The Ontario Securities Commission

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

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A.1.1 Manticore Labs OÜ (o/a Coinfield) and Manticore Labs Inc. – ss. 127(1), 127.1

FILE NO.: 2023-24

IN THE MATTER OF
MANTICORE LABS OÜ
(o/a COINFIELD)
AND
MANTICORE LABS INC.

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

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: October 27, 2023 at 10:00 a.m.

LOCATION: By videoconference

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Capital Markets Tribunal to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on September 27, 2023.

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

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 2nd day of October, 2023

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

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

IN THE MATTER OF
MANTICORE LABS OÜ
(o/a COINFIELD)
AND
MANTICORE LABS INC.

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

A. OVERVIEW

1. The Enforcement Branch of the Ontario Securities Commission (the **Commission**) brings this proceeding to hold Manticore Labs OÜ o/a CoinField and Manticore Labs Inc. (collectively, **CoinField**) accountable for disregarding Ontario securities law and to signal that crypto asset trading platforms flouting Ontario securities law will face regulatory action.

2. CoinField operates an online crypto asset trading platform (the **CoinField Platform**). The CoinField Platform was available to Ontario residents to deposit and trade in crypto asset products starting in at least 2018. Starting on or about December 3, 2021, the CoinField Platform was no longer accessible to new investors using an Ontario internet protocol (**IP**) address but remained accessible to Ontario investors with existing CoinField Platform accounts. Since in or about August 2023, the CoinField Platform became inaccessible to all investors.

3. CoinField is subject to Ontario securities law because the CoinField Platform offered crypto asset products that are securities and derivatives to investors, including Ontario investors. They nonetheless failed to comply with the registration and prospectus requirements under Ontario securities law.

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

5. CoinField did not, and continues not to have sufficient crypto assets in custody to satisfy investor withdrawal requests. As a result, investors with crypto assets deposited on the CoinField Platform experienced delays withdrawing their assets. Some investors' withdrawal requests remained outstanding months after the initial withdrawal requests and still remain outstanding. CoinField did not tell its investors the true reasons for the delays.

6. Crypto trading platforms must ensure that client withdrawal requests can be honoured in a timely fashion. Crypto trading platforms that mislead clients concerning the reasons for the platform's delay in honouring client withdrawal requests further undermine public confidence in Ontario's capital markets.

7. Entities such as CoinField that do not comply with Ontario securities law expose Ontario investors to unacceptable risks and create an uneven playing field within the crypto asset trading platform sector.

B. FACTS

8. Staff of the Enforcement Branch of the Ontario Securities Commission (**Enforcement Staff**) makes the following allegations of fact:

(a) Manticore Labs OÜ and Manticore Labs Inc.

9. Manticore Labs OÜ operating as CoinField, is a company incorporated under the laws of Estonia. Manticore Labs Inc., a company incorporated under the laws of the British Virgin Islands, provides services for CoinField's account holders. Neither Manticore Labs OÜ nor Manticore Labs Inc. have ever been registered with the Commission in any capacity or obtained an exemption from the registration requirement. They have also never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.

(b) The CoinField Platform

10. The CoinField Platform could be accessed through the website located at www.coinfield.com and through mobile apps on the Google and Apple app stores.

11. The CoinField Platform went live in or around 2018.

12. Investors accessed the CoinField Platform by first creating an account on the platform using an online application process which required know-your-client information.

13. After opening an account, an investor could deposit crypto assets into the account. Investors made crypto asset deposits by transferring crypto assets to a custodial wallet controlled by CoinField. Investors were also provided with the option to purchase crypto assets using fiat currency, including Canadian dollars.

14. CoinField maintained custody of crypto assets deposited and traded on the CoinField Platform in wallets CoinField controls. Investors did not have possession or control of crypto assets deposited or traded on the CoinField Platform. Rather, investors saw crypto asset balances displayed in their account on the CoinField Platform. To take possession of crypto assets reflected in their account balance, investors requested a withdrawal and were dependent on CoinField to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.

15. While CoinField purports to facilitate trading of the crypto assets in its investors' accounts, in practice, CoinField only provided its investors with instruments or contracts involving crypto assets (**Crypto Contracts**). These Crypto Contracts constitute securities and/or derivatives and were offered to Ontario investors.

16. The CoinField Platform charges fees for trades on the platform and for crypto asset withdrawals.

(c) CoinField's Ontario Presence

17. From 2018, the CoinField Platform was accessible to Ontario investors.

18. On or about December 3, 2021, after being contacted by the Enforcement Branch regarding its activities in Ontario, CoinField published a post announcing that it would stop "onboarding new clients" from Ontario. Also on December 3, 2021, CoinField implemented a restriction based on IP addresses to purportedly restrict Ontario residents from creating an account on the CoinField Platform (**IP Address Restriction**).

19. Existing investors were not impacted by the IP Address Restriction, whether located in Ontario or elsewhere, and could continue to trade using their CoinField Platform accounts.

20. In addition, CoinField did not advise existing investors located in Ontario to withdraw their assets held on the CoinField Platform in light of the IP Address Restriction.

21. As of October 21, 2022, the CoinField Platform had a total of approximately 1,275 accounts for investors resident in Ontario (**Ontario Accounts**). Ontario investors traded the products offered on the CoinField Platform, as described above, in the Ontario Accounts.

22. CoinField advised that as at June 1, 2023, that the total value of all crypto assets and fiat held by all Canadian investors, converted to CAD, totaled approximately CAD 69.4 million.

(d) CoinField's Failure to Honour Withdrawal Requests and Misrepresentations

23. Commencing in approximately late 2022, CoinField delayed honouring withdrawal requests made by some of its investors, including Ontario investors. In at least one instance, the Ontario investor's withdrawal request was made in January 2023 and has still not been honoured.

24. Investors who experienced withdrawal delays and submitted support tickets to CoinField received little to no explanation for the delay in processing their requests. In May 2023, CoinField assured at least one Ontario investor whose withdrawal request was delayed that "[o]ur team is working on it and all the ongoing issues should be fixed very soon. All the funds are safe regardless of the status (enqueued, authorized, or any other status)."

25. In May 2023, Alex Lightman, who described himself as the "Ultimate Beneficial Owner" of CoinField, admitted to another provincial securities regulator that the true reason behind the withdrawal delays was because of a lack of funds and assets available to satisfy withdrawal requests.

26. Notwithstanding CoinField's admission, in or about May 2023, CoinField communicated to the Commission that the delays experienced by investors were due to an ongoing audit of the company.

27. Starting in or about August 2023, the CoinField website and mobile apps were no longer accessible to investors.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

28. Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct alleged to be contrary to the public interest:

    (a) Manticore Labs OÜ and Manticore Labs Inc. each engaged in, or held itself out as engaging in, the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the *Securities Act*, RSO 1990, c. S.5, as amended (the **Act**);

(b) Manticore Labs OÜ and Manticore Labs Inc. each engaged in trading in securities which constitute distributions without complying with the prospectus requirements and without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act;

(c) Manticore Labs OÜ and Manticore Labs Inc. made or caused others to make statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act; and

(d) In addition to breaching Ontario securities law as outlined above, Manticore Labs OÜ and Manticore Labs Inc. each acted in a manner contrary to the fundamental purposes and principles of the Act as set out in sections 1.1 and 2.1 of the Act, and contrary to the public interest. Specifically, by (i) failing to maintain custody of investors' crypto assets; (ii) failing to honour withdrawal requests in a timely manner or at all; (iii) failing to inform investors of the true reason for not honouring withdrawal requests; and (iv) misleading the Commission as to the true reasons for delays in honouring withdrawal requests, CoinField undermined the fairness, efficiency, and confidence in the Ontario capital markets.

29. These allegations may be amended, and further and other allegations may be added as the Capital Markets Tribunal (the **Tribunal**) may permit.

D. ORDER SOUGHT

30. Enforcement Staff requests that the Tribunal make the following orders as against each of Manticore Labs OÜ and Manticore Labs Inc.:

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

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

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

(d) that they submit to a review of their practices and procedures and institute such changes as may be ordered by the Tribunal, pursuant to paragraph 4 of subsection 127(1) of the Act;

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

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

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

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

(i) that they pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

(j) such other orders as the Tribunal considers appropriate in the public interest.

DATED this 27th day of September, 2023.

ONTARIO SECURITIES COMMISSION
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A.1.2 Highland Capital Management, L.P. and NexPoint Hospitality Trust – s. 127

FILE NO.: 2023-25

IN THE MATTER OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

AND

IN THE MATTER OF
NEXPOINT HOSPITALITY TRUST

NOTICE OF HEARING
Section 127 of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Transactional Proceeding

HEARING DATE AND TIME: October 4, 2023 at 8:30 a.m.

LOCATION: By Videoconference

PURPOSE

The purpose of this proceeding is to consider the Application filed by Highland Capital Management, L.P. dated October 2, 2023, requesting an order that postpones NexPoint Hospitality Trust's annual and special meeting of shareholders scheduled for October 12, 2023 and amends the related information circular, amongst other relief.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 7(1) of the *Capital Markets Tribunal Practice Guideline*.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this October 3, 2023

Registrar, Governance & Tribunal Secretariat

Ontario Securities Commission

For more information

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

IN THE MATTER OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

AND

IN THE MATTER OF
NEXPOINT HOSPITALITY TRUST

APPLICATION OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

(In connection with a transactional proceeding under Rule 16 and
Under Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

A. ORDERS SOUGHT

The applicant, Highland Capital Management, L.P., requests that the Tribunal make the following orders:

1. an order pursuant to s. 127(1)(5) of the *Securities Act* requiring NexPoint Hospitality Trust ("**NHT**") to amend its Notice of Annual and Special Meeting of Unitholders and Management Information Circular filed September 21, 2023 (the "**Information Circular**") to address the deficiencies in the Information Circular outlined in this application, and to provide Staff with a copy of the amended information circular at least five business days before it is sent to NHT's unitholders;

2. an order requiring NHT to postpone the annual and special meeting of unitholders, currently scheduled for October 12, 2023, to a date not earlier than 21 calendar days after the date the amended information circular is sent to NHT's unitholders;

3. an order pursuant to s. 127(1)(2) of the *Securities Act* requiring NHT to cease trading of its securities, or the securities of NHT Operating Partnership LLC, with any entities controlled or managed by James Dondero until such time that NHT complies with clauses 1 and 2 above;

4. an order requiring NHT to exclude the votes attached to units owned by Liberty CLO HoldCo, Ltd. and Highland Dallas Foundation in determining minority approval at the 2023 annual and special meeting of the unitholders;

5. an order, if required, granting standing to the applicant to bring this application pursuant to s. 127 of the *Securities Act*;

6. an order for an expedited hearing to be held before October 12, 2023; and

7. such further and other relief as the Capital Markets Tribunal may deem just.

B. GROUNDS

The grounds for the request are:

8. In this application, a significant minority unitholder, the applicant, requires the Capital Markets Tribunal's assistance to correct a seriously deficient information circular that asks NHT's unitholders to approve amendments to over $56 million USD worth of convertible loans.

The parties

9. The applicant, Highland Capital Management, L.P. ("**Highland**"), is an investment advisory firm based in Texas. It owns 7.25% of NHT's units. In October 2019, Highland filed for bankruptcy in the US.

10. NHT is an Ontario real estate investment trust ("**REIT**") established in 2019. It currently trades on the TSX Venture Exchange (the "**TSXV**") at $0.25 USD per unit. It is a reporting issuer in Ontario and Alberta.

11. As disclosed in its prospectus, NHT's assets were held indirectly through NHT Operating Partnership LLC ("**OP**"), a limited liability company formed in Delaware, and NHT owned all Class A Units in OP through two wholly owned subsidiaries, NHT Intermediary LLC and NHT Holdings LLC.

12. James Dondero, Graham Senst, Jerry Patava, and Neil Labatte are NHT's trustees. Dondero, through various entities, owns 72.13% of NHT's units. Numerous court decisions in Highland's bankruptcy proceedings have recognized that Dondero directly and indirectly owns, controls, and directs various entities, including unitholders of NHT.

13. Under the Limited Liability Corporation Agreement between NHT, OP, and NHT Holdings LLC, Class B Units in OP are redeemable after one year of their issuance for units in NHT at the discretion of NHT Holdings LLC. Dondero is the manager of NHT Holdings LLC.

NHT enters into related party transactions

14. From 2019 to 2022, NHT disclosed that it has entered into over $82 million USD worth of convertible notes with entities affiliated with Dondero (the "**Convertible Notes**"). None of the Convertible Notes was subjected to minority approval when they were entered into. NHT has provided very little information about the notes to its unitholders.

15. NHT's financial statements provide very few details about the terms of the Convertible Notes. They included a stock description of the Convertible Notes, disclosing that they are convertible to Class B units of OP at the election of NHT subject to TSXV approval, they mature in 20 years "in most cases", and they were used for general corporate and working capital purposes.

16. NHT's financial statements also vaguely and apparently inconsistently describe the interest rates of the Convertible Notes. NHT's Q3 2022 financial statement disclosed that the notes "bear interest at an annual rate ranging between 1.82% to 7.50% while outstanding". NHT's Q1 2023 financial statement disclosed that the notes "have rates ranging from 1.93% to 7.50% while outstanding". There is no explanation as to why the lowest interest rate in the range rose from 1.82% in Q3 2022 to 1.93% in Q1 2023.

17. NHT published multiple news releases about the Convertible Notes in 2021 and 2022. Each news release disclosed that the Convertible Notes constituted a related party transaction under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transaction*s ("**MI 61-101**"). The news releases disclosed that these notes were exempt from the formal valuation and minority approval requirements under s. 5.7(1)(a) of MI 61-101 because the fair market value of each note did not exceed 25% of NHT's market capitalization when they were entered into. The news releases did not disclose any other reason for why there was no minority vote for the notes.

18. However, according to NHT's own disclosures, the Convertible Notes that NHT entered into in Q1 2022 total over 25% of its market capitalization in that quarter.

NHT undertakes to amend the Convertible Notes

19. On June 26, 2023, NHT announced via news release that NHT had undertaken, at the request of the TSXV, to amend the terms of $56,165,000 USD worth of the Convertible Notes issued to NexPoint Real Estate Opportunities LLC and Highland Income Funds during the COVID-19 pandemic (which NHT now refers to as the "**COVID Loans**" in the news release and Information Circular) as follows:

    a. Reduce the conversion term to five years from the date of issuance;

    b. Establish a minimum acceptable conversion price based on market prices at the time of each particular advance; and

    c. Remove the conversion of interest.

20. NHT also disclosed in this news release that the conversion terms of one $8.5 million USD note will be removed altogether. The removal of conversion terms of the $8.5 million USD note would result in outstanding Convertible Notes in the amount of approximately $74 million USD.

21. Since the notes are a related party transaction, this news release announced that MI 61- 101 requires that NHT seek minority approval of the amendments at the upcoming annual and special meeting of the unitholders.

22. Article 9.3 of NHT's Declaration of Trust requires that NHT's trustees deliver notices of all meetings of the unitholders to each unitholder no less than 21 days before the meeting.

Highland requests information from NHT

23. Highland has requested information from NHT about the Convertible Notes and upcoming vote, but these requests have largely gone unsatisfied.

24. On July 11, 2023, Highland's counsel sent NHT's counsel a letter requesting more information about the Convertible Notes so that it could be fully informed about them for the upcoming vote. The letter requested, among other things, the terms of the original notes, the terms of the proposed amended notes, minutes of meetings and resolutions of the trustees, and correspondence between NHT and the TSXV related to the TSXV's requested amendments. Highland relied on Article 18.12 of NHT's Declaration of Trust, which stated that the unitholders have the right to examine any documents or records which the trustees determine should be available for inspection.

25. NHT's counsel responded on July 17, 2023, and refused to provide access to these documents.

26. On July 28, 2023, NHT set the date for the annual general and special meeting of the unitholders as October 2, 2023. On August 31, 2023, the meeting date was amended to October 12, 2023.

27. On September 18, 2023, Highland's counsel sent another letter to NHT's counsel outlining its concerns about NHT's inclusion of Liberty CLO HoldCo, Ltd. and Highland Dallas Foundation as minority unitholders entitled to vote on the amendments, in view of the US Bankruptcy Court of the Northern District of Texas's having recognized that Dondero may indirectly direct or control these entities. The letter requested that NHT include in its upcoming information circular any information that the trustees have obtained in inquiring about the control and direction of these entities. As described below, this information, however, was not included in the Information Circular.

The Information Circular is released and is deficient

28. On September 21, 2023, NHT released the Information Circular. The Information Circular specified that NHT received 32 loans from entities controlled or managed by Dondero between June 2021 and September 2022 in the aggregate amount of $56,165,000 USD. According to the Information Circular, each of these loans is unsecured, has a 20-year term and bears interest at rates ranging from 2.25% per year to 7.5% per year. The Information Circular notes that the principal and interest owing under the COVID Loans is convertible into Class B units of OP based on the value of a Class B unit at the time of conversion. The Information Circular provided that the Convertible Notes were principally used to fund NHT's operating expenses and loan repayments, but they were also used to acquire two hotel properties focused on the leisure travel market to modify NHT's asset mix.

29. The Information Circular discloses for the first time that the Convertible Notes are convertible at the option of the holder at any time. All previous NHT disclosures have described the Convertible Notes as convertible at the option of NHT.

30. Although NHT had consistently disclosed that these notes were exempted from MI 61-101's minority approval requirement under s. 5.7(1)(a) of MI 61-101 due to their being less than 25% of NHT's market capitalization, the Information Circular disclosed for the first time that NHT also relied upon the financial hardship exemption under s. 5.7(1)(e) of MI 61-101. The Information Circular explained that, at the time the notes were issued, NHT's trustees determined that the REIT was in serious financial difficulty and the notes were designed to improve its financial position.

31. The Information Circular also disclosed that the loans were filed with the TSXV at various points during 2021 and 2022 under TSXV Policy 5.1 – Loans, Loan Bonuses, Finder's Fees and Commissions. However, according to the Information Circular, the TSXV advised NHT in December 2022 that these loans were required to be treated as "Convertible Securities" under TSXV Policy 4.1 – Private Placements, and, as a result, the TSXV required amendments to the notes. NHT never disclosed the TSXV's recategorization of the Convertible Notes until the Information Circular.

32. The Information Circular disclosed that if the amendments are implemented, a maximum number of 21,075,012 Class B units will be issuable upon conversion of the notes.

33. The Information Circular also disclosed that:

> The Board, having undertaken a thorough review of, and having: (i) considered the terms of the Amendments to the COVID Loans; (ii) considered the need to comply with the requirements of the TSXV in order to maintain a listing for the Units, and (iii) consulted with its legal advisors, concluded that the Amendments are in the best interests of the REIT and agreed to pursue the approval of the Amendments.
>
> …
>
> If the Amendments are not approved at the Meeting, the REIT will engage with the TSXV to seek alternative solutions to the [*sic*] satisfy the TSXV listing requirements; however, there can be no assurance that a satisfactory solution will be found, and if a solution is not found, the TSXV may halt trading in the Units, suspend trading in the Units and/or initiate a delisting review of the REIT's Units as, absent the Amendments, the REIT would not be in compliance with TSXV listing requirements.

34. The Information Circular disclosed that the units of NexPoint Real Estate Opportunities, Dugaboy, NHT Holdco, LLC, Governance Re Ltd, and NexPoint Real Estate Advisors, LP will be excluded from the minority vote. The Information Circular did not exclude Liberty CLO HoldCo, Ltd and Highland Dallas Foundation as voters and did not provide reasons for not doing so.

35. On September 29, 2023, NHT announced via news release that 817,905 units held by Liberty CLO Holdco, Ltd. through NHT Holdco, LLC will also be excluded from voting on the proposed amendments.

The Information Circular breaches securities law

36. S. 5.3(3) of MI 61-101 outlines the requirements of an information circular, which shall include, among other things:

    a. a description of the background to the transaction;

    b. a discussion of the review and approval process adopted by the board of directors and the special committee, if any, of the issuer for the transaction, including a discussion of any materially contrary view or abstention by a director and any material disagreement between the board and the special committee;

    c. disclosure of the number of votes attached to the securities that, to the knowledge of the issuer after reasonable inquiry, will be excluded in determining whether minority approval for the related party transaction is obtained; and

    d. the identity of the holders of securities specified in subparagraph (c) together with their individual holdings.

37. The companion policy to MI 61-101 identifies other pieces of information in relation to a related party transaction that should be disclosed, including the trustees' "reasonable beliefs as to the desirability or fairness of the proposed transaction" and the material factors on which the beliefs are based, including the background of the trustees' deliberations.

38. The Information Circular makes significant material omissions and breaches these standards of disclosure. It does not provide sufficient detail about the Convertible Notes to enable Highland and other minority shareholders to make an informed decision on how to vote on the proposed amendments.

39. The unitholders can cast an informed vote on the amendments only if they know about the fairness of the proposed amendments. However, the trustees do not disclose in the Information Circular their reasonable beliefs as to the desirability or fairness of the amendments to the Convertible Notes. Nor do the trustees disclose in reasonable detail the material factors on which their beliefs about the proposed amendments are based. Instead, the Information Circular contains a list of vaguely described factors, with no elaboration on why or how these factors allowed the trustees to conclude that the amendments are "in the best interests of the REIT".

40. To cast an informed vote, the unitholders also need to know if the proposed amendments are the best terms for NHT. The Information Circular does not describe how the specific terms of the amendments were agreed to with the TSXV or the lenders; nor does it explain why, under the proposed amendments, at least one note would have its conversion terms removed altogether. The Information Circular does not at all discuss the trustees' deliberations about the amendments.

41. The unitholders also need to know the implications of approving or rejecting the amendments in order to make an informed vote. However, the Information Circular does not disclose how the notes will affect NHT in the future and there is no discussion about the impact of the notes' potential conversion on NHT's financial status. There is no discussion in the Information Circular about the likelihood that some or all of the notes will be converted. There is also no discussion about whether it would be beneficial for NHT to have the notes converted or pay back the notes in full.

42. The Information Circular also does not discuss NHT's options in the instances that the amendments are not approved. There is no discussion on possible alternative solutions, how they could affect NHT, or whether the trustees have engaged with the TSXV on available options.

43. To make an informed decision on how to vote, the unitholders need to know the TSXV's views on the amendments. The Information Circular is silent on why the Convertible Notes are being amended so long after the TSXV first advised NHT that they must be amended, or why the TSXV requested the amendment so long after their issuance. There is no description of any negotiations or discussions between NHT and the TSXV on the appropriate policy treatment or discussion on whether the TSXV provided options for amendments or demanded a single set of specified amendments.

44. The Information Circular does not provide an explanation for why only $56 million USD worth of notes are being amended when NHT has entered into over $82 million USD worth of Convertibles Notes in total. NHT's financial statements have never uniquely described any group of Convertible Notes such that they would be treated differently by the TSXV. If there will be future similar amendments to the rest of the Convertible Notes, that is a significant piece of information that would inform the unitholders on how to vote.

45. There is no further explanation on why the trustees and their advisors did not believe that the COVID Loans were to be treated as "convertible securities" under TSXV Policy 4.1 – Private Placements when they have been described as "convertible notes" in NHT's financial statements since 2020. This initial mischaracterization places the unitholders of NHT in a difficult position since they are now forced to approve amendments to Convertible Notes that were already issued without minority approval, at the risk of delisting by the TSXV.

46. To make an informed decision on how to vote on the amendments to Convertible Notes that have already been issued, the unitholders need disclosure on why the Convertible Notes were not subjected to minority approval at the time they were issued. However, the Information Circular does not even provide basic information about the notes, such as who the lenders are, the amounts of the notes, each note's rate of interest, when they were entered into, or their purposes. Without this information, unitholders are unable to determine whether the Convertible Notes are potentially connected transactions under s. 5.7(1)(a) of MI 61-10 such that the notes would not qualify for the market capitalization exemption in that provision.

47. The Information Circular also does not discuss why the Convertible Notes are suddenly also exempted from MI 61-101's minority approval requirement under the financial hardship exemption in s. 5.7(1)(e) of MI 61-101. Before the Information Circular, NHT consistently disclosed only that the Convertible Notes were exempt under the market capitalization exemption in s. 5.7(1)(a) of MI 61-101. NHT had never made reference to the financial hardship exemption and the Information Circular provides no information on why the trustees are retroactively applying this exemption.

48. If Dondero-affiliated entities are included as minority unitholders for voting purposes, this would defeat the purpose of MI 61-101's minority approval requirements and would render Highland's vote meaningless. The Information Circular does not provide any commentary on the inclusion of Liberty CLO HoldCo, Ltd. and Highland Dallas Foundation as minority unitholders, even though Highland had objected to their inclusion and requested that information relevant to any inquiries made by the trustees regarding the control or direction over these parties be included in the Information Circular.

49. The Information Circular also contains inadequate disclosure regarding how the conversion right can be exercised. While NHT's financial statements and news releases have consistently disclosed that the Convertible Notes are convertible at the option of NHT, the Information Circular—for the first time—describes the Convertible Notes as convertible "at the option of the holder at the time". This change in the exercise of the conversion is not included as one of the three amendments for which NHT is seeking minority approval, suggesting that the change may already have been made.

50. Changing the exercise of the conversion from being at the option of NHT to being at the option of the Dondero-affiliated lenders consolidates Dondero's control over the Convertible Notes. Rather than needing the approval of NHT's independent trustees to convert the notes, Dondero can now seek to convert them at his will to his benefit. The Information Circular does not draw attention to this significant change, only briefly mentioning it among numerous other facts about the Convertible Notes, and it does not disclose any additional information about this change.

51. The Information Circular may also contain misrepresentations. The Highland Opportunities and Income Fund ("**HFRO**") disclosed in its US securities filings that it held a secured promissory note with OP for over $42 million USD maturing February 14, 2027.

52. The only entry in NHT's Q2 2023 financial statements that could accommodate the HFRO secured loan is the entry for the Convertible Notes. If this is true, NHT's Information Circular would contain a misrepresentation since it describes the COVID Loans as unsecured and having a 20-year term. NHT unitholders require additional disclosure to reconcile the HFRO secured note with NHT's Information Circular.

53. All of the above information is vital to enable Highland to vote on the amendments. NHT currently trades at $0.25 USD per unit and the TSXV lists its market capitalization as $7,338,014 USD with 29,352,055 outstanding units. The approval of over $52 million USD of convertible notes with Dondero-affiliated parties, which may result in the conversion of 21,075,012 units, poses a significant risk of dilution for Highland's shares and could drastically consolidate Dondero's control of NHT. NHT's trustees must provide much more disclosure in its Information Circular before asking NHT's unitholders to approve this significant transaction.

54. The Information Circular should be amended to include the following information to allow the unitholders to make an informed decision on how to vote on the amendments to the COVID Loans:

    a. Copies of all executed agreements, including any amendments or assignments, for the Convertible Notes;

    b. Details about the COVID Loans and Convertible Notes, and their terms, including:

        i. the amount of each note;

        ii. the date each note was entered into;

        iii. the terms of each note;

        iv. the identity of the lender of each note;

        v. the intended purpose of the proceeds of each note;

vi. the terms related to the convertibility of each note;

vii. all assignments of each note, if any; and

viii. all proposed and executed amendments to each note;

c. The reasonable beliefs of the NHT trustees on the desirability or fairness of the amendments, including:

i. the background of the trustees' deliberations regarding the amendments;

ii. the review and approval process adopted by the trustees regarding the amendments;

iii. a description of how the trustees and the TSXV or NHT's lenders agreed to the specific terms of the amendments, including any alternative amendments proposed by the TSXV;

iv. a discussion on whether the terms of the amendments are the best terms that NHT could negotiate;

v. the reason for the complete removal of the conversion terms from one $8.5 million USD note;

vi. an analysis of whether it is in the best interests of NHT to remove the conversion terms from the $8.5 million USD note; and

vii. all other material factors on which the trustees based their beliefs regarding the Convertible Notes;

d. The implications of approving the proposed amendments, including:

i. a description of how the notes and their conversion will affect NHT in the future, including its financial status;

ii. the likelihood that the notes will be converted; and

iii. an analysis on whether it is beneficial for the Convertible Notes to be converted or be paid back in full;

e. The implications of not approving the proposed amendments, including:

i. alternative options available if the amendments are not approved at the annual and special meeting of the unitholders; and

ii. the details of any discussions or negotiations between NHT and the TSXV about these alternative options;

f. The details of any discussions or negotiations between NHT and the TSXV on the appropriate policy treatment of the Convertible Notes, including:

i. the reason why the TSXV has requested the amendments so long after the notes were issued;

ii. the reason why the TSXV requested an amendment of only $56 million USD worth of notes when NHT entered into over $82 million USD worth of notes;

iii. the reason why the trustees and their advisors did not believe the notes should be treated as "convertible securities" under TSXV Policy 4.1 when they first filed them with the TSXV; and

iv. the reason why NHT is attempting to amend the notes now when the TSXV advised NHT of the required treatment of the notes in December 2022;

g. An explanation of NHT's exemptions from minority approval, including:

i. an explanation as to why NHT is now relying on the financial hardship exemption under s. 5.7(1)(e) of MI 61-101 when it has never referenced this exemption before issuing the Information Circular; and

ii. an analysis related to the conclusion that the market capitalization exemption in s. 5.7(1)(a) of MI 61-101 was available, including clarification on whether the notes were connected transactions under MI 61-101; and

h. An explanation of the inclusion of Liberty CLO HoldCo Ltd. and Highland Dallas Foundation as minority unitholders, including information relevant to any inquiries made by the trustees regarding the control or direction over these parties.

The meeting should be postponed

55. In order that NHT may make the required amendments to the Information Circular, the annual and special meeting of unitholders, currently scheduled for October 12, 2023, should be postponed to a date not earlier than 21 calendar days after the date the amended information circular is sent to NHT's unitholders.

Highland should be granted standing to bring this application

56. This application involves both past and possible future conduct regulated by Ontario securities law, namely the contents of the Information Circular and how it impacts the validity of the vote scheduled for October 12, 2023.

57. This application is not purely enforcement in nature.

58. Highland seeks future-looking relief, namely the amendment of the Information Circular so that it can vote on the proposed amendments with adequate information.

59. This Tribunal has the authority to order an amendment of an information circular under s. 127 of the *Securities Act*.

60. Highland, as one of the few minority unitholders of NHT, is directly affected by the lack of disclosure in NHT's Information Circular.

61. It is therefore in the public interest to hear this application.

Highland requests an expedited hearing

62. Because the annual and special meeting of the unitholders is currently scheduled for October 12, 2023, Highland requests a hearing of this application before that date.

C. EVIDENCE

The applicant intends to rely on the following evidence at the hearing:

63. The affidavit of James P. Seery, Jr., to be affirmed; and

64. Such further and other evidence as this Tribunal may permit.

DATED this 2nd day of October, 2023

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Lawyers for the applicant

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A.2
Other Notices

A.2.1 Amin Mohammed Ali

FOR IMMEDIATE RELEASE
September 28, 2023

AMIN MOHAMMED ALI,
File No. 2022-6

TORONTO – Take notice that the hearing in the above-named matter scheduled to be heard on September 29, 2023 will not proceed as scheduled.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.2 Nova Tech Ltd and Cynthia Petion

FOR IMMEDIATE RELEASE
September 28, 2023

NOVA TECH LTD AND
CYNTHIA PETION,
File No. 2023-20

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

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

Registrar, Governance & Tribunal Secretariat
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A.2.3 Zahir "Zip" Sadrudin Dhanani and Robert James Naso

FOR IMMEDIATE RELEASE
September 29, 2023

ZAHIR "ZIP" SADRUDIN DHANANI AND
ROBERT JAMES NASO,
File No. 2023-14

TORONTO – The Tribunal issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above named matter.

A copy of the Reasons and Decision and the Order both dated September 28, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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inquiries@osc.gov.on.ca

A.2.4 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
September 29, 2023

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

TORONTO – Take notice that an attendance in the above-named matter is scheduled to be heard on October 3, 2023 at 3:00 p.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.5 April Vuong and Hao Quach

FOR IMMEDIATE RELEASE
October 2, 2023

APRIL VUONG AND
HAO QUACH,
File No. 2023-16

TORONTO – The Tribunal issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above named matter.

A copy of the Reasons and Decision and the Order both dated September 29, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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For General Inquiries:

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inquiries@osc.gov.on.ca

A.2.6 Nvest Canada Inc. et al.

FOR IMMEDIATE RELEASE
October 2, 2023

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

TORONTO – Take notice that the merits hearing in the above-named matter scheduled to be heard on October 27, 2023 and November 6 and 7, 2023 at 20 Queen Street West, 17th Floor, Toronto, Ontario will instead proceed by videoconference.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.7 Manticore Labs OÜ (o/a Coinfield) and Manticore Labs Inc.

FOR IMMEDIATE RELEASE
October 2, 2023

MANTICORE LABS OÜ
(o/a COINFIELD) AND
MANTICORE LABS INC.,
File No. 2023-24

TORONTO – The Tribunal issued a Notice of Hearing on October 2, 2023 setting the matter down to be heard on October 27, 2023 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above-named matter.

A copy of the Notice of Hearing dated October 2, 2023 and Statement of Allegations dated September 27, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.8 Highland Capital Management, L.P. and NexPoint Hospitality Trust

FOR IMMEDIATE RELEASE
October 3, 2023

HIGHLAND CAPITAL MANAGEMENT, L.P. AND
NEXPOINT HOSPITALITY TRUST,
File No. 2023-25

TORONTO – On October 3, 2023, the Tribunal issued a Notice of Hearing pursuant to Section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, to consider the Application filed by Highland Capital Management, L.P. dated October 2, 2023, requesting an order that postpones NexPoint Hospitality Trust's annual and special meeting of shareholders scheduled for October 12, 2023 and amends the related information circular, amongst other relief.

A preliminary attendance will be held on October 4, 2023 at 8:30 a.m.

A copy of the Notice of Hearing dated October 3, 2023 and the Application dated October 2, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.9 Mark Edward Valentine

FOR IMMEDIATE RELEASE
October 3, 2023

MARK EDWARD VALENTINE,
File No. 2022-7

TORONTO – Take notice of the merits hearing time change on October 4, 2023, in the above named matter. The hearing on October 4, 2023, scheduled to commence at 10:00 a.m. will instead commence at 11:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.10 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
October 3, 2023

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

TORONTO – Take notice that the merits hearing on October 4, 2023, in the above-named matter will proceed by videoconference.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.3
Orders

A.3.1 Nova Tech Ltd and Cynthia Petion

IN THE MATTER OF
NOVA TECH LTD AND
CYNTHIA PETION

File No. 2023-20

Adjudicator: M. Cecilia Williams

September 28, 2023

ORDER

WHEREAS on September 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 (**Staff**), and no one appearing on behalf of the respondents;

IT IS ORDERED THAT:

1. by 4:30 p.m. on November 17, 2023, Staff shall serve and file their Notice of Motion and motion materials with respect to waiver of service and further relief;

2. by 4:30 p.m. on November 24, 2023, the respondents shall file responding materials, if any, with respect to Staff's Notice of Motion regarding waiver of service and further relief;

3. a further attendance in this matter is scheduled for November 27, 2023, at 9:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"M. Cecilia Williams"

A.3.2 Zahir "Zip" Sadrudin Dhanani and Robert James Naso – ss. 127(1), 127(10)

IN THE MATTER OF
ZAHIR "ZIP" SADRUDIN DHANANI AND
ROBERT JAMES NASO

File No. 2023-14

Adjudicator: James D. G. Douglas

September 28, 2023

ORDER
(Subsections 127(1) and 127(10) of the
Securities Act, RSO 1990, c S.5)

WHEREAS the Capital Markets Tribunal held a hearing in writing, to consider a request by Staff of the Commission (**Staff**) for an order imposing sanctions against Zahir "Zip" Sadrudin Dhanani (**Dhanani**) and Robert James Naso (**Naso**) (together, the **Respondents**) pursuant to subsections 127(1) and 127(10) of the *Securities Act,* RSO 1990, c S.5 (the **Act**);

ON READING the materials filed by Staff, the Respondents not filing any materials, although properly served;

IT IS ORDERED THAT:

1. against Dhanani:

   a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Dhanani cease permanently, except that he may trade securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of this Order;

   b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Dhanani cease permanently, except that he may acquire securities for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of this Order;

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

d. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Dhanani resign any positions he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Dhanani is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

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

2. against Naso:

a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Naso cease permanently, except that he may trade securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of this Order;

b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Naso cease permanently, except that he may acquire securities for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of this Order;

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

d. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Naso resign any positions he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Naso is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

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

"James D.G. Douglas"

A.3.3 April Vuong and Hao Quach – ss. 127(1), 127(10)

IN THE MATTER OF
APRIL VUONG AND
HAO QUACH

File No. 2023-16

Adjudicator: M. Cecilia Williams (chair of the panel)

September 29, 2023

ORDER
(Subsections 127(1) and 127(10) of the
Securities Act, RSO 1990, c S.5)

WHEREAS the Capital Markets Tribunal held a hearing in writing, to consider a request by Staff of the Ontario Securities Commission for an order imposing sanctions against April Vuong and Hao Quach pursuant to subsections 127(1) and 127(10) of the *Securities Act* (the **Act**);

ON READING the materials filed by Staff, Vuong and Quach having not filed any materials, although properly served;

IT IS ORDERED THAT:

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

2. pursuant to paragraph 2.1 of s 127(1) of the Act, acquisition of any securities by Vuong and Quach is prohibited permanently;

3. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Vuong and Quach permanently;

4. pursuant to paragraphs 7, 8.1 and 8.3 of s 127(1) of the Act, Vuong and Quach resign any positions that they hold as a director or officer of any issuer or registrant;

5. pursuant to paragraphs 8, 8.2 and 8.4 of s 127(1) of the Act, Vuong and Quach are prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

6. pursuant to paragraph 8.5 of s 127(1) of the Act, Vuong and Quach are prohibited permanently from becoming or acting as a registrant or promoter.

"M. Cecilia Williams"

A.4
Reasons and Decisions

A.4.1 Zahir "Zip" Sadrudin Dhanani and Robert James Naso – ss. 127(1), 127(10)

Citation: *Dhanani (Re)*, 2023 ONCMT 31
Date: 2023-09-28
File No. 2023-14

IN THE MATTER OF
ZAHIR "ZIP" SADRUDIN DHANANI AND
ROBERT JAMES NASO

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

Adjudicator:	James D. G. Douglas	
Hearing:	In writing; final written submissions received July 31, 2023	
Appearances:	Vincent Amartey	For Staff of the Ontario Securities Commission
	No one appearing for Zahir "Zip" Sadrudin Dhanani or Robert James Naso	

REASONS AND DECISION

1. OVERVIEW

[1] On October 6, 2021, the British Columbia Securities Commission (**BCSC**) issued its Findings[1] in an enforcement proceeding brought pursuant to the BC *Securities Act*[2] by the Executive Director of the BCSC against Arian Resources Corp., Zahir "Zip" Sadrudin Dhanani and Robert James Naso. The BCSC found that, over the period of 2014 to 2017, Arian repeatedly failed to make disclosure of material changes regarding its sole material asset and made false or misleading statements (or omitted facts necessary to make the statements made not false or misleading) in required public filings, all contrary to the BC *Securities Act*.[3] The BCSC further found that Dhanani and Naso, as officers and directors of Arian, authorized, permitted or acquiesced in Arian's disclosure breaches and therefore contravened the same provisions of the BC *Securities Act*.[4] On February 22, 2022, the BCSC issued its Decision and Orders[5] which, among other things, ordered that Dhanani and Naso each pay an administrative penalty of $200,000, and further made various orders against them restricting their future market participation.

[2] Staff of the Ontario Securities Commission brought this inter-jurisdictional enforcement proceeding against Dhanani and Naso seeking to impose non-monetary sanctions similar to those in the BCSC Decision and Orders, to the extent possible under the Ontario *Securities Act*[6] (the ***Act***), restricting their future participation in the capital markets of Ontario.

[3] OSC Staff sought no relief against Arian because Arian was dissolved on July 9, 2018, which is outside of the two-year limitation period to commence a proceeding against a dissolved company set out in s. 346(1) of the British Columbia *Business Corporations Act*.[7]

[4] For the reasons following, I conclude that:

a. the respondents are subject to the BCSC Decision and Orders, which are an order of a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on them;

b. the principles of comity and reciprocity do not govern or influence whether an order under s. 127(1) of the *Act* would be in the public interest; and

1 *Arian Resources Corp (Re)*, 2021 BCSECCOM 391 (**BCSC Findings**)
2 *Securities Act*, RSBC 1996, c 418
3 BCSC Findings at paras 39, 41, 43, 46, 49, 53 and 61
4 BCSC Findings at paras 59, 60 and 61
5 *Arian Resources Corp (Re)*, 2022 BCSECCOM 55 (**BCSC Decision and Orders**)
6 *Securities Act*, RSO 1990, c S.5
7 *Business Corporations Act*, SBC 2002, c 57

c. it is in the public interest to make an order under s. 127(1) of the *Act* substantially on the terms sought by OSC Staff.

2. SERVICE AND PARTICIPATION

[5] OSC Staff elected to proceed by way of the expedited procedure for a written hearing provided for by rule 11(3) of the Tribunal's *Rules of Procedure and Forms* (***Rules***). The procedure allows a respondent who is served with the Notice of Hearing to file a responding hearing brief and written submissions, or to request an oral hearing.

[6] As is evident from the affidavit of Michelle Spain sworn June 20, 2023,[8] OSC Staff served Dhanani and Naso by courier with the Notice of Hearing, the Statement of Allegations, written submissions and other written materials[9] filed and relied upon by OSC Staff in this proceeding. I am satisfied that OSC Staff has complied with the service obligations prescribed in the *Rules*. Neither Dhanani nor Naso has filed written responding materials nor requested an oral hearing.

[7] Pursuant to the *Statutory Powers Procedure Act*[10] and the *Rules*,[11] the Tribunal may proceed in the absence of a party where satisfied that the party has been given adequate notice of the proceeding. I am satisfied that each of Dhanani and Naso has received adequate notice of this proceeding and that I may proceed in their absence.

3. THE BCSC FINDINGS AND SANCTIONS

[8] The liability hearing of the BCSC enforcement proceeding against Arian, Dhanani and Naso was held over three days in October 2020, with submissions completed in December 2020. Of the respondents, only Dhanani participated during the pre-hearing stage and later attended the liability hearing when near its conclusion.[12] Neither Dhanani nor Naso provided any submissions on sanctions.[13]

[9] For the purposes of this proceeding, the relevant liability findings of the BCSC may be summarized as follows:

a. Over the period from June 2015 to June 2016, Arian repeatedly failed to file material change reports as required by the BC *Securities Act* in respect of events that had a material adverse impact on its sole material asset, which was a mining claim in Albania;[14]

b. Over the period from June 2015 to September 2016, Arian repeatedly breached the BC *Securities Act* by filing prescribed financial statements and MD&A that were false and misleading in that they failed to disclose the events referred to in paragraph a. above relating to the Albanian mining claim;[15]

c. Arian also failed to file a material change report[16] and made misleading disclosure in interim and year-end financial statements in 2014[17] in respect of a loss suffered in relation to payments made under a contract with a promoter who failed to provide the agreed upon services;

d. Arian failed to make prescribed disclosure in interim and year-end financial statements in 2014 in respect of related party payments (i.e., payments to Dhanani's 76-year-old mother with whom he resided and from whom he held a power of attorney) which rendered those financial statements false and misleading and in contravention of the BC *Securities Act*;[18]

e. In 2015 and 2017 Arian filed information circulars provided to shareholders that contained false and misleading statements regarding executive compensation paid to Dhanani and others for the year ended May 31, 2015, which filings were in contravention of the BC *Securities Act*;[19] and

f. As officers and directors of Arian during the relevant period, Dhanani and Naso authorized, permitted or acquiesced in Arian's contraventions as set out above, thereby committing those same contraventions.[20]

[10] Having made the findings of liability set out above, the BCSC concluded that each of Dhanani and Naso posed "a significant risk to the integrity of the capital markets"[21] and made orders against them effectively barring them permanently

8 Exhibit 1, Affidavit of Service of Michelle Spain, Sworn by videoconference on June 20, 2023
9 Exhibit 2, Hearing Brief of the Ontario Securities Commission, June 6, 2023
10 RSO 1990, c S.22, s. 7
11 *Rules*, r. 21(3)
12 BCSC Findings at para 5
13 BCSC Decision and Orders at para 3
14 BCSC Findings at paras 34-39
15 BCSC Findings at paras 40-41
16 BCSC Findings at paras 42-43
17 BCSC Findings at paras 44-46
18 BCSC Findings at paras 47-49
19 BCSC Findings at paras 50-53
20 BCSC Findings at paras 59 and 60
21 BCSC Decision and Orders at para 36

from all future participation in the capital markets, except as to limited specified "carve outs" which allow them to trade in personal accounts through a registered dealer or registrant, provided that the registered dealer or registrant is given a copy of the BCSC Decision and Orders. The BCSC also ordered each of Dhanani and Naso to pay an administrative penalty of $200,000.[22]

4. ANALYSIS

[11] The issues I must address are:

a. Whether the respondents are subject to an order of a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on them?

b. Do the principles of comity and reciprocity govern or influence whether a s. 127(1) order would be in the public interest?

c. Is it in the public interest to make the order requested by Staff?

[12] Subsection 127(1) of the *Act* empowers the Tribunal to make various orders against an individual if in the Tribunal's opinion it is in the public interest to do so. Section 127(10)4 of the *Act* provides that an order may be made under s. 127(1) where a person is subject to an order of a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person. The BCSC Decision and Orders meet this criterion. Accordingly, I now turn to consider whether it is in the public interest to make the order sought under s. 127(1) of the *Act* and the applicability, if any, of the principles of comity and reciprocity to that decision.

[13] In their written submissions, OSC Staff argue that the principles of comity and reciprocity apply in the context of inter-jurisdictional enforcement proceedings. These principles of common law form the basis of inter-jurisdictional recognition of foreign judgments and orders by our courts.[23] In the absence of the party against whom the foreign judgment or order was obtained demonstrating that there was no substantial connection between it and the originating jurisdiction or that the original order was procured by fraud or that there was otherwise a denial of natural justice in the foreign jurisdiction, the foreign judgment or order will be adopted and enforced by the domestic court.

[14] While some previous Tribunal cases have cited comity and reciprocity as the basis for making an order under s. 127(1) of the *Act* where s. 127(10) applies,[24] I asked OSC Staff to provide me with judicial authority for their submission that comity and reciprocity apply in the context of an inter-jurisdictional enforcement proceeding brought pursuant to s. 127(10), or otherwise in the context of comparable administrative proceedings. OSC Staff were unable to provide any such authority.

[15] In my view, while the principles of comity and reciprocity may have been among the animating factors that led to the Legislature's decision to enact s. 127(10) of the *Act*, their direct application in the context of inter-jurisdictional enforcement proceedings would effectively oust the public interest jurisdiction of the Tribunal under s. 127(1) of the *Act*. On a plain reading of the section, this was clearly not the intention of the Legislature. Moreover, while the Supreme Court of Canada recognized in *McLean* that inter-provincial enforcement proceedings facilitate cooperation amongst provincial securities regulators and avoid inefficient parallel and duplicative proceedings, it also held that the decision-maker in such proceedings cannot "abrogate its responsibility to make its own determination as to whether an order is in the public interest".[25]

[16] In other words, the principles of comity and reciprocity do not apply to make inter-jurisdictional enforcement orders pursuant to s. 127(10) of the *Act* an automatic reciprocation of the order in the original jurisdiction. Such orders require a two-step analysis: (1) a determination of whether one or more of the criteria in s. 127(10) apply in the circumstances; and (2) a decision whether the Tribunal should, on the basis of the facts of the case before it, exercise its jurisdiction to make an order in the public interest under s. 127(1) of the *Act.*

[17] As indicated above, I am satisfied that the first step in the analysis has been met in this case. As to the second step, the scope of the Tribunal's public interest jurisdiction under s. 127(1) is not punitive or remedial, but rather protective and prospective.[26] The Tribunal's public interest jurisdiction is informed by the purposes of the *Act* set out in s. 1.1, which include protection of investors and fostering capital market integrity. Among the principles the Legislature has directed the Tribunal to have regard to when pursuing those purposes is "the sound and responsible harmonization and co-

22 BCSC Decision and Orders at para 40
23 *Morguard Investments Ltd v De Savoye*, 1990 CanLII 29 (SCC); *Beals v Saldanha*, 2003 SCC 72
24 *JV Raleigh Superior Holdings Inc (Re),* 2013 ONSEC 18 at paras 21, 24 and 26; and *New Futures Trading International Corporation (Re),* 2013 ONSEC 21 at paras 23, 25 and 27
25 *McLean v British Columbia (Securities Commission),* 2013 SCC 67 (***McLean***) at para 54.
26 *Mithras Management Ltd (Re),* (1990) 13 OSCB 1600; *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission),* 2001 SCC 37

ordination of securities regulation regimes",[27] which is particularly applicable in the context of inter-jurisdictional enforcement proceedings.[28]

[18] Furthermore, in deciding whether to exercise the Tribunal's public interest jurisdiction to make one or more orders pursuant to s. 127(1) of the *Act* against Dhanani and Naso, I accept and adopt the following guidance from past Tribunal decisions: firstly, that I should not look behind or attempt to second-guess or re-litigate the evidentiary findings made and legal conclusions reached by the adjudicative authority in the original jurisdiction;[29] and, secondly, while it is a factor to be considered, a connection to Ontario on the part of the individual respondents or in the factual matrix that gave rise to the proceedings before that adjudicative authority is not a prerequisite to the engagement of the Tribunal's jurisdiction.[30]

[19] Bearing in mind that guidance and accepting the factual findings and legal conclusions in the BCSC Findings, I have no hesitation in concluding that, had Dhanani and Naso engaged in the same conduct in Ontario that led the BCSC to conclude that they had contravened the identified securities laws of British Columbia, it would have constituted a breach of the same or similar provisions of Ontario securities law such that the Tribunal would have made one or more orders in the public interest against them pursuant to s. 127(1) of the *Act.* Accordingly, I am satisfied that an inter-jurisdictional enforcement order as requested by OSC Staff is warranted in the public interest of Ontario as against Dhanani and Naso.

[20] Deciding the appropriate terms of the order to be made against Dhanani and Naso requires me to consider the applicable sanctioning factors. The list is non-exhaustive and their individual relevance in any particular case depends upon the circumstances of the case. They have been catalogued in a number of previous decisions of the Tribunal[31] and I do not propose to repeat them here. Suffice it to say that the sanctioning factors that the BCSC took into account in deciding the appropriate orders to be made against Dhanani and Naso, as articulated in the BCSC Decision and Orders, are the same or similar in all material respects to sanctioning factors that the Tribunal has referred to in past cases when making one or more orders in the public interest pursuant to s. 127(1) of the *Act*. Specifically, the factors relied on by the BCSC included the seriousness of the conduct, the risk to investors and the market, investor harm, fitness to be an officer or director and the aggravating factor that Dhanani and Naso claimed to understand their obligations as directors yet either deliberately or negligently disregarded those obligations.[32] Accordingly, I adopt the sanctioning factors and supporting reasoning as articulated in the BCSC Decision and Orders in relation to Dhanani and Naso. In addition, I refer back to the principle of "sound and responsible harmonization and co-ordination of securities regulation regimes" which informs the purposes of the *Act* and therefore informs my exercise of the Tribunal's public interest jurisdiction in the context of this inter-jurisdictional enforcement proceeding.

5. CONCLUSION

[21] I am accordingly of the view that it is appropriate to make an order substantially on the terms sought by OSC Staff and that would take into account the minor differences in the orders authorized by the *Act* versus the BC *Securities Act*.[33] As is the case with the BC Decision and Orders, the overall effect of my order is that Dhanani and Naso shall be permanently barred from all future participation in the Ontario capital markets, except as to limited specified "carve outs" which allow them to trade in personal accounts through a registered dealer,[34] provided that the registered dealer is given a copy of my order.

[22] I therefore order:

a. against Dhanani:

i. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Dhanani cease permanently, except that he may trade securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my order;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Dhanani cease permanently, except that he may acquire securities for his own account (including one RRSP

27 *Act*, s. 2.1 paragraph 5
28 *McLean* at paras 54, 59, 76 and 77
29 *Black (Re),* 2014 ONSEC 16 at paras 24 and 34
30 *Cook (Re),* 2018 ONSEC 6 at para 9; *Hable (Re),* 2018 ONSEC 11 at para 8; *Nickford (Re),* 2018 ONSEC 24 at para 13
31 *Belteco Holdings Inc (Re),* (1998) 21 OSCB 7743 at 7746-7747; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at 1136
32 BCSC Decision and Orders at paras 12-16, 18-19 and 22
33 The following differences exist between the BC and Ontario legislation: the prohibitions concerning "investor relations activities" or "acting in a management or consultative capacity" do not exist in the Ontario legislation, however, many, but not all, of these activities are covered by the prohibitions under the Ontario legislation against acting as a director or officer of an issuer, or as a registrant or promoter in Ontario; and the BC *Securities Act* uses the term "purchasing" securities, while in Ontario the *Act* uses the term "acquisition" instead.
34 I note that the BCSC Decision and Orders uses the terms "registered dealer or registrant"; however, in my view it is sufficient to use the term registered dealer as registered dealers (listed in part 7 of *National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations*) are registrants and have the obligation to ensure that individuals engaged by them are registered as appropriate.

account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my order;

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

iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, Dhanani resign any positions he holds as a director or officer of an issuer or registrant;

v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Dhanani is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

vi. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Dhanani is prohibited permanently from becoming or acting as a registrant or promoter; and

b. against Naso:

i. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Naso cease permanently, except that he may trade securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my order;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Naso cease permanently, except that he may acquire securities for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my order;

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

iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, Naso resign any positions he holds as a director or officer of an issuer or registrant;

v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Naso is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

vi. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Naso is prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 28th day of September, 2023

“James D. G. Douglas”

A.4.2 April Vuong and Hao Quach – ss. 127(1), 127(10)

Citation: *Vuong (Re)*, 2023 ONCMT 32
Date: 2023-09-29
File No. 2023-16

IN THE MATTER OF
APRIL VUONG AND
HAO QUACH

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	M. Cecilia Williams (chair of the panel)	
Hearing:	In writing; final written submissions received July 6, 2023	
Appearances:	Vincent Amartey	For Staff of the Ontario Securities Commission
	No one appearing for April Vuong and Hao Quach	

REASONS AND DECISION

1. OVERVIEW

[1] On July 5, 2018, the respondents April Vuong and Hao Quach were convicted of fraud before the Ontario Superior Court of Justice. The Court found that Vuong and Quach had engaged in a large scale and sophisticated fraud whereby they solicited funds from individuals, with promises of significant investment returns, but used some of the funds to pay returns to other investors, akin to a Ponzi scheme, and for personal expenses.

[2] Staff of the Ontario Securities Commission commenced this enforcement proceeding, which is known as an inter-jurisdictional enforcement proceeding, relying principally on Vuong's and Quach's conviction in court. Staff asks for an order banning Vuong and Quach permanently from the capital markets.

[3] Vuong and Quach were afforded an opportunity to participate in this proceeding. They did not. As I explain below, I conclude that it is in the public interest to make the order Staff requests.

2. SERVICE AND PARTICIPATION

[4] Staff elected to bring this proceeding using the expedited procedure for inter-jurisdictional enforcement proceedings as set out in Rule 11(3) of the Tribunal's *Rules of Procedure and Forms* (the **Rules**). That procedure allows a respondent who is served with a Notice of Hearing to request an oral hearing, or to file a hearing brief and written submissions.

[5] According to the affidavit of Rita Pascuzzi sworn on July 6, 2023,[1] Staff served Vuong and Quach with the Notice of Hearing, Statement of Allegations, and other written materials by courier, on June 29, 2023. I am satisfied that Staff has complied with the service obligations set out in Rule 11(2).

[6] Neither Vuong nor Quach responded, either to request an oral hearing or by filing materials. Pursuant to the *Statutory Powers Procedure Act*[2] and the Rules,[3] the Tribunal may proceed in the absence of a party where that party has been given adequate notice of a proceeding. I am satisfied that Vuong and Quach received adequate notice of this proceeding and that I may proceed in their absence.

3. ANALYSIS

3.1 Introduction

[7] Subsection 127(1) of the *Securities Act*[4] (the **Act**) empowers the Tribunal to make various orders against an individual if, in the Tribunal's opinion, it is in the public interest to do so. Subsection 127(10) of the Act explicitly authorizes an order under s 127(1) where a person has been convicted in any jurisdiction of an offence arising from a transaction, business, or course of conduct related to securities or derivatives.

1 Marked as exhibit 1 in this hearing
2 RSO 1990, c S.22, s 7(2)
3 Rules, r 21(3)
4 RSO, 1990, c S.5

[8] Vuong and Quach were convicted of one count of fraud over $5000, contrary to s 380(1)(a) of the *Criminal Code.*[5] They were given a custodial sentence of five years, eight months, and 19 days.

[9] Vuong and Quach appealed their convictions and sentence. On October 12, 2021, the Court of Appeal dismissed the appeals.

3.2 Did Vuong and Quach engage in a transaction, business or course of conduct related to securities or derivatives?

[10] I must determine whether the criminal offence arose from a transaction, business or course of conduct related to securities or derivatives. I conclude that it did, based on the facts described in the sentencing decision dated October 23, 2018.[6]

[11] Vuong and Quach defrauded numerous investors of $5,175,000 in a large scale and sophisticated investment scam resembling a Ponzi scheme. They solicited investors under the guise of their money being protected and guaranteed high annual rates of interest between 12 and 15 per cent and sometimes as high as 20 per cent.

[12] Investor funds were deposited into multiple bank accounts held in the name of Vuong and Quach jointly, bank accounts held in their own names individually, and bank accounts held in the name of Systematech Solutions Inc. Vuong and Quach had originally incorporated this company as a software consulting company. By 2007, they were using the company as a vehicle to offer investment opportunities to various investors. Vuong and Quach were the sole directors and employees of the company. None of Vuong, Quach nor the company has ever been registered with the Commission in any capacity.

[13] Vuong and Quach provided most investors with promissory notes setting out the guaranteed rates of interest. Staff submits, and I agree, that the promissory notes were securities as defined in s 1(1) of the Act and as determined by the Tribunal in various prior decisions.[7] Vuong and Quach operated in tandem to solicit investments and issued the promissory notes to investors. They thereby engaged in a course of conduct related to securities.

3.3 Appropriate sanctions

[14] I now turn to consider whether it is in the public interest to grant the order requested by Staff, barring Vuong and Quach from the capital markets permanently.

[15] I conclude that the requested order, with one variation, is in the public interest, for the following reasons:

a. Vuong's and Quach's conduct was fraudulent, making it among the most egregious kinds of misconduct related to the capital markets;

b. the Court viewed their conduct as serious, as reflected in the custodial sentence of 5 years, 8 months, and 19 days;[8]

c. this was a large scale fraud involving many victims who were defrauded of $5,175,000. Vuong and Quash were ordered to pay restitution of $3,567,992 to 12 investors;[9]

d. the fraud was complex and occurred over a five-year period;[10]

e. Vuong and Quach were motivated by greed, as they continued to personally benefit from the scheme through cash withdrawals, credit card debt payments, and retail transactions, diverting money to themselves while their promises to pay victims' interest and return their principal went largely unfulfilled;[11] and

f. their misconduct had a devastating impact on many investors.[12]

[16] The variation to the relief sought by Staff is that I have not included references to "investment fund manager" because investment fund managers are registrants under the Act.[13]

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5 RSC, 1985, c C-46
6 Contained in Staff's Hearing Brief, marked as exhibit 2 in this hearing (**Reasons for Sentencing**)
7 *Dunk (Re)*, 2019 ONSEC 6, at para 16; *Cook (Re)*, 2018 ONSEC 6 at para 4; *Nixon Lau (Re)* 2017 ONSEC 28 at para 6; *21967628 Ontario Ltd. (Rare Investments),* 2014 ONSEC 17 at para 94
8 Reasons for Sentencing at para 139
9 Reasons for Sentencing at paras 132 and 135
10 Reasons for Sentencing at paras 112-114
11 Reasons for Sentencing at para 119
12 Reasons for Sentencing at paras 115-116
13 *Inverlake (Re),* 2018 ONSEC 35 at para 39

[17] Neither Vuong nor Quach appeared in this proceeding to offer mitigating factors or to submit that Staff's request ought not to be granted.

[18] Their conduct demonstrates that Vuong and Quach cannot be trusted. A permanent ban from the capital markets is required to protect investors by restraining future conduct by Vuong and Quach that would be detrimental to the integrity of the capital markets. A permanent ban is also necessary to act as a general deterrent to other like-minded individuals who might be inclined to engage in similar conduct.

4. CONCLUSION

[19] I agree with Staff's submission that Vuong and Quach should be permanently banned from the capital markets because of their misconduct. Accordingly, I shall issue an order in reliance on paragraph 1 of s 127 (10) of the Act, that provides that:

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

b. pursuant to paragraph 2.1 of s 127(1) of the Act, acquisition of any securities by Vuong and Quach be prohibited permanently;

c. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Vuong and Quach permanently;

d. pursuant to paragraphs 7, 8.1 and 8.3 of s 127(1) of the Act, Vuong and Quach resign any positions that they hold as a director or officer of any issuer or registrant;

e. pursuant to paragraphs 8, 8.2 and 8.4 of s 127(1) of the Act, Vuong and Quach be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

f. pursuant to paragraph 8.5 of s 127(1) of the Act, Vuong and Quach be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 29th day of September, 2023

"M. Cecilia Williams"

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Multilateral Staff Notice 58-316 – Review of Disclosure Regarding Women on Boards and in Executive Officer Positions

CSA Multilateral Staff Notice 58-316 – *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

CSA/ACVM Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Multilateral Staff Notice 58-316
Review of Disclosure Regarding Women on Boards and in Executive Officer Positions

Year 9 Report

October 5, 2023

Highlights of review findings at a glance

Board seats

27%
of board seats were held by women

8%
of the chairs of the board were women

43%
of vacated board seats were filled by women

Executive officer positions

5%
of issuers had a woman chief executive officer (CEO)

17%
of issuers had a woman chief financial officer (CFO)

71%
of issuers had at least one woman in an executive officer position

Policies and targets

64%
of issuers adopted a policy relating to the representation of women on their board

43%
of issuers adopted targets for the representation of women on their board

5%
of issuers adopted targets for the representation of women in executive officer positions

Term limits

23%
of issuers adopted director term limits

36%
of issuers adopted other mechanisms of board renewal (but not director term limits)

38%
of issuers did not adopt director term limits or other mechanisms of board renewal

Disclosure review

Purpose of report

This report outlines key findings from a recent review of public disclosure required by Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) regarding women on boards and in executive officer positions. This is the ninth consecutive annual review of this disclosure that we have conducted.[1] The review was completed primarily for the purposes of identifying key trends. A qualitative assessment of compliance with the disclosure requirements was not conducted.

Disclosure requirements

Subject to certain exceptions[2], issuers listed on the Toronto Stock Exchange (TSX) and other non-venture issuers are required to provide disclosure on an annual basis in the following five areas:

Number and percentage of women on boards and in executive officer roles

Targets for the number or percentage of women on its board and in executive officer positions

Director term limits and other mechanisms of **board renewal**

Written policies relating to identification and nomination of women directors

Consideration of the representation of women when identifying and nominating directors and making executive officer appointments

The objective of the disclosure requirements is to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that issuers take in respect of such representation.

[1] The trends from our first eight annual reviews are set out in CSA Multilateral Staff Notices 58-307 (year 1), 58-308 (year 2), 58-309 (year 3), 58-310 (year 4), 58-311 (year 5), 58-312 (year 6), 58-313 (year 7) and 58-314 (year 8).

[2] Certain TSX listed issuers, such as exchange traded funds, closed-end funds, designated foreign issuers and SEC foreign issuers are not subject to the disclosure requirements.

Review sample

As of May 31, 2023, approximately 1,776 issuers were listed on the TSX, of which approximately 744 were subject to the disclosure requirements. The data summarized in this report is based on a review sample of 602 issuers that had year-ends between December 31, 2022 and March 31, 2023 (Year 9) and filed information circulars or annual information forms by July 31, 2023. A breakdown of the issuers in the review sample by market capitalization and industry is set out in Annex A.

Year-over-year comparison of key trends

The following is a snapshot of the year-over-year comparison of the key trends identified in our reviews[3]:

Trends[4]	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Board representation									
Total board seats occupied by women	11%	12%	14%	15%	17%	20%	22%	24%	27%
Chairs of the board who are women	--	--	--	--	5%	6%	6%	7%	8%
Board vacancies filled by women	--	--	26%	29%	33%	30%	35%	45%	43%
Issuers with at least one woman on their board	49%	55%	61%	66%	73%	79%	82%	87%	89%
Issuers with three or more women on their board	8%	10%	11%	13%	15%	20%	24%	30%	36%
Board seats occupied by women for issuers with < $1 billion market capitalization	8%	9%	10%	11%	13%	15%	16%	18%	21%
Board seats occupied by women for issuers with $1-2 billion market capitalization	11%	13%	17%	19%	20%	24%	24%	27%	30%
Board seats occupied by women for issuers with $2-10 billion market capitalization	17%	18%	18%	21%	23%	26%	28%	31%	33%
Board seats occupied by women for issuers with over $10 billion market capitalization	21%	23%	24%	25%	27%	31%	30%	33%	35%

[3] Due to the scope of our sample, our findings, and the comparisons between the current year and the prior eight years provide only a partial picture. The issuers in the current year and the prior year samples vary for several reasons including:

- issuers being delisted from the TSX,
- issuers' listings of securities being moved to the TSX-V,
- corporate reorganizations resulting in issuers no longer being listed on the TSX,
- issuers filing information circulars after July 31, 2022 (Year 8),
- issuers completing initial public offerings and becoming listed on the TSX, and
- issuers ceasing to be reporting issuers.

[4] Where a percentage is not identified in this table for a particular trend in a specific year, it is generally because that trend was not included in our reporting during that year's review process.

Trends[5]	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Executive officers									
Issuers with at least one woman in an executive officer position[6]	60%	59%	62%	66%	64%	65%	67%	70%	71%
Issuers with a woman CEO	--	--	--	4%	4%	5%	5%	5%	5%
Issuers with a woman CFO	--	--	--	14%	15%	15%	17%	19%	17%
Policies									
Issuers that adopted a policy relating to the representation of women on their board	15%	21%	35%	42%	50%	54%	60%	61%	64%
Targets									
Issuers that adopted targets for the representation of women on their board	7%	9%	11%	16%	22%	26%	32%	39%	43%
Issuers that adopted targets for the representation of women in executive officer positions[6]	2%	2%	3%	4%	3%	4%	6%	4%	5%
Term limits									
Issuers that adopted director term limits	19%	20%	21%	21%	21%	23%	23%	21%	23%

[5] Where a percentage is not identified in this table for a particular trend in a specific year, it is generally because that trend was not included in our reporting during that year's review process.

[6] The decrease in year 5 is driven in part by a change in methodology used to capture executive officer data. Issuers may have included in their disclosure, positions and/or targets for a group other than executive officers, as that term is defined in NI 58-101. In year 5, we focused more closely on disclosure regarding "executive officers" as defined.

Board seat findings

The percentage of board seats held by women increased from 11% in year 1 to 27% in year 9.

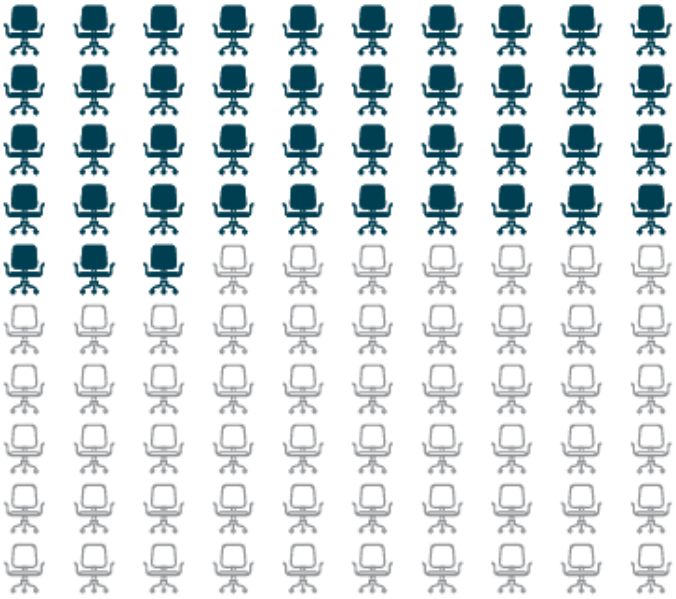
Board seats held by women

27%

This year, 653 board seats were vacated and 500 of those seats were filled. Of those filled seats, approximately 43% (217 seats) were filled by women.

Board vacancies filled by women

43%

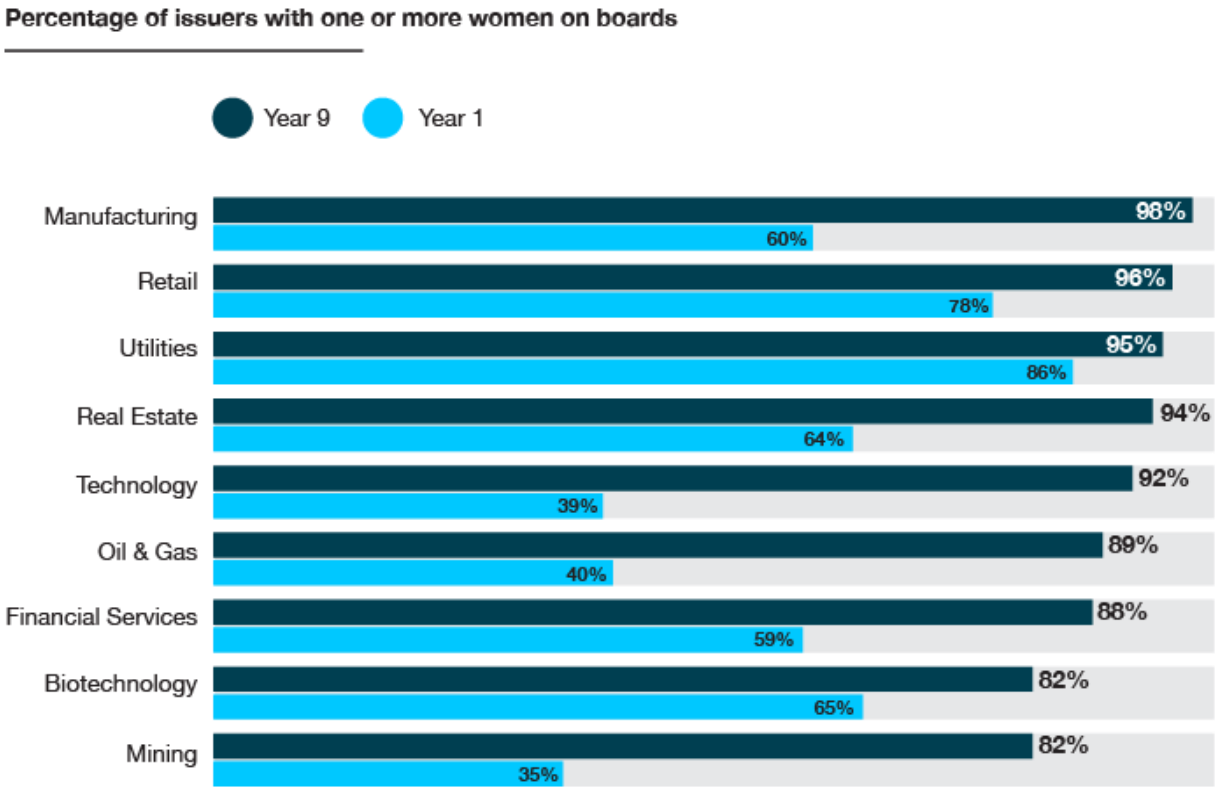


Other notable findings

Variation among industries

The number of women on boards varied by industry. The manufacturing, retail and utilities industries had the highest percentage of issuers with one or more women on their boards.[7] The mining, biotechnology and financial services industries had the lowest percentage of issuers with one or more women on their boards. Over the past 9 years, the percentage of issuers with at least one woman on the board has increased by 20% or more in each of the manufacturing, real estate, technology, oil & gas, financial services and mining industries.

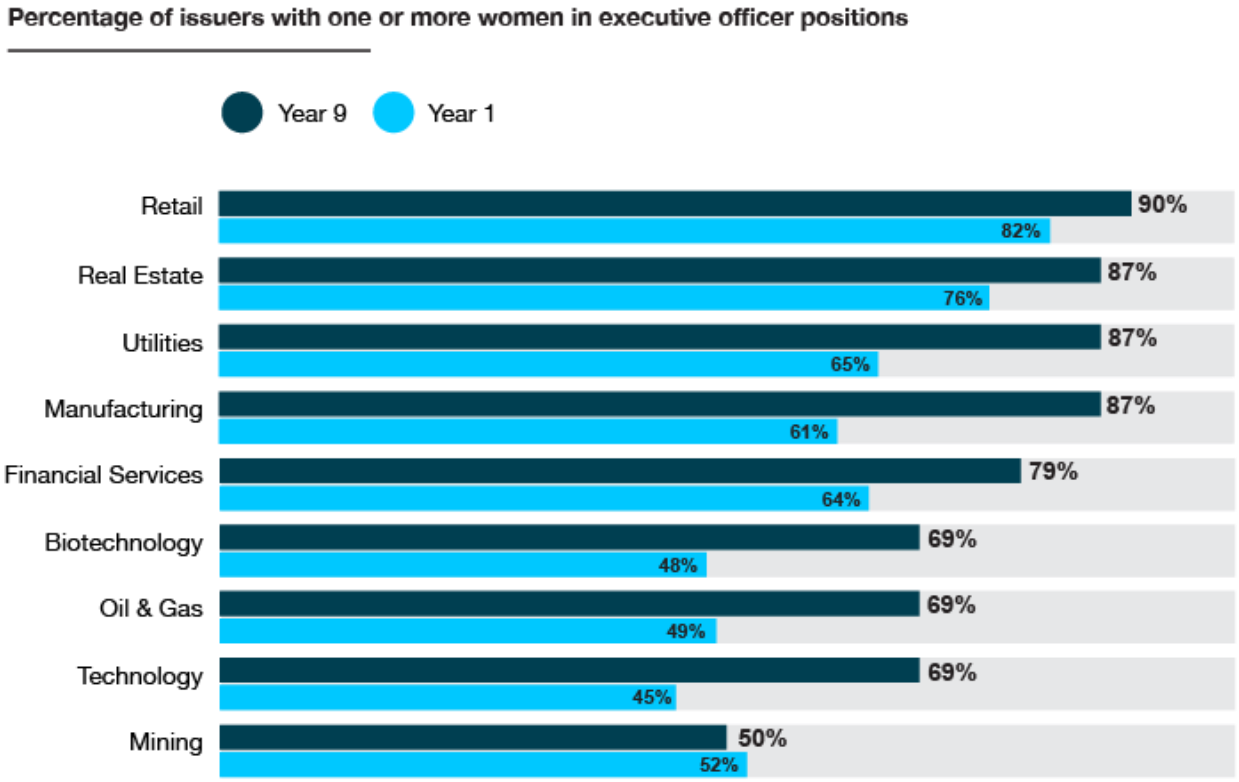
Refer to Annex B for a year-over-year comparison of the percentage of issuers with one or more women on their boards by industry.



[7] The larger Canadian banks, which are part of an industry that has generally been an early adopter of diversity initiatives, are not captured in the data sample for this review.

The number of women in executive officer positions also varied by industry. The retail, real estate, utilities and manufacturing industries had the highest percentage of issuers with one or more women in executive officer positions. The mining, technology, oil & gas and biotechnology industries had the lowest percentage of issuers with one or more women in executive officer positions. Over the past 9 years, the percentage of issuers with at least one woman in an executive officer position has increased by 20% or more in each of the utilities, manufacturing, biotechnology, oil & gas and technology industries.

Refer to Annex C for a year-over-year comparison of the percentage of issuers with one or more women in executive officer positions by industry.



Diversity measures and board seats held by women

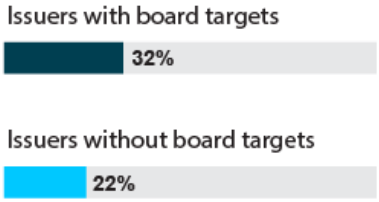
There was a correlation between issuers adopting certain diversity measures and the proportion of board seats held by women.

Issuers who set **targets** for the representation of women on their boards had a greater proportion of board seats held by women. Issuers that adopted board targets had an average of 32% of their board seats held by women, compared to 22% for issuers without targets.

Percentage of issuers with targets

43%

Board seats held by women

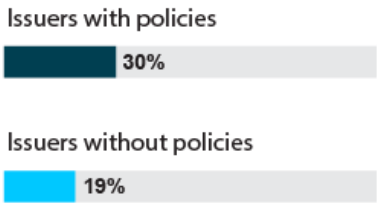


Issuers that adopted a **written policy relating to the representation of women on their board** also tended to have a greater proportion of board seats held by women. Issuers that adopted a policy relating to the representation of women on their boards had an average of 30% of women on their boards, compared to 19% for issuers with no such policy.

Percentage of issuers with policies

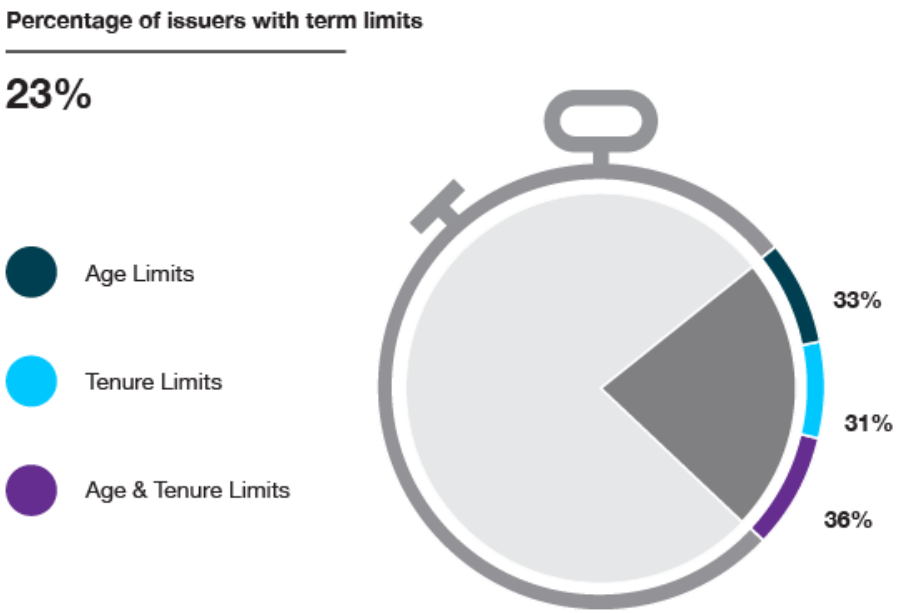
64%

Board seats held by women



Term limits

Of the 23% of issuers we reviewed that had adopted director term limits, 33% adopted age limits alone, 31% adopted tenure limits alone, and 36% adopted both age and tenure limits.



Issuers that adopted term limits had an average of 34% of women on their boards, compared to 24% for issuers with no term limits.

Issuers that adopted other mechanisms of board renewal alone had an average of 27% of women on their boards, compared to 21% for issuers with no term limits or other mechanisms for board renewal.

Questions

If you have any questions regarding this report, please contact:

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Nova Scotia Securities Commission

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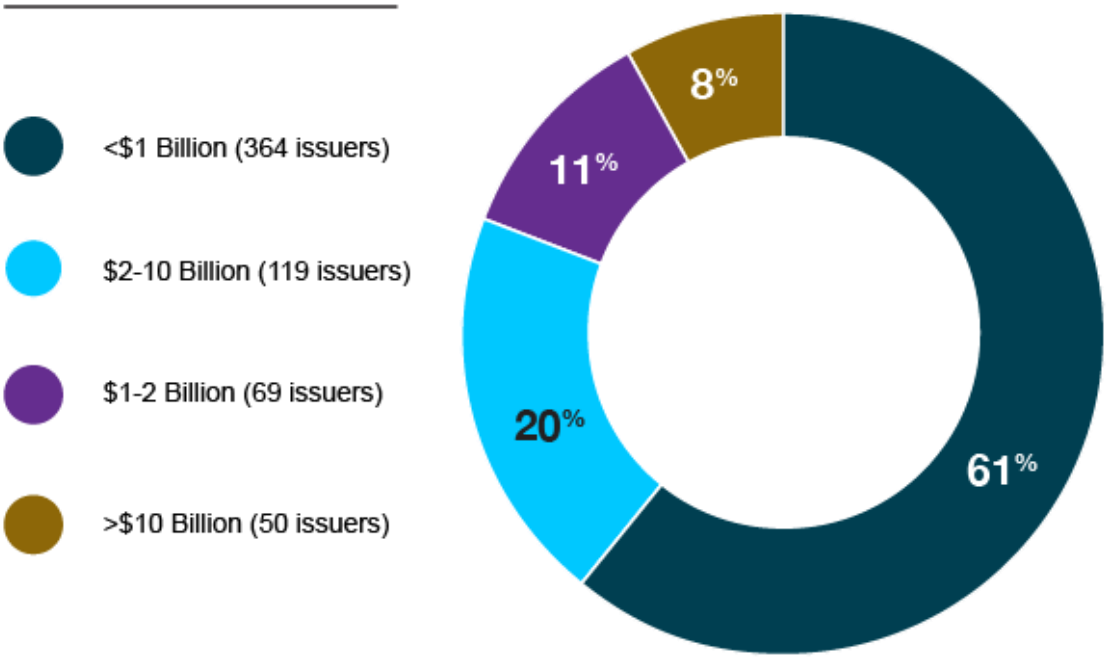
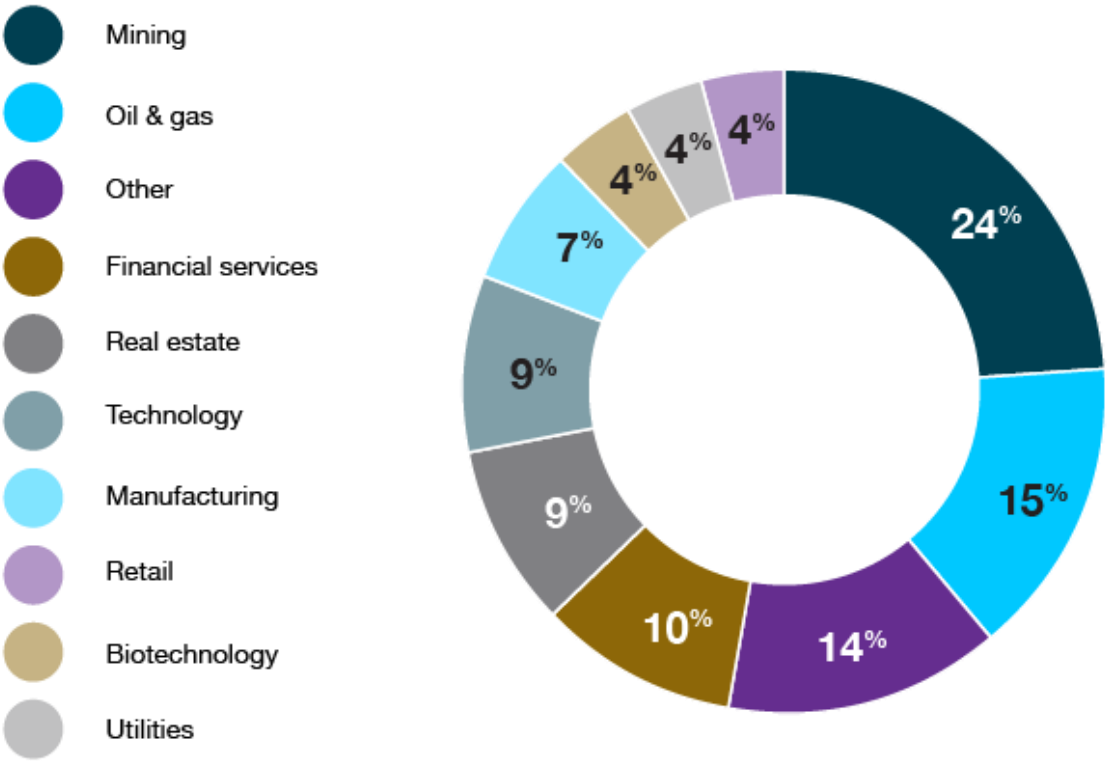
Annex A

Market capitalization in sample (issuer breakdown)



Industries in sample



Annex B

The following is a year-over-year comparison of the percentage of issuers with at least one woman on their board by industry:

Industry	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Biotechnology	65%	57%	56%	56%	67%	59%	64%	85%	82%
Financial Services	59%	67%	60%	61%	73%	77%	85%	86%	88%
Manufacturing	60%	68%	84%	89%	93%	93%	95%	98%	98%
Mining	35%	38%	54%	59%	62%	72%	78%	80%	82%
Oil & Gas	40%	40%	45%	56%	70%	73%	81%	84%	89%
Real Estate	64%	66%	59%	73%	80%	90%	89%	91%	94%
Retail	78%	79%	89%	84%	86%	91%	94%	88%	96%
Technology	39%	52%	52%	68%	73%	84%	74%	86%	92%
Utilities	86%	82%	86%	81%	85%	87%	90%	90%	95%

Annex C

The following is a year-over-year comparison of the percentage of issuers with at least one woman in an executive officer position by industry:

Industry	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Biotechnology	48%	66%	71%	64%	61%	73%	82%	71%	69%
Financial Services	64%	63%	66%	71%	76%	71%	74%	75%	79%
Manufacturing	61%	81%	79%	80%	70%	74%	76%	87%[8]	87%
Mining	52%	49%	52%	56%	52%	52%	57%	55%	50%
Oil & Gas	49%	46%	48%	53%	54%	58%	58%	66%	69%
Real Estate	76%	76%	80%	80%	83%	79%	79%	85%	87%
Retail	82%	71%	68%	76%	80%	78%	88%	88%	90%
Technology	45%	44%	59%	52%	55%	68%	55%	61%	69%
Utilities	65%	73%	67%	75%	70%	75%	79%	85%[8]	87%

[8] This percentage has been updated/corrected, as compared to the amount originally disclosed in the year 8 report.

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B.1.2 Notice of Commission Approval of OSC Rule 33-509 Exemption From Underwriting Conflict Disclosure Requirements

NOTICE OF COMMISSION APPROVAL OF
OSC RULE 33-509 *EXEMPTION FROM UNDERWRITING CONFLICT DISCLOSURE REQUIREMENTS*

October 5, 2023

Introduction

On July 18, 2023, the Ontario Securities Commission (the **Commission** or **we**) made proposed OSC Rule 33-509 *Exemption from Underwriting Conflicts Disclosure Requirements* (the **Proposed Rule**) as a rule under the *Securities Act* (Ontario) (the **Act**).

The Proposed Rule will, if approved by the Minister of Finance, provide an exemption in Ontario from the requirement in National Instrument 33-105 *Underwriting Conflicts* (**NI 33-105**) to include certain underwriting conflicts disclosure in an offering document used to distribute securities under a prospectus exemption in the context of foreign private placements offered to sophisticated investors in Canada.

The Proposed Rule is intended to make permanent the exemption first set out in a blanket order issued on February 18, 2021, Ontario Instrument 33-507 *Exemption from Underwriting Conflicts Disclosure Requirements* (Interim Class Order) (the **Blanket Order**), which Blanket Order was then extended by 18 months by OSC Rule 33-508 *Extension to Ontario Instrument 33-507 Exemption from Underwriting Conflicts Disclosure Requirements* (**OSC Rule 33-508**).

The Blanket Order provides an exemption from the underwriting conflicts disclosure requirements in NI 33-105 if

(a) the distribution is made under an exemption from the prospectus requirement,

(b) the distribution is of a security that is an "eligible foreign security" as defined in NI 33-105, and

(c) each purchaser in Ontario that purchases a security pursuant to the distribution through such person or company is a "permitted client" as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

The Blanket Order eliminates the underwriting conflicts disclosure requirements in NI 33-105 in circumstances where foreign securities are offered to institutional investors in Ontario as part of a global offering and thereby facilitates participation by institutional investors in Ontario in such global offerings.

The Blanket Order as extended by OSC Rule 33-508 will cease to be effective on February 17, 2024. The purpose of the Rule is to make permanent the exemption in the Blanket Order.

The Commission has made the Proposed Rule as a rule pursuant to paragraph 143.2(5)(b) of the Act. Paragraph 143.2(5)(b) provides that publication of a notice and request for comment in respect of a proposed rule is not required if "the proposed rule grants an exemption or removes a restriction and is not likely to have a substantial effect on the interests of persons or companies other than those who benefit under it". We have determined that the Proposed Rule meets the criteria set out in paragraph 143.2(5)(b) of the Act. Accordingly, for this reason the Proposed Rule is not being published for comment.

On October 4, 2023, we delivered the Proposed Rule to the Minister of Finance (the **Minister**). The Minister may approve or reject the Proposed Rule or return it for further consideration. If the Minister approves the Proposed Rule or does not take any further action, the Rule will come into force on February 17, 2024.

The text of the Rule is contained in Annex A of this notice and is also available on the OSC website at www.osc.ca.

Substance and Purpose

We have been advised by a number of institutional investors that the underwriting conflicts disclosure requirements in NI 33-105 create barriers that prevent institutional investors in Ontario from participating in global offerings on a timely basis.

Certain of these institutional investors also provided similar submissions to the Capital Markets Modernization Taskforce (the **Taskforce**) established by the Government of Ontario in February 2020. On January 22, 2021, the Taskforce published its final report (the **Taskforce Final Report**) that included a recommendation that the OSC provide an exemption from the disclosure of conflicts of interest in connection with private placements to institutional investors.[1]

[1] See Recommendation No. 33 in the Taskforce Final Report, available at https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021

Having considered the interests of institutional investors in being able to participate in global offerings on a timely basis and the Taskforce recommendation, the OSC issued the Blanket Order on February 18, 2021. OSC Rule 33-508 caused the blanket relief issued under the Blanket Order to be extended for an additional 18-month period, from August 18, 2022 to February 17, 2024. The purpose of the Proposed Rule is to make permanent the exemption in the Blanket Order.

Without an extension, entities offering foreign securities to institutional investors in Ontario would no longer be able to rely on the exemption in the Blanket Order with the result that institutional investors in Ontario may again experience difficulties in participating in global offerings on a timely basis. We are continuing to review options for a more permanent solution and may propose an amendment to NI 33-105 at a later date.

Rule-making authority

The following provisions of the Act provide the Commission with authority to adopt the Proposed Rule:

- Paragraph 143(1)2
- Paragraph 143(1)3
- Paragraph 143(1)7
- Paragraph 143(1)13
- Paragraphs 143(1)16
- Paragraphs 143(1)39
- Paragraph 143(1)49

Questions

Please refer any questions to the following OSC staff:

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ANNEX A

ONTARIO SECURITIES COMMISSION RULE 33-509
EXEMPTION FROM UNDERWRITING CONFLICTS DISCLOSURE REQUIREMENTS

PART 1 DEFINITIONS

1. **Definitions**

(1) In this Rule,

"**Act**" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

"**eligible foreign security**" has the meaning ascribed to that term in section 3A.1 of NI 33-105;

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

"**NI 33-105**" means National Instrument 33-105 *Underwriting Conflicts*;

"**permitted client**" has the meaning ascribed to that term in section 1.1[*definitions*] of NI 31-103; and

"**underwriting conflicts of interest disclosure requirement**" means the requirement in subsection 2.1(1) of NI 33-105 that investors be provided with certain conflicts of interest disclosure in circumstances in which there is a direct or indirect relationship between the issuer or selling securityholder and the underwriter that might give rise to a perception that they are not independent of each other in connection with a distribution.

(2) Terms used in this Rule that are defined in the Act have the meaning ascribed to them in the Act, unless otherwise defined in this Rule or the context otherwise requires.

PART 2 EXEMPTION FROM UNDERWRITING CONFLICTS DISCLOSURE REQUIREMENT

2. A person or company is exempt from the underwriting conflicts of interest disclosure requirement in subsection 2.1(1) of NI 33-105 in connection with a distribution provided that:

(a) the distribution is made under an exemption from the prospectus requirement;

(b) the distribution is of a security that is an eligible foreign security; and

(c) each purchaser in Ontario that purchases a security pursuant to the distribution through such person or company is a permitted client.

PART 3 EFFECTIVE DATE

3. This Rule comes into force on February 17, 2024.

B.2
Orders

B.2.1 ZoomMed Inc.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

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.

TRANSLATION

Decision N°: 2023-IC-1037840
File N°: 21870

July 13, 2023

ZOOMMED INC.

REVOCATION ORDER

UNDER THE SECURITIES LEGISLATION OF QUÉBEC AND ONTARIO (the Legislation)

Background

1. ZoomMed Inc. (the Issuer) is subject to a failure-to-file cease trader order (the FFCTO) issued by the regulator or securities regulatory authority in each of Québec (the Principal Regulator) and Ontario (each a Decision Maker) respectively on October 5, 2018.

2. The Issuer has applied to the Principal Regulator under Policy Statement 11-207 respecting Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions for an order revoking the FFCTO.

3. This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, in *Regulation 14-501Q respecting Definition*s or in *Policy Statement 11-207 respecting Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

Order

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

5. The decision of the Decision Makers under the Legislation is that the FFCTO is revoked.

“Marie-Claude Brunet-Ladrie”
Directrice de la surveillance des émetteurs et initiés

OSC File #: 2023/0087

B.2.2 Invictus MD Strategies Corp.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of cease trade orders issued by the Commission and British Columbia Securities Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required – Ontario opt-in to revocation order issued by British Columbia Securities Commission, as principal regulator.

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.

Citation: 2023 BCSECCOM 388

REVOCATION ORDER

INVICTUS MD STRATEGIES CORP.

UNDER THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ONTARIO (the Legislation)

Background

¶ 1 Invictus MD Strategies Corp. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator of the British Columbia Securities Commission (the Principal Regulator) and Ontario (each a Decision Maker) respectively on February 4, 2021.

¶ 2 The Issuer has applied to each of the Decision Makers under National Policy 11-207 Failure-to-File Cease Trade Orders and Revocation in Multiple Jurisdictions (NP 11-207) for an order revoking the FFCTOs.

¶ 3 The Issuer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer.

¶ 4 This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

¶ 5 Terms defined in National Instrument 14-101 *Definitions* or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

Order

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

¶ 7 The decision of the Decision Makers under the Legislation is that the FFCTO is revoked as it applies to the Issuer

¶ 8 August 18, 2023

"Larissa M. Streu"
Manager, Corporate Disclosure
Corporate Finance

OSC File #: 2023/0299

B.2.3 Rockcliff Metals Corporation

Headnote

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

Applicable Legislative Provisions

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

September 27, 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
ROCKCLIFF METALS CORPORATION
(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 Alberta, British Columbia and Manitoba.

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2023/0430

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B.3
Reasons and Decisions

B.3.1 Leith Wheeler Investment Counsel Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation and replacement of decision granting relief from the dealer registration and prospectus requirements under the Legislation to a portfolio manager providing non-discretionary advice to sponsors of capital accumulation plans in respect of trades in securities of mutual funds to tax-assisted and non-tax-assisted accumulation plans – Factual update made to a representation – Update does not affect the rationale supporting the previous decision – Conditions to the relief remain unchanged from previous decision.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1)(a), 53, 74(1) and 144.

September 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
LEITH WHEELER INVESTMENT COUNSEL LTD.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) revoking the previous decision of the principal regulator made *In the matter of Leith Wheeler Investment Counsel Ltd.* on February 4, 2022 (the **Previous Decision**) and replacing it with this decision (the **Decision**) ruling that:

(a) the dealer registration requirements contained in the Legislation shall not apply to the Filer (including its respective directors, officers, representatives and employees acting on its behalf) or any Plan Sponsor of a CAP (as defined herein) or a Non-Tax Assisted CAP (as defined herein) that uses the services of the Filer in respect of its CAP or Non-Tax Assisted CAP in respect of trades in the securities of the Funds to a CAP or a Non-Tax Assisted CAP sponsored by the Plan Sponsor for which the Filer provides services, subject to certain terms and conditions (the **Dealer Registration Relief**); and

(b) the prospectus requirements contained in the Legislation shall not apply in respect of the distribution of securities of the Funds to CAPs or Non-Tax Assisted CAPs sponsored by a Plan Sponsor for which the Filer provides services (the **Prospectus Relief**),

(the Dealer Registration Relief and the Prospectus Relief are collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in the jurisdictions of (i) Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut in respect of the Exemption Sought with respect to CAPs, and (ii) Alberta, British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Yukon Territory and the Northwest Territories in respect of the Exemption Sought with respect to Non-Tax Assisted CAPs.

Interpretation

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

For the purposes of this Decision, the following terms have the following meanings:

(a) **CAP** has the meaning given to the term "capital accumulation plan" as defined in section 1.1 of the CAP Guidelines (as defined herein), namely, a tax assisted investment or savings plan that permits the members of the CAP to make investment decisions among two or more options offered within the plan. CAPs include a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, a group tax-free savings plan or a deferred profit sharing plan, and in Québec and Manitoba, include a simplified pension plan.

(b) **CAP Guidelines** means the *Guidelines for Capital Accumulation Plans* published in May 2004 by the Joint Forum of Financial Market Regulators.

(c) **Fund** means a mutual fund as defined in section 1 of the Legislation, whether offered by prospectus or pursuant to prospectus exemptions in the Legislation, and which in both cases, comply with Part 2 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) and are established and managed by the Filer, but does not include an exchange-traded fund.

(d) **Member** means a current or former employee, or a person who belongs, or did belong, to a trade union or association, or

(i) his or her spouse

(ii) a trustee, custodian or administrator who is acting on his or her behalf, or for his or her benefit, or on behalf of, or for the benefit of, his or her spouse or

(iii) his or her holding entity, or a holding entity of his or her spouse

that has assets in a CAP or a Non-Tax Assisted CAP and also includes any person who is eligible to participate in a CAP or Non-Tax Assisted CAP.

(e) **Non-Tax Assisted CAP** means an investment or savings plan that meets the definition of CAP in the CAP Guidelines and that is administered in accordance with the CAP Guidelines, but for the fact that it is an investment or savings plan that is non-tax assisted.

(f) **Plan** means, depending on the context in which it is used, a CAP or a Non-Tax Assisted CAP or both of them.

(g) **Plan Sponsor** means any employer, trustee, trade union or association or a combination of them that establishes a CAP or a Non-Tax Assisted CAP and uses the services of the Filer in respect of such CAP or Non-Tax Assisted CAP, and includes a Service Provider, to the extent that the Plan Sponsor has delegated some or all of its responsibilities to the Service Provider.

(h) **Service Provider** means a person or company that provides services to a Plan Sponsor to design, establish, or operate a CAP or a Non-Tax Assisted CAP.

Representations

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

1. The Filer is a corporation organized under the laws of Canada with its head office in Vancouver, British Columbia.

2. The Filer is registered in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island and the Yukon as a portfolio manager and an exempt market dealer, in Northwest Territories as a portfolio manager, and in British Columbia, Ontario, Québec and Newfoundland and Labrador as an investment fund manager.

3. The Filer's principal business is to provide investment management services through investment funds and discretionary managed accounts to individuals, families, foundations, endowments, not–for-profit organizations, institutions and multi-employer pension and benefit plans.

4. The Filer serves as the manager and principal portfolio advisor for each of its Funds, and for certain of its Funds has retained arm's length sub-advisors for all or a portion of the assets of the Funds. The Filer expects to establish additional Funds in the future.

5. The Filer may provide non-discretionary advice to Plan Sponsors, including doing research and providing recommendations regarding investments Plan Sponsors might select as investment options within a Plan.

6. The investment options for the Members of Plans will include Funds and may also include other investment options, such as segregated funds managed by insurance companies. Where the investment options include Funds, the Funds will comply with Part 2 of NI 81-102 in respect of its investment restrictions and practices. None of the Funds will be exchange-traded funds.

7. Plan Sponsors may wish to offer Funds or model portfolios comprised of securities of Funds as investment options within their CAPs pursuant to the CAP Blanket Exemption (as defined below) and to retain the Filer to provide certain services in relation to the CAPs. However, it is not practicable for the Filer to provide such services unless the Filer receives the Exemption Sought from the dealer registration and prospectus requirements to allow it to provide Funds to Members who are located in the provinces of Ontario, Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut.

8. It is possible that a Plan Sponsor with whom the Filer deals may also establish or have established a Non-Tax Assisted CAP. Accordingly, the Filer wishes to also provide the services that the Filer provides to Plan Sponsors in respect of CAPs to Non-Tax Assisted CAPs, should the Plan Sponsor desire it to do so.

9. The Filer will not engage in discretionary decision-making with respect to Plans or Member accounts and will not select investments for the Plans or Member accounts or provide investment advice to Members. The Filer does not provide custodial services in respect of the Plans or the Funds.

10. The Filer will only service Plans which offer the Filer's proprietary funds as investment options within the Plan. The Plans may also offer other investment options (e.g. segregated funds or investment funds established and managed by other managers).

11. For Plan Sponsors that offer model portfolios comprised of securities of Funds managed by the Filer, the Filer will be responsible to the applicable Plan Sponsor or Service Provider to maintain the specified targeted percentage investment in each Fund within the agreed tolerance range for each model portfolio subject to any adjustments agreed to or recommended by the Filer from time to time, and to provide such other services in connection with the model portfolios as agreed by the Plan Sponsor or Service Provider.

12. Members and in some cases, the Plan Sponsor, will make initial investment decisions to invest in Funds chosen by the Plan Sponsor, although the Plan Sponsor may establish a default option if the Member fails to make an investment choice, and subsequent changes to those investment decisions, with or without the assistance of an advisor selected by the Member (which will not be the Filer). Plan Sponsors may facilitate access to a registrant for advice to Members. The applicable investment instructions of Members will be transmitted by the Plan Sponsor to the Filer. The interest in the securities of Funds will be registered in the name of the applicable Plan Sponsor or the Filer for the account of the relevant Plan. The Filer will process the trades in the Funds as instructed and will establish and maintain the records reflecting the interest of each Plan in each Fund, and the Filer or a Service Provider will maintain records reflecting the interest of each Member or Plan Sponsor, as the case may be, in each Fund.

13. The Filer, the Plan Sponsors and the Funds will trade within the Plans or to Members of the Plans in accordance with the conditions set out in proposed amendments to National Instrument 45-106 *Prospectus Exemptions* related to CAPs, which were published by the Canadian Securities Administrators (the **CSA**) on October 21, 2005 (the **Proposed CAP Exemption**) and adopted in the form of a blanket exemption in all jurisdictions, other than in Ontario, Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut (the **CAP Blanket Exemption**). The Proposed CAP Exemption and the CAP Blanket Exemption contemplate both dealer registration and prospectus exemptions, where required.

14. Although no equivalent to the CAP Blanket Exemption has been adopted in the jurisdictions of Ontario, Québec, Newfoundland and Labrador, the Yukon Territory and Nunavut, CSA Notice 81-405 *Request for Comment on Proposed Exemptions for Certain Capital Accumulation Plans* published May 28, 2004 (the **CAP Staff Notice**) states that, in Ontario, the conditions described in the Proposed CAP Exemption will form the basis of the circumstances in which staff of the Ontario Securities Commission expects that they could recommend that the Ontario Securities Commission grant discretionary relief to an applicant. The jurisdictions in which no equivalent to the CAP Blanket Exemption was adopted made it clear that they would be prepared to grant discretionary relief on terms similar to those contained in the Proposed

CAP Exemption. The CAP Staff Notice stated that the purpose of the Proposed CAP Exemption was to remove existing barriers to trading mutual fund securities with members of CAPs where there is no valid regulatory reason for having such barriers.

15. As Plan Sponsors will typically approach consultants and other parties, such as the Filer, for assistance with respect to securities regulatory issues (when the investment choices are Funds), the Filer is seeking an exemption on behalf of the Filer, Plan Sponsors and Funds, as applicable, from the dealer registration and prospectus requirements, including the obligation to deliver a prospectus, where required, provided the conditions as described in this Decision are adhered to.

16. The Filer is not in default of securities legislation in any jurisdiction.

17. The Filer may be requested by a Plan Sponsor to provide services to a Non-Tax Assisted CAP established by the Plan Sponsor for the benefit of individual Members. These Non-Tax Assisted CAPs would not constitute CAPs, as defined in the CAP Guidelines, the Proposed CAP Exemption or the CAP Blanket Exemption, since they are not "tax-assisted" under applicable legislation. Non-Tax Assisted CAPs are intended as non-registered employee savings plans to which excess contributions of Members that cannot be invested in a CAP because of legislative limits for such CAP investments will be invested on behalf of the Members.

18. Non-Tax Assisted CAPs are established in conjunction with CAPs because Canadian tax legislation imposes a limit on the amounts that may be contributed to a CAP. The benefit formula under a Plan Sponsor's benefit program sometimes results in contributions that exceed that tax limit. A Plan Sponsor may establish a Non-Tax Assisted CAP to allow for those excess contributions to be invested in the same manner as the tax assisted contributions. These excess contributions to Non-Tax Assisted CAPs are not expected to be significant and in any event will be limited by the calculation set out in the conditions to this Decision and subject to the remaining conditions set out in this Decision.

19. Non-Tax Assisted CAPs will operate in the same manner as CAPs in terms of the relationship between Members and Plan Sponsors, and the duties, rights and responsibilities of Members and Plan Sponsors and the services that the Filer will provide. The only significant difference between the two types of Plans is the tax assisted nature of one and not the other.

20. Each Member of a Non-Tax Assisted CAP of a Plan Sponsor that the Filer provides services to will also be a member of the Plan Sponsor's CAP.

21. The Filer will provide services in respect of the Non-Tax Assisted CAPs in accordance with the CAP Guidelines and, in the case of the Non-Tax Assisted CAPs, in a similar fashion to the related CAPs for the applicable Members. The Filer will only provide services in respect of Non-Tax Assisted CAPs which originate out of CAPs of a Plan Sponsor also serviced by the Filer.

Previous Decision

22. The Exemption Sought was previously granted to the Filer under the Previous Decision. In representation 10 of the Previous Decision, the Filer represented that it intended to only service Plans which, to the extent that they offer investment funds as investment options within the Plans, will only offer the Filer's proprietary funds as investment options within the Plan. As such the Plans could offer other investment options (e.g. segregated funds), but the only investment funds offered therein would be those established and managed by the Filer.

23. The Filer is seeking to revoke the Previous Decision and replace it with this Decision to reflect the fact that the Filer now desires to service Plans that offer the Filer's proprietary funds as investment options alongside investment funds established and managed by managers other than the Filer, as stated in representation 10 of this Decision.

24. The factual representation included at representation 10 of the Previous Decision accurately reflected the Filer's intentions at the date of the Previous Decision. The Filer's updated factual circumstances in representation 10 of this Decision do not affect the conditions associated with the Previous Decision and the rationale supporting the Previous Decision is unaffected by the proposed factual update included in this Decision.

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 Previous Decision is revoked and replaced with this Decision granting the Exemption Sought subject to the following conditions:

1. For the Dealer Registration Relief:

(a) the Plan Sponsor selects the Funds that Members will be able to invest in under the Plans;

(b) the Plan Sponsor establishes a policy, and provides Members with a copy of the policy and any amendments to it, describing what happens if a Member does not make an investment decision;

(c) in addition to any other information that the Plan Sponsor believes is reasonably necessary for a Member to make an investment decision within the Plan, and unless that information has previously been provided, the Plan Sponsor provides the Member with the following information about each Fund the Member may invest in:

(i) the name of the Fund;

(ii) the name of the manager of the Fund and its portfolio adviser;

(iii) the fundamental investment objective of the Fund;

(iv) the investment strategies of the Fund or the types of investments the Fund may hold;

(v) a description of the risks associated with investing in the Fund;

(vi) where a Member can obtain more information about each Fund's portfolio holdings; and

(vii) where a Member can obtain more information generally about each Fund, including any continuous disclosure;

(d) the Plan Sponsor provides Members with a description and amount of any fees, expenses and penalties relating to the Plan, as the case may be, that are borne by Members, including:

(i) any costs that must be paid when a Fund is bought or sold;

(ii) costs associated with accessing or using any of the investment information, decision-making tools or investment advice provided by the Plan Sponsor;

(iii) the management fees paid by the Funds;

(iv) the operating expenses paid by the Funds;

(v) record keeping fees;

(vi) any costs for transferring among investment options, including penalties, book and market value adjustments and tax consequences;

(vii) account fees; and

(viii) fees for services provided by the Filer,

provided that the Plan Sponsor may disclose the fees, penalties and expenses on an aggregate basis, if the Plan Sponsor discloses the nature of the fees, expenses and penalties, and the aggregated fees do not include fees that arise because of a choice that is specific to a particular Member;

(e) the Plan Sponsor has, within the past year, provided the Members with performance information about each Fund the Members may invest in, including:

(i) the name of the Fund for which the performance is being reported;

(ii) the performance of the Fund, including historical performance for one, three, five and ten years if available;

(iii) a performance calculation that is net of investment management fees and mutual fund expenses;

(iv) the method used to calculate the Fund's performance return calculation, and information about where a Member could obtain a more detailed explanation of that method;

(v) the name and description of a broad-based securities market index, selected in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, for the Fund, and corresponding performance information for that index; and

(vi) a statement that past performance of the Fund is not necessarily an indication of future performance;

(f) the Plan Sponsor has, within the past year, informed Members if there were any changes in the choice of Funds that Members could invest in and where there was a change, provided information about what Members needed to do to change their investment decision, or make a new investment;

(g) the Plan Sponsor provides Members with investment decision-making tools that the Plan Sponsor reasonably believes are sufficient to assist them in making an investment decision within the Plan;

(h) the Plan Sponsor must provide the information required by paragraphs (b), (c), (d) and (g) prior to the Member making an investment decision under the Plan;

(i) if the Plan Sponsor makes investment advice from a registrant available to Members, the Plan Sponsor must provide Members with information about how they can contact the registrant;

(j) the maximum amount that may be contributed in respect of a Member to a Non-Tax Assisted CAP in a given year is limited to any positive difference between:

(i) the maximum amount that the Member and the Plan Sponsor would have been able to contribute for that year to the applicable CAP under the terms of the applicable CAP if contributions to the applicable CAP were not restricted to the maximum dollar limit provided in the *Income Tax Act* (Canada) (the **ITA**); and

(ii) the maximum dollar limit provided in the ITA for the applicable CAP,

provided that this maximum amount that may be contributed in respect of a Member to the Non-Tax Assisted CAP in a given year shall not exceed an amount equal to the "money purchase limit", as defined in the ITA, for the year.

In this paragraph (j), the amount determined under (i) shall be no more than 18% of the Member's "earned income" as defined in the ITA and the "maximum dollar limit" means the "RRSP dollar limit" as defined in the ITA (in the case where the applicable CAP is an RRSP), the "money purchase limit" as defined in the ITA (in the case where the applicable CAP is a DCPP), one-half of the "money purchase limit" (in the case where the applicable CAP is a DPSP) or any applicable maximum fixed dollar contribution prescribed under the ITA (in the case of any other type of CAP).

2. For the Prospectus Relief:

(a) the conditions set forth in paragraph 1 above are met;

(b) the Funds comply with Part 2 of NI 81-102; and

(c) where a Member chooses to invest in a publicly available Fund selected by the Plan Sponsor as an investment option for a Non-Tax Assisted Plan, the current prospectus of the Fund and/or Fund Facts as permitted by the Legislation, will be made available, upon demand, to the Member.

3. Before the first time a Fund relies on this Decision, the Fund files a notice in the form found in Appendix C of the Proposed CAP Exemption in each jurisdiction in which the Fund expects to distribute its securities.

4. This Decision, as it relates to the jurisdiction of a Decision Maker with respect to the Dealer Registration Relief will terminate upon the coming into force in securities rules of a registration exemption for trades in a security of a mutual fund to a CAP or 90 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to make such a rule.

5. This Decision, as it relates to the jurisdiction of a Decision Maker with respect to the Prospectus Relief will terminate upon the coming into force in securities rules of a prospectus exemption for the distribution of a security of a mutual fund to a CAP or 90 days after the Decision Maker publishes in its Bulletin a notice or a statement to the effect that it does not propose to make such a rule.

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

Application File #: 2023/0436
SEDAR+ File #: 6027716

B.3.2 PenderFund Capital Management Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 81-102 Investment Funds – An investment fund seeks relief from the illiquid asset concentration limits in section 2.4 of NI 81-102 – The securities will be acquired under the registration exemption in Rule 144A of the US Securities Act; the funds purchasing securities will be "qualified institutional buyers" as defined in the US Securities Act; the securities will not be illiquid assets under part (a) of the definition in NI 81-102; the securities will be traded on a mature and liquid market; investors will be provided with disclosure of the relief provided.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.4 and 19.1.

Citation: 2023 BCSECCOM 465

September 26, 2023

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

AND

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

AND

IN THE MATTER OF
PENDERFUND CAPITAL MANAGEMENT LTD.
(the Filer)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer on behalf of all current and future investment funds that are, or will be, managed by the Filer or an affiliate of the Filer and to which National Instrument 81-102 *Investment Funds* (NI 81-102) applies (collectively, the Funds) for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from the restrictions that apply to purchasing or holding illiquid assets under section 2.4 of NI 81-102 to permit:

(a) a Fund that is a Qualified Institutional Buyer (as defined below) to purchase fixed income securities that, at the time of purchase, qualify for, and may be traded pursuant to, the exemption from the registration requirements of the *Securities Act of 1933*, as amended (the US Securities Act), as set out in Rule 144A of the US Securities Act (Rule 144A) for resales of certain fixed income securities (144A Securities) to Qualified Institutional Buyers, in excess of 10% of the Fund's net asset value if the Fund is a mutual fund and in excess of 20% of the Fund's net asset value if the Fund is a non-redeemable investment fund;

(b) a Fund to hold 144A Securities purchased as a Qualified Institutional Buyer for a period of 90 days or more, in excess of 15% of the Fund's net asset value if the Fund is a mutual fund and in excess of 25% of the Fund's net asset value if the Fund is a non-redeemable investment fund; and

(c) a Fund that is a Qualified Institutional Buyer to not be required to take steps to reduce the Fund's holdings of 144A Securities to (i) 15% of the Fund's net asset value if the Fund is a mutual fund and its holdings of 144A Securities exceeds 15% of the Fund's net asset value, or (ii) 25% of the Fund's net asset value if the Fund is a non-redeemable investment fund and its holdings of 144A Securities exceeds 25% of the Fund's net asset value (the Exemption Sought).

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

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

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

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

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-102 have the same meaning if used in this decision, unless otherwise defined. In addition to the defined terms used in this decision, capitalized terms used herein have the following meanings:

IRC means the applicable independent review committee of each of the Funds;

Qualified Institutional Buyer has the same meaning given to such term in §230.144A of the US Securities Act;

Registered Securities means securities that have been registered with the United States Securities and Exchange Commission; and

Rule 144 means Rule 144 of the US Securities Act.

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 the Province of British Columbia. The Filer's head office is located in Vancouver, British Columbia;

2. the Filer is registered in the category of (i) investment fund manager in British Columbia, Ontario, Québec, and Newfoundland and Labrador; (ii) portfolio manager in British Columbia and Ontario; and (iii) exempt market dealer in British Columbia, Ontario, Alberta, Manitoba and Québec;

3. the Filer, or an affiliate of the Filer is, or will be, the investment fund manager of the Funds and the Filer, an affiliate of the Filer or a third-party portfolio manager retained by the Filer is, or will be, the portfolio manager of the Funds;

4. the Filer is not in default of securities legislation in any of the Jurisdictions;

The Funds

5. each Fund is, or will be, an investment fund organized and governed by the laws of a Jurisdiction or the laws of Canada;

6. NI 81-102 will apply to each Fund unless the Fund has obtained an exemption from NI 81-102;

7. except with respect to the matters relating to the Exemption Sought, no existing Fund is in default of securities legislation in any of the Jurisdictions;

Definition of Illiquid Assets in NI 81-102 and 144A Securities;

8. pursuant to section 1.1 of NI 81-102, an "illiquid asset" is defined as:

   (a) 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 net asset value per security of the investment fund; or

   (b) a restricted security held by an investment fund;

9. rule 144A provides an exemption from the registration requirements of the US Securities Act for resales of unregistered securities by and to a Qualified Institutional Buyer. Rule 144A also requires that there must be adequate current public information about the issuing company before the sale can be made;

10. the definition of a Qualified Institutional Buyer under §230.144A of the US Securities Act includes entities that in the aggregate, own and invest on a discretionary basis at least US$100 million in securities of issuers that are not affiliated with such entity;

11. while issuers themselves cannot rely on Rule 144A, as Rule 144A provides an exemption for resales of unregistered securities, the existence of Rule 144A allows financial intermediaries to purchase unregistered securities from issuers and resell them to Qualified Institutional Buyers in transactions that comply with Rule 144A without registering such securities;

12. pursuant to the terms of the US Securities Act, public resales of 144A Securities to non- Qualified Institutional Buyers must be conducted in reliance upon other available exemptions, such as Rule 144. Rule 144 allows a seller to sell 144A Securities to a purchaser who does not qualify as a Qualified Institutional Buyer after a prescribed period of time (ranging from six months to one year after issuance), if certain other reporting requirements of the issuer are satisfied;

13. despite the foregoing, 144A Securities are immediately freely tradable among Qualified Institutional Buyers in accordance with Rule 144A without any holding periods. 144A Securities may also be sold to and purchased by non-Qualified Institutional Buyers at any time after registration of the securities, or pursuant to another exemption from registration under the US Securities Act, if an exemption is available at that time;

14. because Rule 144A restricts resale of 144A Securities to investors that are not Qualified Institutional Buyers for a period of time, they are restricted securities for the purposes of part (b) of the definition of an "illiquid asset" under section 1.1 of NI 81-102, and each Fund's holdings of 144A Securities would be subject to the limits on holdings of illiquid assets in section 2.4 of NI 81-102 (the Illiquid Asset Restrictions);

Reasons for the Exemption Sought

15. the Filer is of the view that certain 144A Securities provide an attractive investment opportunity for the Funds and that, from time to time, it will be desirable for the Funds to hold 144A Securities in excess of the Illiquid Asset Restrictions; as 144A Securities are "illiquid assets" under section 1.1 of NI 81-102, the Funds are unable to pursue these investment opportunities without breaching the Illiquid Asset Restrictions;

16. the ability of Qualified Institutional Buyers to freely trade 144A Securities pursuant to Rule 144A has substantially reduced the discounts and illiquidity that were present in unregistered offerings historically; the market for 144A Securities consists of a very deep pool of Qualified Institutional Buyers;

17. the most liquid 144A Securities have traded with comparable volumes to the most liquid corporate debt registered securities over the past few years; the segment of the U.S. investment grade corporate bond market that is made up of 144A Securities has grown substantially over the past 15 years; the segment of the U.S. high-yield corporate bond market that is made up of 144A Securities has also grown significantly over the past decade;

18. daily market quotations are obtained in the same way through fixed income market platforms for 144A Securities as they are for registered securities; real-time price quotes and market trade data are available for 144A Securities; many fixed income trades including 144A Securities, are reported within minutes into the Trade Reporting and Compliance Engine, a program initially developed by the National Association of Securities Dealers, Inc. (now the Financial Industry Regulatory Authority, Inc.) that provides for the reporting of over-the-counter transactions pertaining to eligible fixed income securities, including 144A Securities, thus meeting market integrity requirements;

19. a Fund that qualifies as a Qualified Institutional Buyer at the time it purchases 144A Securities may trade those 144A Securities to another Qualified Institutional Buyer without further restriction (i.e. not subject to any holding period); typically, a Fund would sell 144A Securities to other brokers or dealers that are Qualified Institutional Buyers themselves, who would then sell on the securities to other Qualified Institutional Buyers;

20. a Fund is not required to maintain its Qualified Institutional Buyer status in order to be able to resell its holdings of 144A Securities to another Qualified Institutional Buyer at any time;

21. in the course of determining the potential liquidity of a security, the Filer or its sub-advisor uses a consistent list of factors; these factors may include, but would not be limited to, market volatility, trending credit quality, current valuation, maturity, size of the tranche or offering, the applicable underwriters, the status of well-covered credit or first-time issuer, index eligibility, and in the case of 144A Securities, whether the security falls under 144A for life status (i.e. an offering that is not registered with the SEC and may therefore be considered less liquid than a 144A offering with registration rights); as a result, the Filer is of the view that it or its sub-advisor can determine whether a given 144A Security would have sufficient liquidity and market transparency such that it would not qualify as an "illiquid asset" under part (a) of the section 1.1 definition;

22. the Filer is of the view that it has the tools, resources and expertise necessary to assess issuances of 144A Securities and to evaluate the creditworthiness of issuers on a per issuance basis; the Filer or its sub-advisor have the ability to conduct sufficient analysis and should have the opportunity to invest in 144A Securities;

23. the purpose of the Illiquid Asset Restrictions is to govern a core investment fund principle: investors should be able to redeem mutual fund securities and, where applicable, non-redeemable investment fund securities on demand. Considering that 144A Securities trade in an active institutional market, the Filer is of the view that 144A Securities can be liquid relative to a Fund's need to satisfy redemptions; the result of the current part (b) definition of an "illiquid asset" in NI 81-102 is that all 144A Securities may be rendered illiquid, whereas 144A Securities may be more liquid than other types of securities that meet the liquidity criteria set out in NI 81-102;

24. the Filer is of the view that granting the Exemption Sought will not result in a Fund being unable to satisfy redemption requests. Investing in 144A Securities may actually be more beneficial to the Funds than various other securities in which the Funds may invest, and the liquidity determination regarding any such 144A Securities should be made on the actual trading liquidity of the security and any restrictions on the security and not simply based on the manner in which the security was offered into the market;

25. the Filer or its sub-advisor maintains investor protection policies and procedures that address liquidity risk, and uses a combination of risk management tools, which include (i) IRC approved governance policies that have been adopted to protect investors in the Funds, (ii) internal portfolio manager notification requirements of significant cash flows into the Funds, (iii) ongoing liquidity monitoring of each Fund's portfolio, (iv) real time cash projection reporting for the Funds, and (v) the consideration of factors set out in paragraph 21 above in order to assess the potential liquidity of a security;

26. if a Fund no longer meets the requirements for qualifying as a Qualified Institutional Buyer, then the Filer will arrange to immediately restrict any further purchases of 144A Securities until such time as the Fund regains its status as a Qualified Institutional Buyer;

27. if the Filer determines that a 144A Security qualifies as an "illiquid asset" under part (a) of the section 1.1 definition in NI 81-102, then the Filer will restrict any further purchases of "illiquid assets" (including such 144A Security that meets the definition under part (a) of section 1.1 definition of NI 81-102) that are in excess of the thresholds set out section 2.4 of NI 81-102;

28. the Filer is of the view that if the Funds continue to be unable to trade 144A Securities that are "illiquid assets" under part (b) of the definition but not under part (a), the Funds and their investors would lose out on potential investment opportunities in the fixed income space. The Filer is of the view that every basis point counts towards the total return opportunity of fixed income investors and investors would benefit from an expanded investment universe; and

29. the Filer is of the view that it would not be prejudicial to the public interest to grant the Exemption Sought to the Funds.

Decision

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

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

(a) a Fund that purchases 144A Securities is a Qualified Institutional Buyer at the time of purchase;

(b) the 144A Securities purchased pursuant to the Exemption Sought are not illiquid assets under part (a) of the section 1.1 definition of an "illiquid asset" in NI 81-102;

(c) the 144A Securities purchased pursuant to the Exemption Sought are traded on a mature and liquid market; and

(d) the prospectus of each Fund relying on the Exemption Sought discloses, or will disclose in the next renewal of its prospectus following the date of this decision, the fact that the Fund has obtained the Exemption Sought.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

B.3.3 1832 Asset Management L.P. and Dynamic Retirement Income Fund (formerly, Dynamic Retirement Income+ Fund)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act to permit the extension of a prospectus lapse date by 50 days to facilitate the consolidation of the funds' prospectus with the prospectus of different funds under common management – no conditions.

Applicable Legislative Provisions

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

September 14, **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
1832 ASSET MANAGEMENT L.P.
(the Filer)

AND

DYNAMIC RETIREMENT INCOME FUND
(FORMERLY, DYNAMIC RETIREMENT INCOME+ FUND)
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limits for the renewal of the simplified prospectus of the Fund dated October 14, 2022, as amended by amendment no. 1 dated October 28, 2022 and amendment no. 2 dated July 31, 2023 (the **Fund's Prospectus**) be extended to those time limits that would be applicable as if the lapse date of the Current Prospectus was December 2, 2023 (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 each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is an Ontario limited partnership, which is wholly-owned by the Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned by BNS with its head office located in Toronto, Ontario.

2. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada and in the Northwest Territories and the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Québec, Newfoundland and Labrador and the Northwest Territories; and (iv) a commodity trading manager in Ontario.

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

4. The Fund is a mutual fund for the purposes of National Instrument 81-102 – *Investment Funds* established as a trust under the laws of the Province of Ontario

5. The Fund is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

6. Neither the Filer nor the Fund is in default of securities legislation in any of the Jurisdictions.

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act)**, the lapse date of the Fund's Prospectus is October 28, 2023 (the **Current Lapse Date**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of the Fund would have to cease on the Current Lapse Date unless: (I) the Fund files a pro forma prospectus at least 30 days prior to the Current Lapse Date; (ii) the final prospectus is filed no later than 10 days after the Current Lapse Date; and (iii) a receipt for the final prospectus is obtained within 20 days of the Current Lapse Date.

8. The Filer is the investment fund manager of 126 other mutual funds (the **Other Funds** and together with the Fund, the **Funds**) that currently distribute their securities to the public under a simplified

prospectus that has a lapse date of December 2, 2023 (the **Other Funds' Prospectus**).

9. The Filer wishes to combine the Fund's Prospectus with the Other Fund's Prospectus in order to reduce renewal, printing and related costs. Offering the Fund and the Other Funds under one prospectus document would facilitate the distribution of such funds in the Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. As the Fund and the Other Funds are managed by the Filer and are part of the same fund family, offering them under the same prospectus will allow investors to more easily compare their features.

10. It would be impractical to alter and modify all the dedicated systems, procedures and resources required to prepare the renewal of the Other Funds' Prospectus, and unreasonable to incur the costs and expenses associated therewith, so that it can be filed early to align with the renewal of the Fund's Prospectus.

11. The Filer may make minor changes to the features of the Other Funds as part of the process of renewing the Other Funds' Prospectus. The ability to file the simplified prospectus of the Fund with those of the Other Funds will ensure that the Filer can make the operational and administrative features of the Fund and the Other Funds consistent with each other, if necessary.

12. If the Exemption Sought is not granted, it will be necessary to file the Fund's Prospectus twice within a short period of time in order to consolidate the Fund's Prospectus with the Other Funds' Prospectus.

13. There have been no material changes in the affairs of the Fund since the date of the Fund's Prospectus. Accordingly, the Fund's Prospectus represents current information regarding the Fund.

14. Given the disclosure obligations of the Filer and the Fund, should any material change in the business, operations or affairs of the Fund occur, the Fund's Prospectus will be amended as required under the Legislation.

15. New investors in the Fund will receive delivery of the most recently filed fund facts of the Fund. The current Fund's Prospectus will remain available to investors upon request.

16. The Exemption Sought will not affect the accuracy of the information contained in the Fund's Prospectus and will therefore not be prejudicial to the public interest.

Decision

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

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

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

Application File #: 2023/0381
SEDAR+ File #: 6011983

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
Magnetic North Acquisition Corp	July 4, 2023	September 27, 2023

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

Company Name	Date of Order	Date of Lapse
Minnova Corp.	August 2, 2023	September 26, 2023
NioCorp Developments Ltd.	September 29, 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	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	
CareSpan Health, Inc.	May 5, 2023	
Canada Silver Cobalt Works Inc.	May 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
Minnova Corp.	August 02, 2023	September 26, 2023
HAVN Life Sciences Inc.	August 30, 2023	
NioCorp Developments Ltd.	September 29, 2023	

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B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Horizons Enhanced All-Equity Asset Allocation Covered Call ETF
Horizons Enhanced All-Equity Asset Allocation ETF
Horizons Enhanced Canadian Oil and Gas Equity Covered Call ETF
Horizons Enhanced NASDAQ-100 Covered Call ETF
Horizons Growth Asset Allocation Covered Call ETF
Horizons Growth Asset Allocation ETF
Horizons Long-Term U.S. Treasury Premium Yield ETF
Horizons Mid-Term U.S. Treasury Premium Yield ETF
Horizons Short-Term U.S. Treasury Premium Yield ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Sep 28, 2023
NP 11-202 Final Receipt dated Sep 28, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06026346

Issuer Name:
Evolve Enhanced Yield Bond Fund
Evolve NASDAQ Technology Enhanced Yield Index Fund
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Sep 27, 2023
NP 11-202 Final Receipt dated Sep 27, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06026217

Issuer Name:
Chou Asia Fund
Chou Associates Fund
Chou Bond Fund
Chou Europe Fund
Chou RRSP Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Sep 23, 2023
NP 11-202 Final Receipt dated Sep 26, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06012611

Issuer Name:
Ninepoint 2023 Short Duration Flow-Through Limited Partnership
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Sep 27, 2023
NP 11-202 Final Receipt dated Sep 27, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06010405

Issuer Name:
BMG BullionFund
BMG Gold BullionFund
BMG Silver BullionFund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 22, 2023
NP 11-202 Final Receipt dated Sep 27, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03448512

Issuer Name:
Scotia Wealth U.S. Mid Cap Value Pool
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated September 22, 2023
NP 11-202 Final Receipt dated Sep 26, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03519837

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NON-INVESTMENT FUNDS

Issuer Name:
Anteros Metals Inc.
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Sep 28, 2023
NP 11-202 Final Receipt dated Sep 29, 2023
Offering Price and Description:
MINIMUM OFFERING: $600,000.00 (4,000,000 COMMON SHARES)
MAXIMUM OFFERING: $1,000,000.00 (6,666,666 COMMON SHARES)
at a price of $0.15 per Common Share
Filing # 03515900

Issuer Name:
Manulife Financial Corporation
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Sep 26, 2023
NP 11-202 Final Receipt dated Sep 26, 2023
Offering Price and Description:
$10,000,000,000.00 - Debt Securities, Class A Shares, Class B Shares, Class 1 Shares, Common Shares, Subscription Receipts, Warrants, Units
Filing # 06029706

Issuer Name:
Bitfarms Ltd.
Principal Regulator – Ontario
Type and Date:
Amendment to preliminary Shelf Prospectus dated Sep 22, 2023
NP 11-202 Amendment Receipt dated Sep 25, 2023
Offering Price and Description:
US$375,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contract
Filing # 03554539

Issuer Name:
Organigram Holdings Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated Sep 25, 2023
NP 11-202 Preliminary Receipt dated Sep 25, 2023
Offering Price and Description:
$500,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06029276

Issuer Name:
Lycos Energy Inc.
Principal Regulator – Alberta
Type and Date:
Final Short Form Prospectus dated Sep 27, 2023
NP 11-202 Final Receipt dated Sep 27, 2023
Offering Price and Description:
$30,437,700.00
8,574,000 Common Shares
$3.55 per Common Share
Filing # 06026538

Issuer Name:
Newterra Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Sep 26, 2023
NP 11-202 Final Receipt dated Sep 27, 2023
Offering Price and Description:
MINIMUM OFFERING: $400,000.00 (4,000,000 COMMON SHARES)
MAXIMUM OFFERING: $600,000.00 (6,000,000 COMMON SHARES)
at a price of $0.10 per Common Share
Filing # 03557392

Issuer Name:
Organigram Holdings Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Sep 25, 2023
NP 11-202 Preliminary Receipt dated Sep 25, 2023
Offering Price and Description:
0
Securities
Filing # 06029276

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Arxnovum Investments Inc. To: Virgo Digital Asset Management Inc.	Exempt Market Dealer, Portfolio Manager, Investment Fund Manager & Commodity Trading Manager	August 22, 2023
New Registration	A.G.P. Canada Investments ULC	Investment Dealer	September 28, 2023
Change of Registration Category	De Luca Veale Investment Counsel Inc.	From: Portfolio Manager and Exempt Market Dealer To: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	September 29, 2023
Voluntary Surrender	Allianz Global Investors U.S. LLC	Exempt Market Dealer	September 20, 2023

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