Canadian Core Plus Bond Fund
Mackenzie FuturePath Canadian Dividend Fund
Mackenzie FuturePath Canadian Equity Balanced Fund
Mackenzie FuturePath Canadian Fixed Income Portfolio
Mackenzie FuturePath Canadian Growth Fund
Mackenzie FuturePath Canadian Money Market Fund
Mackenzie FuturePath Canadian Sustainable Equity Fund
Mackenzie FuturePath Global Balanced Fund
Mackenzie FuturePath Global Core Fund
Mackenzie FuturePath Global Core Plus Bond Fund
Mackenzie FuturePath Global Equity Balanced Fund
Mackenzie FuturePath Global Equity Balanced Portfolio
Mackenzie FuturePath Global Equity Portfolio
Mackenzie FuturePath Global Fixed Income Balanced Portfolio
Mackenzie FuturePath Global Growth Fund
Mackenzie FuturePath Global Neutral Balanced Portfolio
Mackenzie FuturePath Global Value Fund
Mackenzie FuturePath Monthly Income Balanced Portfolio
Mackenzie FuturePath Monthly Income Conservative Portfolio
Mackenzie FuturePath Monthly Income Growth Portfolio
Mackenzie Futurepath Shariah Global Equity Fund
Mackenzie FuturePath US Core Fund
Mackenzie FuturePath US Growth Fund
Mackenzie FuturePath US Value Fund
Mackenzie FuturePath USD US Core Fund
Principal Regulator – Ontario

Type and Date:
Final Simplified Prospectus dated Jun 27, 2023
NP 11-202 Final Receipt dated Jun 28, 2023

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Project #3527493

Issuer Name:
NEI Balanced Private Portfolio
NEI Balanced Yield Portfolio (formerly NEI Global Strategic Yield Fund)
NEI Canadian Bond Fund
NEI Canadian Dividend Fund (formerly NEI Northwest Canadian Dividend Fund)
NEI Canadian Equity Fund (formerly NEI Northwest Canadian Equity Fund)
NEI Canadian Equity Pool
NEI Canadian Equity RS Fund (formerly NEI Ethical Canadian Equity Fund)
NEI Canadian Impact Bond Fund
NEI Canadian Small Cap Equity Fund (formerly NEI Northwest Specialty Equity Fund)
NEI Canadian Small Cap Equity RS Fund (formerly NEI Ethical Special Equity Fund)
NEI Clean Infrastructure Fund
NEI Conservative Yield Portfolio
NEI Emerging Markets Fund (formerly NEI Northwest Emerging Markets Fund)
NEI Environmental Leaders Fund
NEI ESG Canadian Enhanced Index Fund (formerly NEI Jantzi Social Index® Fund)
NEI Fixed Income Pool
NEI Global Dividend RS Fund (formerly NEI Ethical Global Dividend Fund)
NEI Global Equity Pool
NEI Global Equity RS Fund (formerly NEI Ethical Global Equity Fund)
NEI Global Growth Fund (formerly NEI Global Equity Fund)
NEI Global High Yield Bond Fund (formerly NEI Northwest Specialty Global High Yield Bond Fund)
NEI Global Impact Bond Fund
NEI Global Sustainable Balanced Fund (formerly NEI Balanced RS Fund)
NEI Global Total Return Bond Fund
NEI Global Value Fund
NEI Growth & Income Fund (formerly NEI Northwest Growth and Income Fund)
NEI Growth Private Portfolio
NEI Impact Balanced Portfolio
NEI Impact Conservative Portfolio
NEI Impact Growth Portfolio
NEI Income & Growth Private Portfolio
NEI Income Private Portfolio
NEI International Equity RS Fund (formerly NEI Ethical International Equity Fund)
NEI Managed Asset Allocation Pool
NEI Money Market Fund
NEI Select Balanced RS Portfolio (formerly NEI Ethical Select Balanced Portfolio)
NEI Select Growth & Income RS Portfolio (formerly Meritas Growth & Income Portfolio)
NEI Select Growth RS Portfolio (formerly NEI Ethical Select Growth Portfolio)
NEI Select Income & Growth RS Portfolio (formerly NEI Ethical Select Conservative Portfolio)
NEI Select Income RS Portfolio (formerly NEI Ethical Select Income Portfolio)
NEI Select Maximum Growth RS Portfolio (formerly Meritas Maximum Growth Portfolio)

NEI U.S. Dividend Fund (formerly NEI Northwest U.S. Dividend Fund)
NEI U.S. Equity RS Fund (formerly NEI Ethical U.S. Equity Fund)
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jun 29, 2023
NP 11-202 Final Receipt dated Jun 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3542709

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Issuer Name:
CI Balanced Income Personal Portfolio
CI Canadian All Cap Equity Income Class (formerly, CI Canadian Equity Income Class)
CI Canadian All Cap Equity Income Fund
CI Canadian Core Fixed Income Private Trust
CI Canadian Equity Income Private Trust
CI Canadian Small/Mid Cap Equity Income Class
CI Canadian Small/Mid Cap Equity Income Fund
CI Conservative Income Personal Portfolio
CI Corporate Bond Class
CI Defensive Income Personal Portfolio
CI Energy Private Trust
CI Global High Yield Fixed Income Private Trust
CI Global Infrastructure Fund
CI Global Infrastructure Private Trust
CI Global Investment Grade Class (formerly, CI Global Investment Grade Private Pool Class)
CI Global Investment Grade Fund
CI Global Real Estate Private Trust
CI Global REIT Class
CI Global REIT Fund
CI Growth & Income Personal Portfolio
CI Growth Personal Portfolio
CI International Equity Income Private Trust
CI Money Market Class
CI North American Dividend Fund
CI Precious Metals Class
CI Precious Metals Fund
CI Precious Metals Private Trust
CI Resource Opportunities Class
CI U.S. Equity & Income Fund
CI U.S. Equity Class
CI U.S. Equity Currency Neutral Class
CI U.S. Equity Fund
CI U.S. Equity Private Trust
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 23, 2023
NP 11-202 Final Receipt dated Jun 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3540664

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Issuer Name:
AGF Canadian Growth Equity Fund
AGF China Focus Fund
AGF Emerging Markets ex China Fund
AGF Enhanced U.S. Equity Income Fund
AGF U.S. Sector Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jun 28, 2023
NP 11-202 Final Receipt dated Jun 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3540042

Issuer Name:
Guardian Ultra-Short Canadian T-Bill Fund
Guardian Ultra-Short U.S. T-Bill Fund
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jun 29, 2023
NP 11-202 Final Receipt dated Jun 30, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3547189

Issuer Name:
Horizons Enhanced Canadian Large Cap Equity Covered Call ETF
Horizons Enhanced Equal Weight Banks Index ETF
Horizons Enhanced Equal Weight Canadian Banks Covered Call ETF
Horizons Enhanced S&P/TSX 60 Index ETF
Horizons Enhanced US Large Cap Equity Covered Call ETF
Horizons Equal Weight Banks Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jun 28, 2023
NP 11-202 Final Receipt dated Jun 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3549732

Issuer Name:
VPI Canadian Balanced Pool
VPI Canadian Equity Pool
VPI Corporate Bond Pool
VPI Dividend Growth Pool
VPI Global Equity Pool
VPI Income Pool
VPI Mortgage Pool
VPI Sustainability Leaders Pool
VPI Total Equity Pool
Principal Regulator – Manitoba
Type and Date:
Final Simplified Prospectus dated Jun 28, 2023
NP 11-202 Final Receipt dated Jun 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3540576

Issuer Name:
Palos Equity Income Fund
Principal Regulator – Quebec
Type and Date:
Pro Forma Simplified Prospectus dated Jun 26, 2023
NP 11-202 Final Receipt dated Jun 28, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3541986

Issuer Name:
Sun Life Acadian International Equity Fund
Sun Life Aditya Birla India Fund
Sun Life Amundi Emerging Markets Debt Fund
Sun Life BlackRock Canadian Equity Fund
Sun Life Core Advantage Credit Private Pool
Sun Life Crescent Specialty Credit Private Pool
Sun Life Dynamic Equity Income Fund
Sun Life Dynamic Strategic Yield Fund
Sun Life Global Tactical Yield Private Pool
Sun Life Granite Balanced Class
Sun Life Granite Balanced Growth Class
Sun Life Granite Balanced Growth Portfolio
Sun Life Granite Balanced Portfolio
Sun Life Granite Conservative Class
Sun Life Granite Conservative Portfolio
Sun Life Granite Enhanced Income Portfolio
Sun Life Granite Growth Class
Sun Life Granite Growth Portfolio
Sun Life Granite Income Portfolio
Sun Life Granite Moderate Class
Sun Life Granite Moderate Portfolio
Sun Life JPMorgan International Equity Fund
Sun Life KBI Global Dividend Private Pool
Sun Life KBI Sustainable Infrastructure Private Pool
Sun Life MFS Canadian Bond Fund
Sun Life MFS Canadian Equity Fund
Sun Life MFS Diversified Income Fund (formerly, Sun Life MFS Dividend Income Fund)
Sun Life MFS Global Growth Class
Sun Life MFS Global Growth Fund
Sun Life MFS Global Total Return Fund
Sun Life MFS Global Value Fund
Sun Life MFS International Opportunities Class
Sun Life MFS International Opportunities Fund
Sun Life MFS International Value Fund
Sun Life MFS Low Volatility Global Equity Fund
Sun Life MFS Low Volatility International Equity Fund
Sun Life MFS U.S. Equity Fund
Sun Life MFS U.S. Growth Class
Sun Life MFS U.S. Growth Fund
Sun Life MFS U.S. Mid Cap Growth Fund
Sun Life MFS U.S. Value Fund
Sun Life Milestone 2025 Fund
Sun Life Milestone 2030 Fund
Sun Life Milestone 2035 Fund
Sun Life Money Market Class
Sun Life Money Market Fund
Sun Life Multi-Strategy Bond Fund
Sun Life Nuveen Flexible Income Fund (formerly, Sun Life NWQ Flexible Income Fund)
Sun Life Real Assets Private Pool (formerly, Sun Life Real Assets Fund)
Sun Life Schroder Emerging Markets Fund
Sun Life Schroder Global Mid Cap Fund
Sun Life Tactical Balanced ETF Portfolio
Sun Life Tactical Conservative ETF Portfolio
Sun Life Tactical Equity ETF Portfolio
Sun Life Tactical Fixed Income ETF Portfolio
Sun Life Tactical Growth ETF Portfolio
Sun Life Wellington Opportunistic Fixed Income Private Pool
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 28, 2023
NP 11-202 Final Receipt dated Jun 30, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3531278

Issuer Name:
Starlight Global Infrastructure Fund
Starlight Global Real Estate Fund
Stone Covered Call Canadian Banks Plus Fund
Stone Dividend Growth Class
Stone Dividend Yield Hog Fund
Stone Global Balanced Fund
Stone Global Growth Fund
Stone Growth Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 23, 2023
NP 11-202 Final Receipt dated Jun 28, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3538176

Issuer Name:
Invesco EQV European Equity Class*
Invesco EQV International Equity Fund
Invesco EQV International Equity Class*
Invesco Europlus Fund
Principal Regulator - Ontario
Type and Date:
Amendment #5 to Final Simplified Prospectus dated June 22, 2023
NP 11-202 Final Receipt dated Jun 28, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3398826

NON-INVESTMENT FUNDS

Issuer Name:
Anteros Metals Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated June 30, 2023 to Preliminary Long Form Prospectus dated June 30, 2023
NP 11-202 Preliminary Receipt dated June 30, 2023
Offering Price and Description:
MINIMUM OFFERING: $500,000.00 (3,333,333 COMMON SHARES)
MAXIMUM OFFERING: $1,000,000.00 (6,666,666 COMMON SHARES)
at a price of $0.15 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
Chad William Clayton Kennedy
Project #3515900

Issuer Name:
Bitfarms Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated June 28, 2023
NP 11-202 Preliminary Receipt dated June 28, 2023
Offering Price and Description:
US$375,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3554539

Issuer Name:
Cathedra Bitcoin Inc. (Formerly, Fortress Technologies Inc.)
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated June 26, 2023
NP 11-202 Preliminary Receipt dated June 27, 2023
Offering Price and Description:
US$10,000,000
Common Shares
Warrants
Subscription Receipts
Units
Debt Securities
Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3553818

Issuer Name:
Li-FT Power Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated June 26, 2023
NP 11-202 Preliminary Receipt dated June 27, 2023
Offering Price and Description:
$200,000,000.00 - Common Shares Debt Securities Warrants Subscription Receipts Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Julie Hadjuk
Project #3553484

Issuer Name:
Marimaca Copper Corp.
Principal Regulator - Ontario
Type and Date:
Amendment dated June 26, 2023 to Preliminary Shelf Prospectus dated March 27, 2023
NP 11-202 Preliminary Receipt dated June 27, 2023
Offering Price and Description:
$50,000,000 - Common Shares, Warrants, Units, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3508695

Issuer Name:
Reconnaissance Energy Africa Ltd.
Principal Regulator - British Columbia
Type and Date:
Amendment dated June 27, 2023 to Preliminary Short Form Prospectus dated June 26, 2023
NP 11-202 Preliminary Receipt dated June 27, 2023
Offering Price and Description:
$4,999,999.00 - 4,545,454 Units
Price: $1.10 per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #3553302

Issuer Name:
Reconnaissance Energy Africa Ltd.
Principal Regulator - British Columbia
Type and Date:
Amendment dated June 27, 2023 to Preliminary Short Form Prospectus dated June 27, 2023
NP 11-202 Preliminary Receipt dated June 28, 2023
Offering Price and Description:
$6,500,000.00 - 5,909,091 Units
Price: $1.10 per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #3553302

Issuer Name:
Numinus Wellness Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated June 27, 2023
NP 11-202 Receipt dated June 28, 2023
Offering Price and Description:
$150,000,000.00 - COMMON SHARES, WARRANTS, SUBSCRIPTION RECEIPTS, DEBT SECURITIES, UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3528319

Issuer Name:
Vicinity Motor Corp.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated June 26, 2023
NP 11-202 Receipt dated June 27, 2023
Offering Price and Description:
USD$150,000,000.00 - COMMON SHARES WARRANTS, SUBSCRIPTION RECEIPTS, UNITS, DEBT SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3532372

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	ICPP Funds Ltd.	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer	June 26, 2023
New Registration	Evercore Partners Canada Ltd.	Exempt Market Dealer	June 29, 2023
Voluntary Surrender	Entreprises Greg Pompeo Inc./Greg Pompeo Enterprises Inc.	Mutual Fund Dealer	June 30, 2023

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

B.11.2 Marketplaces

B.11.2.1 Alpha Exchange Inc. – Amendment to Order Processing Delay – Notice of Approval

ALPHA EXCHANGE INC.

AMENDMENT TO ORDER PROCESSING DELAY

NOTICE OF APPROVAL

July 6, 2023

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits thereto for recognized exchanges, Alpha Exchange Inc. ("**Alpha**") has adopted, and the Ontario Securities Commission ("**OSC**") has approved (subject to a term and condition for Alpha to provide to the OSC analysis of the impact of the static order processing delay), certain public interest amendments changing Alpha's order processing delay from a randomized 1-3 millisecond delay to a static 1 millisecond delay, as set out in the Request for Comment (as defined below) (the "**Static Order Processing Delay Amendment**"). On March 2, 2023, Alpha published a Notice of Proposed Amendments and Request for Comments (the "**Request for Comment**") with respect to the Static Order Processing Delay Amendment and other proposed amendments relating to the introduction of two new order books on Alpha (the "**New Order Books Amendments**"). A Notice of Approval relating to the New Order Books Amendments will be published separately if the required regulatory approval has been obtained.

Capitalized terms used and not otherwise defined in this Notice of Approval shall have the meaning ascribed to them in the Request for Comment.

Summary of the Amendments

A copy of the Static Order Processing Delay Amendment can be found at www.osc.ca.

As set out in the Request for Comment, no amendments to the Alpha Trading Policy Manual are required to reflect the change from the randomized order processing delay on Alpha to the static order processing delay.

Comments Received

The Static Order Processing Delay Amendment was published for comment on March 2, 2023 for a 30-day period, and six comment letters were received. A summary of the comments submitted with respect to the Order Processing Delay Amendment, together with Alpha's response, is attached at **Appendix A**. Alpha thanks all commenters for their feedback and suggestions.

Effective Date

The Static Order Processing Delay Amendment will be implemented on Alpha on July 17, 2023.

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSES

List of Commenters:

BMO Nesbitt Burns Inc. ("**BMO**")

Canadian Security Traders' Association, Inc. ("**CSTA**")

FIA Principal Traders Group ("**FIA PTG**")

Nasdaq CXC Limited ("**Nasdaq Canada**")

RBC Dominion Securities Inc. & RBC Wealth Management (collectively, "**RBC**")

Scotiabank ("**Scotia**")

Please note that while six comment letters were received, only one letter received provided comments on the Static Order Processing Delay Amendment.

	Summarized Comments Received	***Alpha Response***
	1. ***Order Processing Delay - Alpha***	
1.	One commenter did not agree with Alpha's statement in the Request for Comment that there is consensus on the street to remove the randomization order processing delay on Alpha Exchange and replace it with a static delay. The commenter was of the view that while the change to a static order processing delay may help firms who have latency controlled routers, it may disadvantage certain participants without such tools in assessing liquidity on Alpha Exchange, particularly smaller dealers or those who rely on vendor-supplied smart order routers without latency-normalization capabilities. The commenter stated that this change is "fundamental" in nature and that it should be subject to a higher standard of review and more comprehensive public consultation with stakeholders rather than a unilateral decision by Alpha. **(Scotia)**	We acknowledge that not all market participants may be in favour of this amendment or in favour of an order processing delay in general, and it is not our intent to suggest otherwise. However, during the past year, Alpha has had several meetings with a broad spectrum of participants, both domestic and international, including with buy side, sell side, and Retail Advisory Committee, and comprised of representatives from more than 25 participants. During these meetings, it became clear that while the participants appreciated the goal and intent of the randomized order processing delay, they highlighted some of the challenges they faced with the random nature of the order processing delay, and noted that a predictable and static order processing delay would be preferred. The vast majority of institutional firms and retail desks we talked to viewed the amendment to Alpha's order processing delay as a net positive since they may be better able to capture visible quotes. We would agree that the change will help participants with latency controlled routers, to capture all of the visible liquidity. This is indeed the very point of the change, as we now protect liquidity providers, from the fastest active players, whose flow is event driven, without impeding institutional brokers from capturing the full quote. However, the change will not have any impact on dealers not using such routing strategies. In other words, they will continue to get the same performance as before. Alpha does not view it as a negative that firms who have invested in technology and modeling are able to get superior results to a baseline order router. Markets should and do reward dealers for investment and innovation - which ultimately benefits the end clients using such technology. Great routers outperform good routers in many instances in our markets. This is neither new, nor a negative outcome.

	Summarized Comments Received	*Alpha Response*
		The proposed amendment to Alpha's order processing delay forms part of the Request for Comment (and therefore public consultation process), and is subject to OSC approval.

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