The Ontario Securities Commission

OSC Bulletin

October 19, 2023

Volume 46, Issue 42

(2023), 46 OSCB

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

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

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

Contact Centre:
Toll Free: 1-877-785-1555
Local: 416-593-8314
TTY: 1-866-827-1295
Fax: 416-593-8122
Email: inquiries@osc.gov.on.ca

Capital Markets Tribunal:
Local: 416-595-8916
Email: registrar@osc.gov.on.ca

Published under the authority of the Commission by:
Thomson Reuters
19 Duncan Street
Toronto, Ontario
M5H 3H1
416-609-3800 or 1-800-387-5164

43062601

The OSC Bulletin is published weekly by Thomson Reuters Canada, under the authority of the Ontario Securities Commission.

Printed in the United States by Thomson Reuters.

ISSN 0226-9325

THOMSON REUTERS
19 Duncan Street
Toronto, ON
M5H 3H1
Canada

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Email CustomerSupport.LegalTaxCanada@TR.com

Table of Contents

A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
October 11, 2023

GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO,
File No. 2022-8

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

A copy of the Order dated October 11, 2023 is 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.2.2 Notice of Correction – Highland Capital Management L.P. and NexPoint Hospitality Trust

Please be advised that the date provided in para. 2 a. in *Highland Capital Management L.P. and NexPoint Hospitality Trust – s. 127*, published in the October 12, 2023 issue of the Bulletin at (2023), 46 OSCB 8126, has been corrected. The corrected Order is republished in full in section A.3 Orders of this issue.

A.2.3 Mark Edward Valentine

FOR IMMEDIATE RELEASE
October 12, 2023

MARK EDWARD VALENTINE,
File No. 2022-7

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

A copy of the Order dated October 12, 2023 is 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.2.4 TeknoScan Systems Inc. et al.

FOR IMMEDIATE RELEASE
October 13, 2023

TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM,
File No. 2022-19

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

A copy of the Order dated October 13, 2023 is 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.2.5 Mark Odorico

FOR IMMEDIATE RELEASE
October 16, 2023

MARK ODORICO,
File No. 2022-18

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

A copy of the Reasons and Decision and the Order dated October 13, 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

This page intentionally left blank

A.3
Orders

A.3.1 Go-To Developments Holdings Inc. et al.

IN THE MATTER OF
GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO

File No. 2022-8

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

October 11, 2023

ORDER

WHEREAS on October 11, 2023, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Furtado, Staff, and the receiver of Go-To Developments Holdings Inc., Go-To Spadina Adelaide Square Inc., and Furtado Holdings Inc.;

IT IS ORDERED THAT:

1. the parties shall adhere to the following schedule for the delivery of materials for an adjournment motion:
   a. Furtado shall serve and file his Notice of Motion and any materials by 12:00 p.m. on October 17, 2023;
   b. Staff shall serve and file any materials by 4:30 p.m. on October 18, 2023;
2. an adjournment motion shall take place on October 19, 2023 at 10:00 a.m., by videoconference, or on such date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"M. Cecilia Williams"

A.3.2 Highland Capital Management L.P. and NexPoint Hospitality Trust – s. 127

IN THE MATTER OF
HIGHLAND CAPITAL MANAGEMENT L.P.

AND

IN THE MATTER OF
NEXPOINT HOSPITALITY TRUST

File No. 2023-25

Adjudicator: James Douglas (chair of the panel)

October 10, 2023

ORDER
(Section 127 of the *Securities Act,* RSO 1990, c S.5)

WHEREAS on October 4, 2023, the Capital Markets Tribunal held a hearing by videoconference regarding an application brought by Highland Capital Management in respect of the proposed annual and special shareholders' meeting of NexPoint Hospitality Trust;

ON READING the application record of Highland and on hearing the submissions of the representatives for Highland, NexPoint, and Staff of the Ontario Securities Commission;

IT IS ORDERED THAT:

1. the merits hearing shall take place on October 24, 2023 at 10:00 a.m. at the Capital Markets Tribunal located at 20 Queen Street West, 17th floor, Toronto, Ontario, or on such date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat; and
2. the parties shall adhere to the following mutually agreed upon schedule for the delivery of materials:
   a. NexPoint shall serve and file its responding record by 4:30 p.m. on October 10, 2023;
   b. Highland shall serve and file its memorandum of fact and law by 4:30 p.m. on October 12, 2023;
   c. NexPoint shall serve and file its memorandum of fact and law by 4:30 p.m. on October 17, 2023;
   d. Staff shall serve and file its memorandum of fact and law by 4:30 p.m. on October 20, 2023;

e. Highland shall serve and file its reply memorandum of fact and law, if any, by 4:30 p.m. on October 23, 2023.

"James Douglas"

A.3.3 Mark Edward Valentine

IN THE MATTER OF
MARK EDWARD VALENTINE

File No. 2022-7

Adjudicators: Cathy Singer (chair of the panel)
Dale R. Ponder
Geoffrey D. Creighton

October 12, 2023

ORDER

WHEREAS on October 12, 2023, the Capital Markets Tribunal concluded the evidentiary portion of the merits hearing in this proceeding;

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

IT IS ORDERED THAT:

1. the parties shall adhere to the following schedule for delivery of written closing submissions on the merits:

   a. Staff shall serve and file its written closing submissions by 4:30 p.m. on November 15, 2023;

   b. Valentine shall serve and file his written responding closing submissions by 4:30 p.m. on December 5, 2023; and

   c. Staff shall serve and file its written reply closing submissions, if any, by 4:30 p.m. on December 15, 2023;

2. the previously scheduled merits hearing dates of October 13, 17, 18, 19, 20, 23, and 24, 2023 are vacated; and

3. oral closing submissions on the merits shall be heard on December 21, 2023, at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Cathy Singer"

"Dale R. Ponder"

"Geoffrey D. Creighton"

A.3.4 TeknoScan Systems Inc. et al.

IN THE MATTER OF
TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM

File No. 2022-19

Adjudicators: Andrea Burke (chair of the panel)
James Douglas

October 13, 2023

ORDER

WHEREAS on October 12, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider, among other things, a motion by DLA Piper (Canada) LLP (**DLA Piper**) to be removed as representative of record for the respondents, and for an adjournment of deadlines previously set in an order of the Tribunal dated August 3, 2023, to an unspecified date;

ON READING the materials filed by the parties, and on hearing the submissions of DLA Piper, Staff of the Ontario Securities Commission, and H. Samuel Hyams, appearing on his own behalf by telephone, no one appearing on behalf of the remaining respondents, although properly served;

IT IS ORDERED THAT:

1. pursuant to Rule 21(2) of the *Capital Markets Tribunal Rules of Procedure and Forms*, DLA Piper is removed as representative of record for the respondents;
2. DLA Piper's request to adjourn the deadlines set out in paragraphs 2 and 3 of the August 3, 2023 order is denied;
3. a further attendance in this matter is scheduled for November 1, 2023, at 10:30 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat;
4. the previously scheduled merits hearing dates of December 4, 5 and 6, 2023, are vacated; and
5. additional merits hearing dates are scheduled for February 27, 28 and 29, 2023, at 10:00 a.m. on each hearing day, at the Capital Markets Tribunal located at 20 Queen Street West, 17th Floor, Toronto, Ontario, such that the merits hearing in this matter will commence on November 14, 2023 and continue on November 15, 16 and 17, December 7, 12, 14, 15 and 18, 2023, and February 13, 15, 16, 20, 21, 22, 23, 26, 27, 28, and 29, 2024, or on such other dates and times as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Andrea Burke"

"James Douglas"

A.3.5 Mark Odorico – Rule 22(4) of the CMT Rules of Procedure and Forms

IN THE MATTER OF
MARK ODORICO

File No. 2022-18

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

October 13, 2023

ORDER
(Rule 22(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

WHEREAS on March 7 and July 18, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider an application by Mark Odorico for review of two decisions of the Canadian Investment Regulatory Organization (**CIRO**) dated April 7, 2022 and August 15, 2022;

AND WHEREAS a portion of the hearing on March 7, 2023 proceeded on a confidential basis at the request of Odorico, with the issue of what portion, if any, of the corresponding hearing transcript would be kept confidential subject to further order of the Tribunal after receiving submissions in writing from the parties;

ON READING the materials filed by the parties, and on hearing the submissions of Odorico, and the submissions of the representative of Staff of CIRO and of Staff of the Ontario Securities Commission;

IT IS ORDERED THAT:

1. the transcript of the confidential portion of the March 7, 2023 hearing is to be made public, with the following redactions made:
   a. the words before "I'm still dealing with" on line 21, page 4;
   b. the words between "aside from" on line 3, page 5 to the end of line 5, page 5;
   c. the word between "know" and "or doctor" on line 2, page 7;
   d. the words between "Due to my" and "okay" on line 13, page. 8;
   e. the word between "chief" and "there" on line 25, page 8;
   f. the words after "doctor" on line 4, page 11 to the end of line 8, page 11;
   g. the words after "life" on line 11, page 11 to the end of line 12, page 11;

h. the words between “fake” on line 16, page 11 and “I mean” on line 18, page 11;

i. the words after “things” on line 19, page 11 to the end of line 19, page 11;

j. the words between “cut out” on line 22, page 11 and “Can you” on line 24, p. 11;

k. the words after “Odorico” on line 25, page 11 through to the end of line 1, page 12;

l. the words between “I had” and “so” on line 4, page 13;

m. the word between “not” and “to realize” on line 11, page 13;

n. the words on line 19, page 13;

o. the first word on line 20, page 13;

p. the words between “I had” and “they” on line 11, page 16;

q. the words between “your” and “prevented” on line 19, page 16;

r. the words after “realize what” on line 19, page 17 to the end of line 19;

s. the words on lines 21 and 22, page 17;

t. the words between “on” on line 24, page 17 and “I didn’t” on line 26, page 17;

u. the words on line 9, page 18;

v. the words after “to me” on line 16, page 18 to the end of line 17, page 18;

w. the words after “warning” on line 27, page 18 to the end of line 27, page 18; and

x. the entry on page three of the word index to the transcript between “seriousness” and “session”.

“Andrea Burke”

“Sandra Blake”

“Dale R. Ponder”

A.4
Reasons and Decisions

A.4.1 Mark Odorico – ss. 21.7, 8

Citation: *Odorico (Re)*, 2023 ONCMT 34
Date: 2023-10-13
File No. 2022-18

IN THE MATTER OF
MARK ODORICO

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

Adjudicators:	Andrea Burke (chair of the panel) Sandra Blake Dale R. Ponder	
Hearing:	By videoconference, March 7 and July 18, 2023	
Appearances:	Mark Odorico	For himself
	Kathryn Andrews Marie Abraham	For Staff of the Canadian Investment Regulatory Organization
	Erin Hoult	For Staff of the Ontario Securities Commission

REASONS AND DECISION

1. OVERVIEW

[1] This is an application under ss. 8(3) and 21.7 of the *Securities Act*[1] (***Act***) by Mark Odorico for a hearing and review of two decisions of the Canadian Investment Regulatory Organization (**CIRO**, formerly the Investment Industry Regulatory Organization of Canada, **IIROC**) dated April 7, 2022[2] and August 15, 2022[3] (collectively, the **CIRO Decisions**).

[2] Pursuant to the CIRO Decisions, Odorico, a former registered representative and portfolio manager, was disciplined for certain conduct, including misappropriating client funds, effecting unauthorized trades in a client account, and failing to cooperate with Staff of CIRO (**CIRO Staff**) in its investigation. Sanctions imposed included a fine of $125,000, disgorgement of $579,000 and a permanent ban from registration.

[3] Odorico asks that the Tribunal set aside the CIRO Decisions and make a finding that the permanent registration ban and financial penalties ordered against him were excessive and unfair in the circumstances.

[4] CIRO Staff opposes the application. Staff of the Ontario Securities Commission (**OSC Staff**) takes no position.

[5] We considered various preliminary matters. Odorico requested an adjournment of the hearing of his application. We denied his adjournment request with reasons to follow. We also considered and addressed Odorico's request for confidentiality of a portion of his submissions at the hearing of the application. We agreed to proceed with portions of Odorico's submissions (and testimony) in the absence of the public and for the related non-public hearing transcript to be kept confidential until the parties received a copy and had an opportunity to make further written submissions on which parts of the transcript, if any, should remain confidential. Finally, we also considered whether certain items of fresh evidence raised by Odorico should be admitted and we concluded that they were not admissible.

[6] As to the review of the CIRO Decisions, we have determined that there are grounds to warrant setting aside one aspect of the Merits Decision and a portion of the Sanctions Decision attributable to that aspect of the Merits Decision, and to

1 RSO 1990, c S.5
2 *Re Odorico* 2022 IIROC 6 (**Merits Decision**)
3 *Re Odorico* 2022 IIROC 21 (**Sanctions Decision**)

seek written submissions from the parties regarding any further appropriate corresponding adjustments to the Sanctions Decision.

[7] The one aspect of the Merits Decision we have determined to set aside is the CIRO panel's finding that Odorico misappropriated funds from clients JR and MR. We have concluded that the CIRO panel overlooked or misapprehended material evidence in this finding and expressed a supporting rationale for finding that Odorico's evidence lacked credibility that was inconsistent with the overlooked or misapprehended material evidence. In particular, we find that the CIRO panel overlooked or misapprehended material documentary evidence relevant to the fundamental question of whether the funds were advanced to Odorico as a personal loan.

[8] In the circumstances, we decide that CIRO Staff shall be entitled to decide whether the allegation of misappropriation of JR's and MR's funds shall be re-heard in a new hearing (or hearing *de novo*) before a different CIRO panel. The reasons for our conclusions are set our below.

2. BACKGROUND

[9] Mark Odorico was a registered representative with CIBC World Markets and regulated by CIRO (then-IIROC). He ceased to be registered with CIRO on April 30, 2019.

[10] The CIRO disciplinary hearing took place on March 1 and 2, 2022, after Odorico was granted a number of adjournment requests between 2021 and 2022.

[11] The Merits Decision found that Odorico engaged in the following misconduct:

a. between March 2014 and October 2018, Odorico misappropriated funds from three clients, contrary to Dealer Member Rule 29.1 (prior to September 1, 2016) and Consolidated Rule 1400 (after September 1, 2016);

b. between January 2016 and February 2019, Odorico effected unauthorized trades in a client's account, contrary to Dealer Member Rule 29.1 (prior to September 1, 2016) and Consolidated Rule 1400 (after September 1, 2016); and

c. in May 2020, Odorico failed to co-operate with CIRO Staff's investigation, contrary to section 8104 of the Consolidated Rules.

[12] In the subsequent Sanctions Decision, following further adjournment requests, only one of which was granted, the CIRO panel ordered that Odorico:

a. pay fines totalling $125,000;

b. disgorge the amount of $579,000;

c. be permanently banned from registration with CIRO in any capacity; and

d. pay costs of $25,000.

[13] On August 13, 2022, Odorico filed his application with the Tribunal for a review of the CIRO Decisions.

[14] On October 27, 2022, Odorico filed a motion to stay the CIRO Decisions pending the disposition of the application. The Tribunal dismissed the motion and provided its reasons for doing so on March 1, 2023.[4]

[15] Prior to the hearing of this application, the Tribunal made several decisions regarding Odorico's requests for confidential treatment of hearing documents, including with respect to medical records,[5] certain documents contained in the records of the original CIRO proceeding,[6] and hearing transcripts.[7]

[16] The hearing of the application was held on March 7, 2023, and was reconvened at the panel's request on July 18, 2023, to have the parties address some additional questions raised by the panel. Subsequent to the March 7, 2023 hearing of the application we also received written submissions from the parties addressing: (i) Odorico's request that certain portions of the transcript of the March 7, 2023 hearing be kept confidential, and (ii) CIRO Staff's identification of certain portions of Odorico's submissions which CIRO Staff asserted was fresh evidence that we should not admit.

4 *Odorico (Re)*, 2023 ONCMT 10 (***Odorico Stay Decision***)
5 (2022) 45 OSCB 8313
6 *Odorico (Re)*, 2022 ONCMT 36, (2023) 46 OSCB 503
7 *Odorico Stay Decision* at paras 32-45

3. PRELIMINARY MATTERS

3.1 Adjournment request

[17] We declined Odorico's request for an adjournment of this hearing and proceeded with hearing the merits of the application. Our reasons for denying the adjournment request are set out below.

[18] Approximately a week before the scheduled start of the review hearing, Odorico made a request to the panel for a postponement of the hearing for at least 30 days to allow him extra time to prepare. We heard Odorico's request for an adjournment at the start of the review hearing on March 7.

[19] Odorico submitted that he needed more time to prepare for the hearing because of various health challenges he was facing. He advised us that reviewing and responding to his earlier confidentiality request about redactions to transcripts had taken a toll on his health due to stress. Additionally, he submitted that the process for preparing for this proceeding is different than for CIRO's proceeding. He wanted to ensure that he put things in a proper order and clarified his specific concerns with the CIRO Decisions.

[20] When asked, Odorico confirmed that he did not have any medical notes to support his submissions regarding his health as his doctor was on vacation. In any event, Odorico believed that his earlier medical notes had been disregarded by CIRO and any further medical notes would be of limited utility as a result. Odorico did advise that if a medical note would be of assistance, he would get one.

[21] CIRO Staff opposed the adjournment request, citing rule 29(1) of the Tribunal's *Rules of Procedure and Forms* (**Rules**), which states that every hearing of an application shall proceed on the scheduled date unless a party satisfies the panel that there are exceptional circumstances requiring an adjournment. CIRO Staff submitted that no compelling reasons had been put forward to satisfy this high bar. CIRO Staff conceded that this was Odorico's first adjournment request of the hearing. However, it pointed to the pattern of Odorico's adjournment requests through the merits and sanctions hearings before CIRO.

[22] OSC Staff agreed with CIRO Staff's submissions and reiterated that Odorico's request for extra preparation time fell far short of exceptional circumstances to warrant an adjournment. Additionally, the lack of a prior request for an adjournment in this proceeding was not a factor in favour of granting an adjournment.

[23] CIRO Staff submitted that Odorico received the record of the CIRO proceeding in August 2022 and the supplementary CIRO record in December 2022. Odorico had been aware of the March 7 hearing date for five months, since it was set by order of the Tribunal dated October 7, 2022.[8] CIRO Staff submitted, and we agree, that Odorico had been given ample time to prepare for the review hearing.

[24] There are numerous procedural steps an applicant must take following the filing of their application for review. Among those steps is a requirement to provide notice of any intention to rely on documents or things not included in the record of original proceeding, serving and filing a witness list for any witnesses they propose to call at the review hearing, and serving a summary of each proposed witness's anticipated evidence on each other party.

[25] Odorico was first ordered to complete each of these steps by December 5, 2022. He subsequently received two extensions of time, first to January 18, 2023, and then to January 27, 2023. By the time we received Odorico's adjournment request, he had not provided notice of any additional documents, served or filed a witness list, served a summary of anticipated evidence of proposed witnesses or filed any written submissions.

[26] The standard to meet "exceptional circumstances" is a high bar that reflects the important objective that Tribunal proceedings be conducted in a just, expeditious and cost-effective manner. This objective must be balanced against the parties' ability to participate meaningfully in the hearing and to present their case. A determination as to whether an adjournment should be granted is necessarily fact-based, and will include consideration of, among other things, how the requesting parties have conducted themselves in the case.[9]

[27] In *Debus (Re),* the Tribunal acknowledged that health issues presented challenging circumstances to the respondent, however in that case they did not meet the high bar contemplated by rule 29(1).[10]

[28] Odorico submits that he has had ongoing health issues for several years. We acknowledge that health issues may impact one's ability to prepare for a Tribunal hearing. However, we did not receive any new medical evidence to substantiate that his health had deteriorated to the point that he would be unable to participate meaningfully in the hearing.

8 (2022) 45 OSCB 8663
9 *Money Gate Mortgage Investment Corp (Re),* 2019 ONSEC 40 (***Money Gate***) at para 54
10 *Debus (Re)*, 2021 ONSEC 22 (***Debus***) at para 70

[29] We questioned Odorico concerning how additional time would help him present his case. After considering Odorico's submissions, we failed to understand how further time would benefit Odorico.

[30] In balancing the objective to conduct proceedings in a just, expeditious and cost-effective manner against the parties' ability to participate meaningfully, we were not satisfied that Odorico demonstrated any "exceptional circumstances" that might warrant an adjournment of the review hearing.

[31] For these reasons, we declined Odorico's request for an adjournment of the review hearing and proceeded with hearing the merits of the application.

3.2 Request for confidentiality

[32] During the merits hearing, Odorico requested that some of his oral submissions (some of which verged into evidence) in support of both his adjournment request and the merits of his application be kept confidential and not be made available to the public. We agreed to proceed with portions of Odorico's submissions (and testimony), primarily on health-related matters, in the absence of the public and for the related non-public hearing transcript to be kept confidential until the parties received a copy and had an opportunity to make further written submissions on which parts of the transcript, if any, should remain confidential.

[33] We followed this approach at the hearing of Odorico's stay motion on November 25, 2022, when Odorico made a similar request. We took this approach primarily because Odorico had not filed any materials in advance of the hearing and the scope of his intended submissions (and testimony) was not known, making it difficult to consider and make a ruling on confidentiality in advance.

[34] CIRO Staff proposed certain limited redactions to the non-public transcript. OSC Staff agreed that a limited confidentiality order based upon the redactions proposed by CIRO Staff was appropriate. Odorico agreed with the redactions proposed by CIRO Staff and proposed a few additional redactions.

[35] The Tribunal's authority to order that part of an adjudicative record (including a hearing transcript) be confidential arises under s. 9(1) of the *Statutory Powers Procedure Act*[11] (***SPPA***) and rules 22(2) and 22(4) of the Rules. We are also mindful of the Capital Markets Tribunal *Practice Guideline* which states that personal information relevant to the resolution of a matter is generally not treated as confidential.

[36] In applying s. 9(1) of the *SPPA* (as well as rules 22(2) and 22(4) of the Rules) it is helpful to consider the common law relating to confidentiality in court or administrative tribunal proceedings and, in that regard, we have taken into account the recent Supreme Court of Canada decision in *Sherman Estate v Donovan*[12] as well as the approach taken by the Tribunal in resolving Odorico's prior requests for confidentiality in this matter.

[37] We have concluded that some (but not all) of the redactions proposed by CIRO Staff will be marked confidential, on the basis that they offend the personal dignity of Odorico and the public interest in privacy outweighs the public interest in the open court principle. We have also concluded that the additional redactions sought by Odorico are not appropriate.

[38] The redactions that we agree should be marked confidential focus on the type of doctor Odorico visited, detailed particulars of his medical symptoms and a doctor's note previously redacted by the Tribunal, and particulars of the type, dosage and effect of medication that Odorico was taking at the time of the CIRO proceedings. We do not agree that the following portions of the transcript should be confidential:

a. Odorico's explanation as to the impact of his health issues on his ability to prepare for the merits hearing before us that he offered in support of his request to adjourn the March 7, 2023, merits hearing;

b. the name of Odorico's doctor; and

c. Odorico's comments about the significance of a handwritten doctor's note.

3.3 Request to admit fresh evidence

3.3.1 Admissibility of fresh evidence identified by CIRO Staff

[39] Odorico made some statements and provided some details about his health conditions during his confidential submissions that CIRO Staff identified as "fresh" evidence or evidence that augmented the record that was before the CIRO panel when it dismissed Odorico's request to adjourn the CIRO disciplinary hearing on March 1, 2022.

[11] RSO 1990, c S.22
[12] 2021 SCC 25

[40] This evidence is included in the portions of the March 7, 2023 non-public transcript that all parties agreed should be kept confidential and that we have determined, for the reasons set out above, should be redacted in the public version of the transcript.[13]

[41] Odorico's statements identified by CIRO Staff as fresh evidence indicated the type, dosage and effect of medication he was taking at the time his adjournment request was denied by the CIRO panel and also included an assertion that elaborated on the nature of his health issues.

[42] CIRO Staff objected to this evidence being admitted on the ground that it does not meet the Tribunal's test for admitting fresh evidence on a hearing and review of a CIRO decision.[14] In order for Odorico to establish that we should exercise our discretion to admit the fresh or additional evidence on this application, the applicable test is whether the evidence is both "new and compelling".[15]

[43] CIRO Staff submitted that the evidence is not "new" as it was known to Odorico at the time of the CIRO hearing and could have been provided by him along with the other medical information that he did provide to the CIRO panel in support of his March 1, 2022, adjournment request. CIRO Staff submitted that the evidence is also not "compelling" because it is in the nature of bald assertions without supporting medical documentation and would not have changed the CIRO panel's decision to dismiss Odorico's adjournment request.

[44] OSC Staff objected on the same basis as CIRO Staff and also objected on the principled basis that Odorico had not provided advance notice of his intention to seek to tender and rely on this evidence.

[45] Odorico maintained that we should admit the fresh evidence but volunteered that the fresh evidence is not "shockingly extremely different evidence" but instead "merely supportive evidence" to the evidence that was presented to the CIRO panel and that in his submissions before us he "voluntarily mentioned more information in detail, although [he] didn't think it was needed to prove [his] issue".[16]

[46] Odorico submitted that if we decide to not admit the fresh evidence it is not going to make his argument on his application weaker. Odorico also submitted that at the time of his March 1, 2022 request to adjourn the CIRO hearing he did not think that the additional details in the fresh evidence were necessary as he thought that the doctor's note would be sufficient and he was not in good enough health to question if he must provide all background details.

[47] Notably, Odorico did not take the position that the fresh evidence was not available to him nor that he was incapable of raising it at the time the CIRO panel considered his adjournment request. Odorico also told us that the fresh evidence relating to the type, dosage and effect of medication he was taking at the time his adjournment request was denied by the CIRO panel was information that he chose not to tell the CIRO panel.

[48] On an application for review under ss. 8(3) and 21.7 of the *Act*, the Tribunal has original jurisdiction to make a decision and can, in its discretion, admit new evidence that was not before the decision maker below.[17] This Tribunal has historically taken a restrained approach in exercising this discretion to ensure that an applicant is not permitted the opportunity to re-argue the initial hearing with an augmented record of evidence that was available at the time of the initial hearing and is of questionable probative value.[18]

[49] We find that Odorico's fresh or additional evidence is not "new" because it is information that was known to Odorico and that he could have raised at the time of the CIRO panel's decision to dismiss the adjournment request.[19]

[50] Furthermore, we find that Odorico's fresh or additional evidence is not "compelling" in the sense that it would have changed the CIRO panel's decision to dismiss Odorico's adjournment request had it been known by the CIRO panel at the time of the decision.[20] We carefully reviewed Odorico's submissions and evidence in support of his request to adjourn the March 1 and2, 2022 CIRO disciplinary hearing. We are satisfied that Odorico's fresh or additional evidence does not substantially add to the evidence about Odorico's health that was available to and considered by the CIRO panel, and would not have been expected to change the CIRO panel's decision to dismiss the adjournment request.

[51] For these reasons, we decline to admit Odorico's fresh evidence as identified by CIRO Staff.

---

13 The portions of the March 7, 2023 *in camera* transcript that contain the fresh evidence identified by New SRO Staff are as follows: p. 10, line 22 (the two words before "way more"); p. 13, lines 19 and 20 (the four words before "here"); p. 17, lines 24 to 26 (the words between "on" and "I didn't tell IIROC this"); and p. 18, line 9.

14 *Re Canada Malting Co.* (1986), 33 9 O.S.C.B. 3566 (***Canada Malting***); *Northern Securities Inc (Re),* 2013 ONSEC 48 (***Northern Securities***), at paras 26-30; *Northern Securities v Ontario (Securities Commission)* 2015 ONSC 3641 (Div Ct) at para 12; *Debus (Re)*, 2021 ONSEC 1 (***Debus Motion***) at paras 26-32; *Debus* at paras 39-40; *Hahn Investment Stewards & Co. Inc (Re)*, 2009 ONSEC 41 (***Hahn***) at paras 197-198.

15 *Northern Securities* at para 30; *Debus Motion* at paras 30-33

16 Hearing Transcript, March 7, 2023 at p 57, line 19 to p 58, line 2 and p 58, line 25 to p 59, line 3.

17 *Debus Motion* at para 27; *Northern Securities* at para 27, citing *HudBay Minerals Inc (Re)*, 2009 ONSEC 15 (***HudBay***) at paras 111-112

18 *Northern Securities* at paras 28-30; *Debus Motion* at para 29, citing *HudBay* at para 114

19 *Debus Motion* at para 32; *Northern Securities* at para 28, citing *Hahn* at paras 197-198

20 *Northern Securities* at para 28, citing *Hahn* at paras 197-198; *Debus Motion* at para 33

4. ISSUES AND ANALYSIS

4.1 Introduction

[52] Odorico asks that we set aside the CIRO Decisions and make a finding that the permanent registration ban and financial penalties ordered against him were excessive and unfair in the circumstances.

[53] In his application for review, Odorico's grounds for review are the following:

a. he was not treated fairly based on his health condition and needed more time to be represented properly; and

b. he did not do anything wrong with investment accounts; instead he only had a personal loan that was agreed upon with the related parties that were family and outside personal relationships that were outside his employment.

[54] At this hearing, Odorico made further oral submissions about the state of his health at the CIRO merits hearing. He submitted that the failure of the CIRO panel to take his medical evidence fully into account and the failure to grant him an adjournment of the merits hearing, resulted in an unfair hearing because it was one in which he could not meaningfully participate.

[55] It is important to note that at the merits and sanctions hearings before CIRO, Odorico was self-represented. He also made attempts to retain counsel for this hearing, but without success. Accordingly, Odorico remained self-represented in this hearing.

[56] We have determined that there are grounds to warrant setting aside one aspect of the Merits Decision. We will also set aside a portion of the Sanctions Decision attributable to the aspect of the Merits Decision that we are setting aside and will consider written submissions from the parties regarding any further appropriate corresponding adjustments to the Sanctions Decision. We first discuss the applicable standard of review in conducting a review and we examine the duties owed to a self-represented party.

4.2 Scope of Review

[57] On applications for review under ss. 8 and 21.7 of the *Act*, the Tribunal may: (1) confirm the decision of CIRO (a recognized self-regulatory organization, or **SRO**); or (2) make such other decision as the Tribunal considers proper.[21]

[58] The Tribunal's review of a SRO decision is a hearing *de novo* rather than an appeal. In other words, the Tribunal exercises original jurisdiction rather than a more limited appellate jurisdiction. However, in practice the Tribunal takes a "restrained approach" on reviews of decisions of a SRO such as CIRO and applicants must meet a "high threshold" to demonstrate that a SRO decision should be overturned.[22] This is consistent with the requirement in the *Act* that the Commission should "use the enforcement capability and regulatory expertise of recognized self-regulatory organizations."[23]

[59] The Tribunal accords deference to decisions within a CIRO panel's area of expertise, including factual determinations and interpretation and application of CIRO's rules, and will not intervene in such decisions simply because it might have made a different decision.[24]

[60] In past decisions, the Tribunal has adopted the grounds set out in *Canada Malting* in determining whether to interfere with a decision of a SRO. Accordingly, the Tribunal will only interfere with a decision of a SRO where one or more of the following grounds have been satisfied:

a. the SRO has proceeded on an incorrect principle;

b. the SRO has erred in law;

c. the SRO has overlooked material evidence;

d. new and compelling evidence is presented to the Tribunal that was not presented to the SRO; or

e. the SRO's perception of the public interest conflicts with that of the Tribunal.[25]

---

21 *Act*, ss 8(3) and 21.7
22 *Northern Securities* at paras 49, 54, 56-57
23 *Act*, s 2.1
24 *Northern Securities* at paras 57-61
25 *Canada Malting* at para 24; *Rudensky (Re),* 2019 ONSEC 24 at para 32; *Eley (Re),* 2021 ONSEC 19 (***Eley***) at paras 44-46

4.3 Obligations in Proceedings Involving Self-Represented Litigants

[61] As Odorico was self-represented before CIRO and this Tribunal, certain obligations apply to the CIRO panel, this Tribunal, and all other participants in the proceeding.

[62] The Canadian Judicial Council's Statement of Principles on Self-Represented Litigants and Accused Persons has been endorsed by the Supreme Court of Canada in relation to court proceedings involving a self-represented party. As the Ontario Divisional Court and the British Columbia Court of Appeal have recently held, the Statement of Principles also provides useful guidance for proceedings before administrative tribunals.[26]

[63] With respect to decision-makers, the Statement of Principles states that:

a. judges have a responsibility to inquire whether self-represented persons are aware of their procedural options, and to direct them to available information if they are not. Depending on the circumstances and nature of the case, judges may have to explain the relevant law in the case and its implications before the self-represented person makes critical choices; and

b. in appropriate circumstances, judges should consider providing self-represented persons with information to assist them in understanding and asserting their rights, or to raise arguments before the court.[27]

[64] For self-represented litigants, the Statement of Principles provides that they are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case and are expected to prepare their own case.[28]

[65] Therefore, in the interests of conducting a fair hearing, a decision-maker has a duty to offer sufficient assistance to a self-represented party. However, the duty to provide assistance is not unlimited. The decision-maker must not act as counsel for the self-represented party and must balance providing assistance with the duty to both appear and remain neutral.[29]

4.4 Has Odorico established any grounds for intervention in the merits decision?

[66] We will first address the merits decision. Specifically, we will look at whether the CIRO panel:

a. proceeded on an incorrect principle or erred in law by dismissing Odorico's adjournment request;

b. proceeded on an incorrect principle or erred in law by proceeding with a two-member panel;

c. overlooked material evidence by disregarding Odorico's medical notes; or

d. proceeded on an incorrect principle or erred in law or overlooked material evidence by finding that Odorico misappropriated client funds, effected unauthorized trades in client accounts, and failed to cooperate with CIRO Staff.

4.4.2 Did the CIRO panel proceed on an incorrect principle or err in law by dismissing Odorico's adjournment request?

[67] We find that given the numerous requests for adjournments in the CIRO proceeding, CIRO did not proceed on an incorrect principle nor err in law by dismissing Odorico's adjournment request. Given all the circumstances outlined below, it was reasonable to proceed.

[68] The date for the CIRO merits hearing was scheduled on a peremptory basis due to the number of prior adjournments granted to Odorico. Nevertheless, prior to the hearing, Odorico advised CIRO Staff of his intention to seek an adjournment, submitting that he would not be able to proceed due to medical issues. CIRO Staff opposed the further request for an adjournment.

[69] Odorico also reiterated that the state of his health was such that he could not meaningfully participate in the hearing.

[70] CIRO Staff submits that Odorico's claim that he was not treated fairly due to his health, and that he needed more time to obtain legal representation is not supported by the record. CIRO Staff further submits that Odorico was previously represented and had ample opportunity to retain new counsel but did not do so.

[71] CIRO Staff also submits that Odorico participated in the merits hearing and was given opportunity to cross examine CIRO Staff's witnesses and declined to do so. He was aware on the first day of the merits hearing that oral closing submissions

---

26 *Pintea v Johns,* 2017 SCC 23 at para 4; Canadian Judicial Council, *Statement of Principles on Self-Represented Litigants and Accused Persons,* 2006 (**Statement of Principles**); *Hirtle v College of Nurses of Ontario,* 2022 ONSC 1479 (Div Ct) (***Hirtle***) at para 55; *Mountainstar Gold Inc. v British Columbia Securities Commission,* 2022 BCCA 406 (***Mountainstar Gold***) at paras 104-105

27 Statement of Principles, section C at p 7; see also *R v Tossounian,* 2017 ONCA 618 at para 38

28 Statement of Principles, section C page 9 (under "For Self-Represented Persons")

29 *Hirtle* at paras 57-58, 60, citing *Girao v Cunningham,* 2020 ONCA 260 (***Girao***); *Mountainstar Gold* at para 105

likely would be proceeding the following day. He was given the opportunity to call evidence and although he testified on his own behalf, he did not call any other witnesses. On the second day of the merits hearing Odorico did not allow himself to be cross-examined by CIRO Staff or to be questioned by the panel because he did not return to the hearing following the morning break or the lunch break despite efforts to reach him.

[72] CIRO Staff cites the Tribunal's decision in *Darrigo*[30] and observes that in that case the CIRO hearing proceeded after several adjournments based on medical grounds had been granted, with the last adjournment request refused. In its hearing and review decision, the Tribunal noted that the CIRO panel recognized that it had to balance the public interest in a timely hearing with Darrigo's interests in having an opportunity to answer the case against him.[31] The Tribunal found that:

> "…IIROC's liability hearing was consistent with the interests of natural justice, with no denial of procedural fairness. IIROC balanced the appropriate factors in determining whether the additional adjournment should be granted. The decision to deny the further adjournment reflected a judicious exercise of the Panel's discretion. It was not an error of law and the Panel did not proceed on an incorrect principle. There is no basis of procedural unfairness to support an intervention by the Commission."[32]

[73] We asked Odorico how the CIRO hearing would have been different had he been granted the adjournment. In particular, we asked Odorico whether there was evidence refuting the allegations of misappropriation of funds or unauthorized trading that he would have provided had the hearing been adjourned. Was there new evidence regarding his medical condition at the time of the CIRO merits hearing? Odorico was unable to provide an explanation and although he had the opportunity to seek leave to provide new evidence going to such matters for purposes of this hearing, he did not do so.

[74] In all the circumstances surrounding the conduct of the CIRO merits hearing, we agree with CIRO Staff that the CIRO panel did not proceed on an incorrect principle nor err in law when denying Odorico's request for an adjournment of the merits hearing. As was the case in the *Darrigo* decision, we find that the CIRO panel recognized that it had to balance the public interest in a timely hearing with Odorico's request for further time to better prepare his case in recognition of his continuing health issues, and that it balanced the appropriate factors in determining that a further adjournment should not be granted. Denial of Odorico's adjournment request did not result in an unfair hearing nor did it amount to the panel making an error in law or proceeding on an incorrect principle.

4.4.3 Did the CIRO panel proceed on an incorrect principle or err in law by proceeding with a two-member panel?

[75] On the date of the merits hearing one of the three members of the CIRO panel was unavailable. Under then-applicable IIROC Rules, a hearing could proceed with two panel members, but only with the consent of all parties. At the outset of the hearing, consent was sought and obtained from CIRO Staff and Odorico. Thereafter, the two-person CIRO panel heard and denied Odorico's request for a further adjournment of the merits hearing.

[76] Subsequent to the two-person CIRO panel's denial of his adjournment request, Odorico submitted that he had not appreciated the consequences of consenting to a two-member panel. He said that immediately after his adjournment request was denied he asked the CIRO panel to allow him to retract his consent. However, the CIRO panel determined that the decision had been made and that the merits hearing would proceed over Odorico's objection.

[77] CIRO Staff submits there was no error in law made by the panel in proceeding with only two panelists in the circumstances.

[78] CIRO Staff observes that the CIRO merits hearing was held under IIROC Series 8000 Rules that were in effect at the time. Rules 8408(10) and (11) indicate that if a member of a hearing panel becomes unable to continue to serve as a member of the hearing panel for any reason, the remaining members may continue to hear the matter and render a decision, but only with the consent of all parties. A decision of a hearing panel must be made by a majority of its members, and if, as was the case in this merits hearing, the hearing panel consists of only two members, the decision must be unanimous.

[79] Rule 8401(1) provides that the Rules of Practice and Procedure set out the rules that govern the conduct of CIRO's enforcement proceedings and regulatory review hearings to secure fair and efficient proceedings and just determinations. Section 8403(1) of the IIROC Rules provides that the IIROC Rules shall be interpreted and applied to secure a fair hearing and just determination of a proceeding on its merits and the most expeditious and least expensive conduct of the proceeding.

---

30 2016 ONSEC 21 (***Darrigo***)
31 *Darrigo* at para 9
32 *Darrigo* at para 11

[80] CIRO Staff submits the following regarding the fairness of the hearing in the context of the issue of a two-member panel:

a. there is no evidence that Odorico was unable to understand the proceedings at the merits hearing and instead, his comments at the time indicate that he understood that he was consenting to proceeding with two panelists. During the non-public portion of the hearing Odorico told the panel that he had been given the opportunity to cancel that day because one of the panel members was not present, but that he did not want to delay the proceeding.

b. Odorico received a full and fair hearing with two panelists; and

c. the test is not whether the disciplinary hearing was "perfect"; the test is whether Odorico received a fair hearing and it is clear from the record that he did.

[81] CIRO Staff further submits that the duty of fairness is flexible and variable and cites *Baker v Canada (Minister of Citizenship and Immigration*)[33] in which the Supreme Court of Canada states:

> "the existence of a duty of fairness, however, does not determine what requirements will be applicable in any given set of circumstances. As I wrote in Knight v. Indian Head School Division No. 19, [1990] 1 SCR 653 at p. 682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case". All of the circumstances must be considered in order to determine the content of the duty of procedural fairness."[34]

[82] OSC Staff submits that it appears that the CIRO panel may not have adequately explained to Odorico that:

a. he had the right to refuse to allow the merits hearing to proceed that day, given the absence of one panel member and IIROC Rule 8408(10); and

b. if he consented to proceed with a two-member panel, the panel could deny his request for an adjournment of the merits hearing and the hearing would proceed.

[83] OSC Staff also submits that the fact that the CIRO panel may not have adequately explained these matters to Odorico is not in itself a basis for the Tribunal to determine that it should interfere in the CIRO Decisions. The question is not whether an adjudicator could have done more to assist a self-represented litigant. Rather, we must determine whether any such shortcomings gave rise to an unfair hearing or miscarriage of justice such that the CIRO panel incorrectly applied the principle of procedural fairness or erred in law by failing to apply procedural fairness. The fundamental issue is: "whether the proceedings were fairly conducted. Did the self-represented litigant get a fair hearing?"[35]

[84] Having regard to the discussion under section 4.3 above, although we agree with OSC Staff that it may have been preferable if the CIRO panel had explained to Odorico the points noted in paragraph 82 above, we do not find that such shortcomings resulted in an unfair hearing or miscarriage of justice. Indeed, as acknowledged by Odorico at the time, he was aware that he had the opportunity to refuse to allow the merits hearing to proceed that day given the absence of the third panel member, and he chose not to exercise that right.

[85] In our view the CIRO panel followed its rules of procedure regarding the composition of the panel at the merits hearing and in rendering its decision. We find no error in law. As to the question of procedural fairness more particularly, we agree with CIRO Staff that the duty of procedural fairness must be considered in the context of all the circumstances and that in these circumstances, the panel had to balance its duty to act fairly with all registrants with its role of protecting the public from harmful professional conduct and ensuring that the public's concerns are addressed on a timely basis. We find that the CIRO panel did not proceed on an incorrect principle nor err in law in proceeding with a two-member panel.

4.4.4 Did the CIRO panel overlook material evidence by disregarding Odorico's medical notes at the merits hearing?

[86] Odorico submits that his medical evidence in the form of medical notes was disregarded by CIRO when it refused to grant an adjournment of the merits hearing.

[87] CIRO Staff submits that the medical notes provided by Odorico were taken into consideration but they were either vague or insufficient to support an argument that more time was needed in addition to the time that had already been granted by the CIRO panel.

[88] We have reviewed the written record from the CIRO proceedings and conclude that all of the medical notes provided to the panel were considered. However, the notes were lacking in clarity and insufficient to support the assertion that

[33] 1999 CanLII 699 (SCC) (***Baker***)
[34] *Baker* at para 21
[35] *Hirtle* at para 62, citing *College of Optometrists of Ontario v SHS Optical Ltd*, 2008 ONCA 685 at paras 57-59; *R v Forrester*, 2019 ONCA 255 at paras 17-18; *Girao* at para 7

Odorico did not understand the questions asked of him or the proceedings. Further, insufficient medical evidence was provided to support Odorico's request for an adjournment of the CIRO merits hearing.

[89] Based on the foregoing, we find that the CIRO panel did not disregard material evidence in this respect at the merits hearing.

4.4.5 Did the CIRO panel proceed on an incorrect principle, err in law or disregard material evidence in finding that Odorico misappropriated client funds, effected unauthorized trades in RM's account, and failed to cooperate with the CIRO investigation?

[90] As noted above, Odorico did not file any written submissions in support of his application. As such, we were left to glean from his application and his oral submissions the additional grounds upon which he relies in seeking to have us intervene in the CIRO panel's merits decision.

[91] Other than the issue of whether he was treated fairly in light of his health conditions which has already been addressed above, Odorico's application only directly impugns the CIRO panel's finding that he misappropriated funds. In this regard, the only ground he raises is a bare denial of the factual finding made by the CIRO panel. He asserts that "he did not do anything wrong with investment accounts; instead he only had a personal loan that was agreed upon with the related parties that were family and outside personal relationships that were outside his employment."

[92] In his oral submissions, Odorico reiterated his denial that he misappropriated client funds and repeated his position (and essentially the same evidence he gave at the CIRO merits hearing) that he borrowed money for personal reasons and that the personal loans from his clients (including from his cousin MR) had nothing to do with their CIBC World Markets client accounts and were not investments. He submits that the CIRO panel's conclusions that he had misappropriated client funds was a miscarriage of justice.

[93] Odorico also submits that he got authorization for trades from his clients, spoke to them often, met with them regularly, made money for his clients, and his clients received statements and they were happy.

[94] Odorico submits that he did not deny failing to cooperate with CIRO Staff's investigation, but he sought to explain the failure by referring to the non-specific issues that he was dealing with at the time (which we understood to be various personal and health issues) and by explaining that he believed at the time of the investigation that CIRO Staff would figure out that he had done nothing wrong.

[95] In the course of his oral submissions, we specifically inquired whether Odorico had any additional evidence relevant to the CIRO panel's findings of contraventions that he might want to seek permission to introduce. Odorico reiterated that he had no intention to seek to introduce any additional evidence.

[96] CIRO Staff submits that Odorico has failed to establish any grounds under the *Canada Malting* test that would warrant interference with the CIRO panel's findings that Odorico misappropriated client funds, effected unauthorized client trades and failed to cooperate with CIRO Staff's investigation. CIRO Staff submits that the CIRO panel properly articulated and applied the burden of proof, explained why it did not accept Odorico's version of events and properly set out and applied the test for assessing the credibility of a witness.

[97] OSC Staff did not take a position on these issues, and instead simply offered guidance to us regarding the relevant law and principles to be applied by the Tribunal on a hearing and review.

[98] It is Odorico's heavy burden to establish that there are grounds on which we ought to intervene in the CIRO panel's merits decision. Odorico's bare denial of the findings of contraventions by the CIRO panel and his reiteration of the evidence he gave at the CIRO merits hearing did not offer us a roadmap with reference to the *Canada Malting* grounds justifying intervention in the CIRO panel's merits decision.

[99] We took into account the fact that Odorico is self-represented and might have difficulty articulating grounds for intervention within the *Canada Malting* framework that would amount to, or explain, his fundamental disagreement with the CIRO panel's conclusions (namely, that the conclusions were incorrect and did not accord with his evidence). Bearing this in mind, we have considered whether the CIRO panel proceeded on an incorrect principle, erred in law or disregarded material evidence by reviewing the CIRO merits decision and the record that was before the CIRO panel. In doing so, we are aware that it is not our role to act as an advocate for a self-represented party nor is it our role to scour the record that was before the CIRO panel to identify and develop arguments that might assist Odorico. We are also aware that the burden does not shift to requiring CIRO Staff to establish that there are no grounds that warrant interference with the CIRO panel's merits decision.

[100] We have concluded that although we might differ with the CIRO panel's approach in some instances relating to the findings that Odorico: (i) misappropriated client RM's funds, (ii) effected unauthorized trades and (iii) failed to cooperate with the CIRO investigation, none of these instances warrant intervention as the CIRO panel neither erred in law, nor

proceeded on an incorrect principle, nor misapprehended or otherwise overlooked material evidence in making such findings.

[101] However, with respect to the CIRO panel's finding that Odorico misappropriated clients JR's and MR's funds, we have concluded that the CIRO panel overlooked or misapprehended material evidence and expressed a supporting rationale for finding Odorico's evidence lacked credibility that was inconsistent with the overlooked or misapprehended material evidence. The reasons for our conclusions are set out below.

4.4.5.a Misappropriation of client RM's funds

[102] In concluding that Odorico misappropriated $429,000[36] of client RM's funds, it is evident from the CIRO panel's merits decision that the panel reviewed, considered and weighed the relevant conflicting testimony of RM and Odorico[37] as well as the relevant documentary evidence.[38] The CIRO panel clearly recognized that the evidence of RM and Odorico conflicted on the essential issue of whether the monies advanced by RM to Odorico were to be invested by Odorico for RM or, alternatively, were a loan from RM to Odorico to allow him to make repairs on the house he had purchased from her before she became his client.[39]

[103] The CIRO panel properly recognized that the resolution of the conflict in the testimony of RM and Odorico hinged on the credibility of the witnesses.[40] The CIRO panel articulated the proper approach to assessing credibility of witnesses whose testimony is in conflict. The credibility of interested witnesses cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried the conviction of the truth. Instead, one must reasonably subject the evidence to an examination of its consistency with the probabilities that surround the existing conditions and whether the story of a witness is in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.[41]

[104] The CIRO panel specifically acknowledged that the fact that RM advanced the money to Odorico in his personal name as well as the numerous promissory notes that Odorico gave RM in connection with the advances of monies might be indications that the monies were advanced by RM as a loan to Odorico.[42] The CIRO panel clearly considered this evidence but concluded that the money advanced by RM to Odorico in his personal name was explained by RM's inexperience and trust in Odorico and the CIRO panel preferred RM's explanation that she understood the promissory notes to simply provide her with evidence of the amounts advanced to Odorico for investment.[43] The CIRO panel appears to have been influenced in its decision by RM's level of education, investment inexperience and trust in Odorico.[44]

[105] In preferring RM's evidence to Odorico's on the essential question and in concluding that the money was provided to Odorico for investment on RM's behalf and not as a personal loan to Odorico, the CIRO panel also explained that it took into account the following facts:

a. Odorico did not cross-examine RM and "therefore RM's testimony remains unimpeached";[45]

b. Odorico provided no evidence to substantiate that he had done extensive repairs on his house and in the CIRO panel's view, this cast doubt on his testimony around repairs;[46]

c. Odorico provided no evidence to substantiate his testimony that he had paid RM monthly interest on the advanced monies for years;[47] and

d. Odorico failed to return to the hearing after giving his evidence to allow for CIRO Staff to cross-examine him.[48]

[106] We might quibble with the CIRO panel's emphasis on RM's testimony being "unimpeached" on the basis that Odorico did not cross-examine her. This is because, as appears from the transcript of the CIRO merits hearing, when Odorico was asked by the CIRO panel whether he wanted to cross-examine RM he advised that he was saddened and disappointed to have heard a lot of "untruths" from RM. Notwithstanding, he was not advised by the CIRO panel of the potential evidentiary importance based on the rule in *Browne and Dunn*[49] of challenging any "untruths" through cross-

---

36 CIRO's Statement of Allegations and the Merits Decision both stated that $449,000 had been misappropriated but this was corrected by the CIRO panel in the Sanctions Decision to $429,000 (see *Sanctions Decision* at para 15)
37 Merits Decision at paras 15-22
38 Merits Decision at paras 17, 18, and 22
39 Merits Decision at para 20
40 Merits Decision at para 21
41 Merits Decision at para 21, citing *Faryna v Chorney*, 1951 CanLII 252 (BCCA) at p 357
42 Merits Decision at para 22
43 Merits Decision at para 22
44 Merits Decision at paras 15 and 22
45 Merits Decision at para 22
46 Merits Decision at paras 23-24
47 Merits Decision at paras 23-24
48 Merits Decision at para 23
49 *Browne v Dunn*, 1893 CanLII 65

examination of a witness.[50] We would have preferred that the CIRO panel have done so. However, reading the CIRO panel's merits decision as a whole, it is evident to us that despite the panel's comment about RM's testimony being "unimpeached" the panel nevertheless did consider and weigh all of the relevant material evidence, including the evidence that contradicted or might have put into doubt RM's evidence.

[107] While we cannot say that we necessarily would have arrived at the same conclusion as the CIRO panel, we find that there was an adequate (although not ample) evidentiary record before the CIRO panel on which to base its credibility findings and conclusion that Odorico misappropriated funds from client RM, and that RM did not advance the funds to Odorico as a personal loan. We find that the CIRO panel articulated and applied the proper standard of proof to be met, namely that CIRO Staff must prove the allegations on a balance of probabilities based on clear, convincing and cogent evidence.[51]

4.4.5.b Misappropriation of clients JR's/MR's funds

[108] In concluding that Odorico misappropriated $150,000 of clients JR's and MR's funds advanced to Odorico on September 26, 2018 it is evident from the Merits Decision that the CIRO panel reviewed, considered and weighed the relevant conflicting testimony of JR and MR and Odorico[52] as well as the post-dated personal cheque dated October 26, 2018 provided by Odorico to JR and MR for $165,000 (representing the original $150,000 advanced to him plus 10%).[53] It is also evident that the CIRO panel clearly recognized that the evidence of JR and MR and Odorico conflicted on the essential issue of whether the monies advanced by JR and MR to Odorico were to be invested by Odorico for them in a "guaranteed investment" or, alternatively, were a personal loan to Odorico.[54]

[109] The CIRO panel resolved the conflict in the testimony between JR and MR and Odorico in favour of JR's and MR's testimony on the following basis:[55]

> [32] Similar to the situation involving client RM, there is a conflict between the testimony of the Respondent and the Rs, and the Panel resolved this conflict in the same manner. The testimony of both JR and MR was straightforward and believable. The Panel characterized the testimony of the Respondent in the same way as his testimony regarding RM. The lack of credibility of the Respondent's testimony is supported by the following: he testified that he promised to repay the Rs as soon as he refinanced his property but was prevented from doing so because of the *lis pendens* put on the property. However, the *lis pendens* was not registered until August 29, 2019, almost a year after the funds were to be repaid to the Rs.
>
> [33] Furthermore, the Respondent did not cross-examine either JR or MR whose testimony therefore remained unimpeached; also after testifying on March 2, 2022, the hearing took a short recess after which the Respondent did not return and therefore IIROC counsel could not cross-examine him.

[110] Reading the Merits Decision as a whole it appears that, as with the case of RM, the CIRO panel concluded that the fact that the money was given by JR and MR to Odorico in his personal name and the fact that Odorico gave a personal post-dated cheque (dated one month after the advance) as intended repayment of the advanced funds (plus 10%)--which facts could have indicated that the funds were a personal loan--were instead explained by JR's and MR's inexperience and complete trust in Odorico. The panel preferred JR's and MR's testimony that the money was not advanced as a personal loan to Odorico but was, instead, advanced for a guaranteed investment.

[111] We find that in arriving at its decision that Odorico also misappropriated investment funds from JR and MR, the CIRO panel overlooked or misapprehended material documentary evidence relevant to the fundamental question of whether the funds were advanced to Odorico as a personal loan. We also conclude that the CIRO panel's articulated supporting reason for finding Odorico's testimony that the funds were a personal loan to lack credibility is also explained by the CIRO panel overlooking or misapprehending material evidence.

[112] The CIRO panel's Merits Decision makes no reference whatsoever to the promissory note dated October 26, 2018 (**Promissory Note**) that MR testified was prepared by a friend of hers at her request and that she demanded Odorico sign.

[113] MR's evidence was that she took steps to have her friend prepare the Promissory Note and demand that Odorico sign it after Odorico advised JR and MR not to cash his October 26, 2018 post-dated cheque due to insufficient funds.[56] The

---

50 Exhibit 1, Record of Original Proceeding, Transcript, CIRO Merits Hearing, March 2, 2022 at p 39
51 *F.H. v MacDougall*, 2008 SCC 53; Merits Decision at para 14
52 Merits Decision at paras 28-34
53 Merits Decision at paras 28-29
54 Merits Decision at para 32
55 Merits Decision at paras 32-33
56 Exhibit 1, Record of Original Proceeding, Promissory Note dated October 26, 2018, Tab 5, p 27; Exhibit 1, Record of Original Proceeding, Transcript, CIRO Merits Hearing, March 1, 2022 at pp 33-34, 44-45

Promissory Note provides that Odorico promises to pay JR and MR the principal amount of $150,000 with interest calculated annually in arrears at the rate of 15% per annum on September 20, 2019.[57]

[114] The Promissory Note is a critical document that on its face supports Odorico's oral evidence that the money advanced to him by JR and MR was a personal loan, and not for investment by him on their behalf. The fact that the Promissory Note was a document that MR herself had someone prepare for her and she demanded Odorico sign is also significant evidence tending to confirm that the money was advanced to Odorico as a loan. MR's evidence about why she demanded that Odorico sign the Promissory Note is also consistent with a loan, or at best neutral. Neither JR nor MR gave any evidence at the CIRO hearing to explain why they required Odorico to sign a document that ordinarily connotes a loan (namely a promissory note) if the money they advanced to him was other than a personal loan. The entirety of MR's evidence about the reason for requiring Odorico to sign the Promissory Note (described by her as a "letter") was:[58]

> Q. ..Have you seen this document before?
>
> A. Yes.
>
> Q. And can you explain the circumstances of this document?
>
> A. It was a letter that I asked a friend of mine to draft up in order to give me, to give me some kind of peace of mind that the monies were going to be returned to me. So it was a letter that I drafted up. We asked Mr. Odorico to come to the house. I was extremely upset. I asked him, probably demanded that he sign this in order to make sure that I had some kind of information or proof that he was going to pay me back some kind of money, the money that we had given him.
>
> Q. Did you consider that this money was a loan, Mrs. R?
>
> A. It was an investment. He told JR it was a guaranteed investment opportunity. What he considered it to be…?

[115] JR's evidence about the reason for requiring Odorico to sign the Promissory Note (also referred to as a "letter" in his testimony) was:[59]

> Q. And what was the –do you know the circumstances of preparing this document?
>
> A. My wife, I'll let her speak to it, but she was getting very nervous that our monies were not put into some kind of investment account. So she just wanted, you'd have to ask her, but I think she just wanted something to prove that Mr. Odorico owed us this money.
>
> So he came over to the house one day, trying to explain the circumstances. My wife saw that I was very agitated and she made – she got him to sign this letter that she wrote. I didn't even know, to be honest with you.
>
> Q. Were you present that day when Mr. Odorico --
>
> A. Oh, I --
>
> Q.--came over?
>
> A. I was very much present. My wife was trying to get me to contain myself and I think she drafted up this letter.
>
> Q. All right. Did you see Mr. Odorico sign this letter?
>
> A. Oh, yes.
>
> Q. Thank you.
>
> A. And his intention was to pay us, pay us the money, but he would sign anything, he would, I guess, to appease her and put her mind at rest.

[116] The CIRO panel also made a factual finding that was directly inconsistent with the Promissory Note. This factual finding was identified by CIRO as support for its conclusion that Odorico's testimony that the funds were advanced as a personal loan was not credible. The relevant portion of the Merits Decision where the factual finding and rationale for finding Odorico's testimony to not be credible is reproduced below:[60]

---

57 Exhibit 1, Record of Original Proceeding, Promissory Note dated October 26, 2018, Tab 5, p 27
58 Exhibit 1, Record of Original Proceeding, Transcript, CIRO Merits Hearing, March 1, 2022 at p 44 line 20 to p 45 line 15
59 Exhibit 1, Record of Original Proceeding, Transcript, CIRO Merits Hearing, March 1, 2022 at p 33 line 7 to p 34 line 13
60 Merits Decision at para 32

> [32] …"The lack of credibility of the Respondent's testimony is supported by the following: he testified that he promised to repay the Rs as soon as he refinanced his property but was prevented from doing so because of the *lis pendens* put on the property. However, the *lis pendens* was not registered until August 29, 2019, almost a year after the funds were to be repaid to the Rs."

[117] The CIRO panel's finding reproduced above is predicated on the CIRO panel's apparent understanding that JR's and MR's funds were to be repaid by Odorico on October 26, 2018, the date of the post-dated cheque that Odorico provided to them. The CIRO panel failed to take into account the terms of the Promissory Note which, on its face, extended Odorico's obligation to repay the funds to September 20, 2019, a date that was *after* (and not before) the registration of the *lis pendens*.

[118] Although the CIRO panel's Merits Decision references at a high level the fact that JR and MR made a complaint to Odorico's former employer, CIBC Wood Gundy, when the money they advanced to Odorico was not returned to them,[61] the Merits Decision makes no reference whatsoever to the contents of the complaint letter from JR and MR dated September 23, 2020 (**Complaint Letter**).[62] The Complaint Letter sets out JR's and MR's characterization almost two years prior to their testimony at the CIRO hearing of the circumstances under which they advanced money to Odorico, as follows:[63]

> "Specifically, during the week of September 25, 2018, Mr. Odorico called us on more than one occasion to recommend an opportunity that would generate a return of 10% on **a $150,000.00 loan** in 30 days. As our investment advisor, we trusted Mr. Odorico and delivered the $150,000.00 to him on September 26, 2018. He told us the return of the capital was "guaranteed" and provided us with a personal post-dated cheque for $165,000.00 dated October 26, 2018. Mr. Odorico advised us that 10% was an appropriate rate of interest **for a loan of this nature.** He told us that he expected to receive funds from CIBC to cover the post-dated cheque. While we found it different that Mr. Odorico asked that the money be delivered to him personally, we trusted him as our advisor.
>
> …
>
> After Mr. Odorico left CIBC and Mr. GP took over as our advisor, we were led to believe that **Mr. Odorico was asking other CIBC clients to lend him personal funds**. Our relationship with CIBC ended and we moved our accounts to another financial institution…
>
> We understand that **Mr. Odorico owes a significant amount of money to other people, some of them with connections to CIBC.** We also understand that Mr. Odorico was let go by CIBC, however we were not advised of the circumstances directly by CIBC. Had we known the full extent of Mr. Odorico's situation, we likely could have acted sooner to increase the chances of recovering our funds"…[emphasis added]

[119] The fact that JR and MR themselves describe in their Complaint Letter the money as being advanced as "a loan" and refer to Odorico asking other clients to lend him funds is itself material, especially when considered in conjunction with the Promissory Note and the two other documents (the bank draft and the September 26, 2018, post-dated cheque) relevant to the advance of funds to Odorico by the Rs that were introduced into evidence at the CIRO hearing. From our review of the CIRO record the "loan" language in the Complaint Letter was not specifically drawn to the attention of the CIRO panel and neither JR nor MR was asked to explain it.[64] Nevertheless, we conclude that it was material enough that it ought to have factored into the CIRO panel's considerations.

[120] We reconvened the hearing of this application on July 18, 2023, to receive further submissions from the parties specifically on the manner in which the CIRO panel considered the Promissory Note and the Complaint Letter in arriving at its finding that Odorico misappropriated JR's and MR's funds.

[121] CIRO Staff acknowledged that neither the Promissory Note nor the Complaint Letter is referred to specifically in the Merits Decision. CIRO Staff submits that despite the fact that the Merits Decision does not refer to these documents, the CIRO panel did, in fact, consider them in resolving the conflict between the testimony about the advance of funds of JR and MR on the one hand, and Odorico on the other. The essence of this submission was that because the Promissory Note and the Complaint Letter are both part of the CIRO record, they necessarily were taken into account by the CIRO panel in arriving at its decision. CIRO Staff also emphasized that it is well-established that it is not necessary for a decision-maker to specifically address every piece of evidence in its reasons for decision, or set out every finding and every conclusion.[65]

---

61 Merits Decision at para 31

62 Exhibit 1, Record of Original Proceeding, Complaint letter from JR and MR to CIBCWG dated September 23, 2020, Tab 3, p 23; Exhibit 1, Record of Original Proceeding, Transcript, CIRO Merits Hearing, March 1, 2022 at pp 25, 41

63 Exhibit 1, Record of Original Proceeding, Complaint letter from JR and MR to CIBCWG dated September 23, 2020, Tab 3 at p 24

64 Exhibit 1, Record of Original Proceeding, Transcript, CIRO Merits Hearing, March 1, 2022 at p 25, line 19 to p 26, line 7 and p 41, lines 16-21

65 *Clifford v Ontario (Attorney General)*, 2009 ONCA 670 (***Clifford***) at paras 17, 29, 30 and 40

[122] OSC Staff took no position on the manner in which the CIRO panel considered the Promissory Note and Complaint Letter in arriving at its decision that Odorico misappropriated JR's and MR's funds. Instead, OSC Staff emphasized certain principles, including that it is not necessary for reasons for decision to address every piece of evidence that is adduced and the importance of this Tribunal deferring to the knowledge and expertise of SRO's as well as to their factual determinations.

[123] Odorico made no submissions specific to the manner in which the Promissory Note and Complaint Letter were considered by the CIRO panel.

[124] We accept and agree with the principle advanced by both CIRO Staff and OSC Staff; namely, that a tribunal need not refer to every piece of evidence or set out every finding or conclusion in the process of arriving at its decision.[66] However, we also note that on a hearing and review we are not limited to an assessment of the adequacy of the CIRO panel's reasons from a functional perspective (that is, from the perspective of whether the reasons are intelligible).[67] The *Canada Malting* test imports additional considerations.

[125] In the circumstances of this case, the Promissory Note and the Complaint Letter were significant, important and "core" evidence. It was significant documentary evidence that was actually and potentially contradictory to the CIRO panel's finding that Odorico misappropriated (rather than personally borrowed) JR's and MR's funds and, in our view, ought to have been considered by the CIRO panel when it considered the contradictory oral evidence and decided that JR's and MR's evidence was preferred. As such, the CIRO panel's failure to address this evidence in the Merits Decision is a clear indication that the CIRO panel overlooked or misapprehended material evidence. The CIRO panel's finding supporting its adverse credibility determination against Odorico is also a further clear indication that the CIRO panel overlooked or misapprehended the Promissory Note.

[126] Only four documents (including the Promissory Note and the Complaint Letter) related to the Rs advancing funds to Odorico were introduced into evidence in the CIRO hearing. All four of these documents are on their face inconsistent or potentially inconsistent with the CIRO panel's decision that the R's funds were not advanced to Odorico as a personal loan. The CIRO panel's determination of the issue rested on directly contradictory evidence of JR and MR and Odorico with such contradiction being resolved at least in part upon an adverse credibility finding that was supported by a misapprehension of the evidence. Accordingly, we are satisfied that the CIRO panel's errors in overlooking or misapprehending this key documentary evidence impacted the panel's finding. In sum, we are satisfied that the errors were of consequence to the CIRO panel's decision.[68]

[127] In so-concluding, we have specifically taken into account the fact that Odorico did not return to the hearing to be cross-examined after giving his evidence-in-chief. We agree with CIRO Staff that Odorico's failure to return to be cross-examined could be relevant to the weight accorded to Odorico's testimony. However, this does not, in our view, alter our conclusion that the CIRO panel's failure to take into account or misapprehension of the Promissory Note and the "loan" language in the Complaint Letter amounted to an error of consequence.

4.4.5.c Unauthorized trading in RM accounts

[128] The CIRO panel found that Odorico did not obtain RM's authorization to make trades in her accounts and that he did not have discretionary trading authority over these accounts.[69] The panel's reasons indicate that the panel accepted RM's "uncontroverted evidence" in this regard and found that Odorico did not provide any evidence, verbal or documentary, to the contrary.[70]

[129] Our review of the record indicates that Odorico did, in passing, and only at a very high level, give some testimony going to the issue of trading authorization. The extent of this testimony is reproduced below:[71]

> "She became my client, and I basically managed her account to the best of my ability with professionalism and full integrity, and **I tried to explain to her every time I was doing a trade**, and she trusted me, you know, she trusted me, and I did the best I could do and I made her money." [emphasis added]

[130] In the circumstances, we have concluded that the CIRO panel neither erred in law, nor proceeded on an incorrect principle, nor misapprehended nor overlooked material evidence in finding that Odorico engaged in unauthorized trading in RM's accounts. We are satisfied that it was reasonably available to the CIRO panel to conclude as it did based on the record before it that RM's evidence was sufficient to establish the contravention on a balance of probabilities.

---

66 *Clifford* at para 29
67 *Clifford* at paras 29-32
68 *Eley* at paras 61-64
69 Merits Decision at paras 36-39
70 Merits Decision at para 37
71 Exhibit 1, Record of Original Proceeding, Transcript, CIRO Merits Hearing, March 2, 2022 at p 44, lines 16-21

4.4.5.d Failure to cooperate with CIRO investigation

[131] We have considered the CIRO panel's reasons for concluding that Odorico failed to cooperate with the CIRO investigation. The CIRO investigator's evidence at the merits hearing about Odorico's multiple failures to cooperate was indeed uncontroverted and unchallenged. Indeed, as noted above, Odorico did not deny in his oral submissions in this hearing that he failed to cooperate with the CIRO investigation.

[132] As appears from the CIRO panel's reasons, the panel duly considered, and rejected, Odorico's position as set out in the Response that he filed in the CIRO proceeding that his non-cooperation with the CIRO investigation was either explained or excused by the fact that he was allegedly "distracted with the pandemic and other pressing legal and financial issues and did not have the capacity to respond".[72] We note that Odorico did not address or provide evidence relevant to this position at the CIRO merits hearing.

[133] We see no basis that might warrant intervention with the CIRO panel's finding that Odorico failed to cooperate with the CIRO investigation.

4.5 What is the appropriate remedy for our finding of reversible error in connection with the CIRO panel's conclusion that Odorico misappropriated MR's and JR's funds?

[134] When we reconvened the hearing of this application on July 18, 2023, we also asked the parties for submissions on the appropriate remedy in the event that we should find that there was a reversible error in respect of the CIRO panel's finding of misappropriation of MR's and JR's funds.

[135] CIRO Staff submits that the Tribunal has a wide discretion in fashioning a remedy, including that the Tribunal can substitute its own decision for that of the CIRO panel. CIRO Staff submits that in this case we should not simply dismiss the particular misappropriation allegation (or charge) or substitute our own decision. CIRO Staff submits that we should instead adopt the approach that was taken by the Tribunal in *Northern Securities*[73] where the allegation (or charge) in question was sent back to CIRO Staff to decide whether it is important from a regulatory perspective that the allegation be reheard in a new hearing (or hearing *de novo*) before a different CIRO panel.

[136] CIRO Staff did not offer any particular guidance to us as to the relevant factors or considerations that we should take into account in deciding whether to send the question back to CIRO Staff.

[137] OSC Staff did not take a position on the appropriate remedy in this case. Instead, OSC Staff made submissions about the applicable principles and considerations in fashioning a remedy, including that:

a. the Tribunal has broad discretion to fashion an appropriate remedy;[74]

b. any remedial order issued by the Tribunal should be the least intrusive necessary to accomplish the regulatory objectives;[75]

c. in fashioning a remedy we should remain deferential to SRO knowledge and expertise, including to the fact-finding of the SRO;[76]

d. we should be careful not to substitute our own decision for that of the SRO unless all necessary evidence and factual findings are available to us, to avoid usurping the role of the SRO; and

e. efficiency is an important consideration.

[138] Odorico made only limited submissions on the issue of the appropriate remedy. His submissions were that he does not want further litigation and wants to resolve this matter as quickly and as fairly as possible.

[139] We have considered the parties' submissions on appropriate remedy, including the submissions of OSC Staff about the applicable principles and considerations we should take into account. In the particular circumstances of this case, including because the CIRO panel's decision about misappropriation raises significant credibility issues and contradictory oral evidence and we have not had the benefit of hearing the relevant witnesses' testimony, we have decided to set aside the CIRO panel's decision that Odorico misappropriated JR's and MR's funds and we refer the matter back to CIRO for disposition.

---

72 Merits Decision at para 40
73 *Northern Securities* at para 343
74 *Eco Oro Minerals Corp (Re)*, 2017 ONSEC 23 (***Eco Oro***) at para 164; *Northern Securities* at para 53
75 *Eco Oro* at para 164; *Northern Securities* at para 53
76 *Northern Securities* at para 61

[140] Similar to the approach taken by the Tribunal in *Northern Securities*[77], CIRO Staff shall be entitled to decide whether this allegation of misappropriation shall be re-heard in a new hearing before a different CIRO panel. While there may be some practical challenges and inefficiencies related to rehearing the matter, we have concluded on balance that CIRO Staff should have the option to decide whether the allegation should be re-heard if CIRO Staff considers that to be important from a regulatory perspective. Any decision by CIRO Staff to have a different CIRO panel re-hear the misappropriation allegations shall be made by CIRO Staff and communicated to Odorico, OSC Staff and to the Tribunal via the Registrar's office within 30 days from the release of our further decision (referred to below) as to the effect on sanctions of setting aside the CIRO panel's decision that Odorico misappropriated JR's and MR's funds, failing which the allegation of misappropriation of JR's and MR's funds shall be dismissed.

[141] Consistent with our decision to set aside the CIRO panel's decision that Odorico misappropriated JR's and MR's funds, we also set aside the portion of the CIRO panel's disgorgement order that corresponds to the finding that Odorico misappropriated JR's and MR's funds. Accordingly, the amount of the disgorgement order is reduced by $150,000 (from $579,000 to $429,000), which amount corresponds to the amount of the alleged funds misappropriated from JR and MR.

[142] We also request submissions in writing from the parties as to the effect, if any, that setting aside the finding that Odorico misappropriated JR's and MR's funds should have on the remaining orders made by the CIRO panel further to the Sanctions Decision where such orders were not made solely with respect to the finding of misappropriation for JR's and MR's funds but were also made in light of other contraventions found by the CIRO panel—namely the orders (i) imposing a fine of $50,000 for "contravention 1" which included both the misappropriation of funds from RM and the misappropriation of funds from JR and MR, (ii) permanently banning Odorico from registration and (iii) for payment of CIRO's investigation and prosecution costs in the amount of $25,000.

4.6 Did the CIRO panel err in law by imposing sanctions that were harsh and excessive?

[143] Odorico also asks that the Sanctions Decision be set aside and that we find that a permanent registration ban and the financial penalties ordered against him were excessive and unfair in the circumstances.

[144] Separate and apart from the considerations above about sanctions relating to the misappropriation finding that we have set aside, we find that the sanctions imposed by the CIRO panel were reasonable. We do not find that the CIRO panel erred in law by imposing sanctions that were harsh and excessive.

[145] CIRO Staff submits that the CIRO panel considered the facts of this case on the evidence before it, the IIROC Sanctions Guidelines and relevant caselaw.

[146] CIRO Staff further submits that in assessing the penalty related to misappropriation, the CIRO panel considered the number of clients impacted, the amounts involved and the period of time over which the conduct occurred. Similarly, they considered the number of clients, number of trades and period of time related to the finding of unauthorized trading. They noted that the failure to cooperate was a one-time event but that this has been recognized by previous panels as a serious contravention.[78] Each of the above contraventions was found to be serious. The CIRO panel also considered the financial benefit to Odorico, noting that $579,000 was not returned to clients.

[147] With respect to the permanent ban ordered, CIRO Staff submits that in this case it is not "harsh and excessive", rather, it is a protective and preventative sanction that achieves the goals of specific deterrence and general deterrence. The CIRO panel considered the quasi-criminal nature of the misconduct, found that Odorico cannot be trusted to act in an honest and fair manner, and that the contraventions involved significant harm to the investing public and the integrity of the securities industry.

[148] Finally, CIRO Staff submit that prior cases have noted that "the [Tribunal] accords even greater deference in matters of sanctions and recognizes that [CIRO] hearing panels will have greater familiarity with IIROC's regulations and sanction guidelines."[79]

[149] We find that the CIRO panel's approach to determining the appropriate sanctions is consistent with the purpose and principles applicable to regulatory sanctions, the IIROC Sanction Guidelines and prior CIRO decisions. The CIRO panel considered the protective, preventive and prospective nature of sanctions and the importance of fostering investor protection and improved industry standards and practices, the seriousness of the misconduct and the need for specific and general deterrence. We do not find that the CIRO panel erred in law by imposing sanctions that were harsh and excessive.

---

77 *Northern Securities* at para 343
78 *Nelson (Re)*, 2019 IIROC 22 at paras 36 and 38
79 *Eley* at para 134

5. CONCLUSION

[150] For the reasons set out above we have set aside the CIRO panel's finding that Odorico misappropriated JR's and MR's funds. We have also set aside the portion of the CIRO panel's disgorgement order that is attributable to this finding. After receiving and considering further written submissions from the parties as detailed above in paragraph 4.5[142] we will determine the effect, if any, our setting aside of the CIRO panel's finding that Odorico misappropriated JR's and MR's funds shall have on those portions of the CIRO panel's additional sanctions orders that are attributable to the misappropriation finding.

[151] CIRO Staff shall be entitled to decide whether the allegation of misappropriation of JR's and MR's funds shall be re-heard in a new hearing before a different CIRO panel. Any decision by CIRO to re-hear the misappropriation allegations shall be made by CIRO and communicated to Odorico, OSC Staff and to the Tribunal via the Registrar's office within 30 days from the release of our further decision contemplated in the preceding paragraph. Failing such communication within that time frame, the allegation of misappropriation of JR's and MR's funds shall be dismissed.

[152] We also order that the transcript of the confidential or non-public portion of the March 7, 2023, hearing is to be made public, with the following redactions made:

a. the words before "I'm still dealing with" on line 21, page 4;

b. the words between "aside from" on line 3, page 5 to the end of line 5, page 5;

c. the word between "know" and "or doctor" on line 2, page 7;

d. the words between "Due to my" and "okay" on line 13, page. 8;

e. the word between "chief" and "there" on line 25, page 8;

f. the words after "doctor" on line 4, page 11 to the end of line 8, page 11;

g. the words after "life" on line 11, page 11 to the end of line 12, page 11;

h. the words between "fake" on line 16, page 11 and "I mean" on line 18, page 11;

i. the words after "things" on line 19, page 11 to the end of line 19, page 11;

j. the words between "cut out" on line 22, page 11 and "Can you" on line 24, p. 11;

k. the words after "Odorico" on line 25, page 11 through to the end of line 1, page 12;

l. the words between "I had" and "so" on line 4, page 13;

m. the word between "not" and "to realize" on line 11, page 13;

n. the words on line 19, page 13;

o. the first word on line 20, page 13;

p. the words between "I had" and "they" on line 11, page 16;

q. the words between "your" and "prevented" on line 19, page 16;

r. the words after "realize what" on line 19, page 17 to the end of line 19;

s. the words on lines 21 and 22, page 17;

t. the words between "on" on line 24, page 17 and "I didn't" on line 26, page 17;

u. the words on line 9, page 18;

v. the words after "to me" on line 16, page 18 to the end of line 17, page 18;

w. the words after "warning" on line 27, page 18 to the end of line 27, page 18; and

x. the entry on page three of the word index to the transcript between "seriousness" and "session".

Dated at Toronto this 13th day of October, 2023

“Andrea Burke”

“Sandra Blake”

“Dale R. Ponder”

This page intentionally left blank

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA/CIRO Staff Notice 23-331 Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Markets

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA/CIRO STAFF NOTICE 23-331
REQUEST FOR FEEDBACK ON DECEMBER 2022 SEC MARKET STRUCTURE PROPOSALS AND POTENTIAL IMPACT ON CANADIAN CAPITAL MARKETS

October 19, 2023

I. Introduction

On December 14, 2022, the United States Securities and Exchange Commission (**SEC**) published for comment four proposals to significantly change certain fundamental elements of U.S. market structure (**SEC Proposed Amendments**).[1] The comment period closed on March 31, 2023.

The Canadian Securities Administrators (**CSA**) and the Canadian Investment Regulatory Organization (**CIRO**) (together **we**) have been reviewing the SEC Proposed Amendments and considering their impact on Canadian equity market structure should the SEC adopt any or all of them in any form. We are publishing this notice to solicit views and to seek comment on certain aspects of the SEC Proposed Amendments, with a focus on the potential impacts on Canadian capital markets, including, to the extent it can be estimated, compliance costs, and the potential policy responses. Neither the CSA nor CIRO is proposing any changes to the regulatory framework in Canada at this time. Any proposed changes that may result from this consultation will be published for comment in the normal course.

While it is not certain that any of the SEC Proposed Amendments will be adopted as final rules as proposed or even adopted at all, we are seeking input at this time as the SEC has announced its intention to finalize the Proposed Amendments in April of 2024,[2] and any response by the CSA or CIRO must follow the normal rule-making process.

Section II of this notice outlines the core components of the SEC Proposed Amendments. Section III focuses on certain elements of the SEC Proposed Amendments that may have implications on Canadian capital markets and ask specific questions on which we would like stakeholder feedback to further inform our analysis of the issues and decide on an appropriate course of action. We also share our preliminary views on whether any changes may be required to the regulatory regime in Canada as a result of the SEC Proposed Amendments.

1 *Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders* published at www.sec.gov/rules/proposed/2022/34-96494.pdf;
Regulation Best Execution published at www.sec.gov/rules/proposed/2022/34-96496.pdf;
Disclosure of Order Execution Information published at: www.sec.gov/rules/proposed/2022/34-96493.pdf;
Order Competition Rule published at www.sec.gov/rules/proposed/2022/34-96495.pdf;

2 https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=3235-AN23

II. Overview of SEC Proposed Amendments

Below is a brief overview of the key components of the four SEC Proposed Amendments.

Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders[3]

The SEC proposes to amend certain rules under Regulation NMS[4] to:

1. adopt variable minimum pricing increments, or tick sizes, for the quoting and trading of National Market System (**NMS**) securities. This should enable pricing, for quotes and trades, at sub-penny increments as the current minimum pricing increment for quotes of USD 0.01 causes many NMS stocks to be price constrained;

2. reduce the limit on fees that can be charged by a trading center (as defined by the SEC rules) to take into account lower, sub-penny, pricing increments proposed;

3. accelerate the implementation of the odd-lot information and round lot[5] definitions under the previously-adopted (but not yet implemented) Market Data Infrastructure Rules (**MDI Rules**). This should enhance transparency about better priced round lot and odd lot orders available in the market.

Regulation Best Execution[6]

One of the SEC Proposed Amendments relates to best execution and would introduce a best execution regulatory framework through SEC rules, in addition to existing best execution obligations under the rules of the Financial Industry Regulatory Authority Inc. (**FINRA**) and the Municipal Securities Rulemaking Board (**MSRB**).

The proposed SEC best execution standards would apply to all securities, including options, NMS stocks, corporate and municipal bonds, and digital assets that are securities or government securities under federal securities laws. Further, the SEC best execution proposal includes provisions to address potentially conflicted transactions with retail customers, including payment for order flow (**PFOF**) to retail brokers, and require quarterly and annual review processes. The proposed SEC best execution standards would co-exist with FINRA and MSRB standards, and a dealer that would also be subject to the FINRA and/or MSRB rules would need to comply with the strictest standards.

Disclosure of Order Execution Information[7]

The SEC proposes to update the disclosure required under Rule 605 of Regulation NMS, which requires "market centers" (as defined) to disclose order execution quality information for NMS securities. The SEC Proposed Amendments would expand the definition of "covered orders" as well as the scope of entities subject to Rule 605. Additionally, the SEC proposes to amend certain reporting categories and information required to be reported under Rule 605.

The purpose of the SEC Proposed Amendment respecting disclosure of order execution information is to: i) modernize and enhance execution reporting in order to better enable investors to compare and evaluate execution quality among different U.S. trading venues and U.S. broker-dealers; and ii) help promote competition among market centers and broker-dealers.

Order Competition Rule[8]

One of the SEC Proposed Amendments is intended to enhance competition for the execution of tradeable orders of individual investors by requiring certain orders to be exposed to competition in open auctions before being executed internally by a trading venue that restricts order-by-order competition.

In the U.S., a large proportion of retail orders are traded off-exchange by over-the-counter (**OTC**) market makers, who generally provide PFOF to retail brokers and then execute these orders internally or route them to an exchange. Consequently, other market participants are typically not provided with an opportunity to interact with these retail orders. The SEC Proposed Amendment is intended to promote competition and transparency by requiring most retail orders to first be routed to a qualified auction operated by an "open competition trading center" (as defined by the SEC) prior to being routed back to the OTC market makers, who could then execute the order internally.

3 www.sec.gov/files/34-96494-fact-sheet.pdf.
4 17 C.F.R. §242.600 – 242.614.
5 A "round lot" is usually referred to as a "board lot" in Canadian equity markets.
6 www.sec.gov/files/34-96496-fact-sheet.pdf.
7 www.sec.gov/files/34-96493-fact-sheet.pdf.
8 www.sec.gov/files/34-96495-fact-sheet.pdf.

III. Request for Stakeholder Feedback

Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders

i) Variable Minimum Pricing Increments

According to the SEC, many NMS securities are price constrained by the minimum USD 0.01 pricing increment required under SEC Rule 612 and thus are not able to be priced by market forces. More specifically, in the SEC's view, U.S. data demonstrates that a significant percentage of executions occur in sub-penny increments as a result of midpoint executions and sub-penny price improvement provided by U.S. OTC market makers who internalize retail orders or through retail liquidity programs on U.S. exchanges.

In order to promote fair and orderly markets as well as fair competition and equal regulation between U.S. OTC market makers, exchanges, and alternative trading systems, the SEC is proposing to assign one of four minimum pricing increments, ranging from USD 0.001 to 0.01, for the quoting and trading of NMS securities priced at or above USD 1.00 per share based on the time-weighted average quoted spread on U.S. marketplaces during an evaluation period, with the minimum pricing increment recalculated on a quarterly basis.

In Canada, CIRO's Universal Market Integrity Rules (**UMIR**) 6.1 (1) prohibits the entry of orders at a price including a fraction of a cent, other than half-penny increments in respect of orders with a price of less than CAD 0.50.

CIRO analyzed trading in Canadian listed securities from January 1, 2023 to April 30, 2023 (**study period**). On average, 140 securities out of 2,944 would be considered tick-constrained and would have smaller trading increments if a similar rule were adopted in Canada. The trading in these securities accounted for 39% of the volume, 16% of the value and 26% of the trades during the study period. An average of 35 out of the 140 tick-constrained securities are inter-listed with U.S. exchanges.

Question 1: If adopted as proposed by the SEC, please provide your views regarding whether Canada should harmonize with an amended SEC rule, including with respect to:

(a) the methodology used to calculate minimum pricing increments, including, source of data (which marketplaces and what entity should be responsible for calculation) and time periods during which the metrics are calculated,

(b) securities to which any amended Canadian price increments would apply (e.g., inter-listed securities only or all or some classes of securities, exchange-traded funds and/or other exchange-traded securities),

(c) treatment of situations where the use of an aligned methodology results in different trading increments between inter-listed securities traded in Canada and the U.S. (i.e., where the time-weighted average quoted spreads in Canada and the U.S. are different for the same security).

Question 2: If Canadian requirements as related to minimum pricing increments are not amended in response to an amended SEC rule as proposed:

(a) Would marketplace participants send less order flow to Canadian marketplaces in favor of U.S. trading venues?

(b) Does the difference in value between the Canadian and the American dollars matter in your analysis?

Question 3: Concerns have been raised in relation to:

(a) operational resiliency and systems readiness should the number of pricing increments be increased, especially where they would be periodically adjusted on a per-security basis, and

(b) increase in message traffic (i.e., electronic order and trade messages) that will result from an increase in the number of pricing increments.

Please discuss whether you share these concerns.

Question 4: It has been suggested that any Canadian proposal to amend minimum pricing increments would introduce complexity in managing orders. Please provide your views in this regard, including as related to:

(a) complexities associated with the frequency at which minimum trading increments could change,

(b) the necessary lead-time between establishment and implementation of new minimum trading increments both initially and on an ongoing basis,

(c) challenges with management of existing orders entered on marketplaces at prices that have become invalid trading increments (may be particularly relevant for orders of retail investors that are entered with longer expiry dates (i.e., "GTC" orders)),

(d) investor education challenges associated with an amended approach to minimum pricing increments.

Question 5: As modifying trading increments in Canada would impact the determination of a "better price"[9] under UMIR, please discuss whether Participants (as defined in UMIR 1.1) would still be providing meaningful price improvement in circumstances where a "better price" is required.[10]

Question 6: Please provide any views on expected outcomes (positive and negative) associated with any changes to minimum trading increments, including as related to expected quoted volume at each price increment. Additionally, please provide your views on what metrics could be used to evaluate whether any new approach to minimum trading increments results in positive or negative outcomes.

ii) Reduce Access Fee Caps

In connection to its proposal to introduce lower variable minimum pricing increments, the SEC is proposing to reduce the access fee caps to reflect the proposed lower pricing increments. Currently, SEC Rule 610 of Regulation NMS caps exchange access fees at USD0.003 per share for securities priced greater than USD1.00 and 0.3% for securities priced below USD1.00, both of which apply to "maker-taker" and 'taker-maker" fee models.[11]

For securities priced USD1.00 or more, the SEC is proposing to introduce a variable structure for access fee caps and reduce the prescribed cap levels to USD-0.0005/share and 0.001/share based on tick size. For securities priced less than USD1.00, the access fee cap would be 0.05% of the quotation price.

In Canada, subsection 6.6.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**) caps fees charged by certain marketplaces for executing an order against a displayed order based on whether the security is inter-listed or non-inter-listed. Fee caps for inter-listed securities are set at CAD0.0030 per share for securities priced greater than CAD1.00, and CAD0.0004 per share for securities priced below CAD1.00, while fee caps for non-inter-listed securities are set at 0.0017 per share for securities priced greater than CAD1.00, and CAD0.0004 per share for securities priced below CAD1.00. The fee caps only apply to "maker-taker" fee models.

Question 7: Please discuss whether fee caps should also apply to "taker-maker" fee models and, if so, whether their fee caps should be different.

Question 8: Generally, the exact fee or rebate for an order cannot be determined until after an execution occurs, as discounted fees or credits are determined by marketplaces at the end of the month, based on trading during the month of a Participant. To be able to calculate the full cost of a transaction at the time of execution, the SEC also proposes to require that all exchange fees and rebates be determinable at the time of execution. U.S. trading venues would be required to set such volume thresholds or tiers using volume achieved during a stated period *prior* to the assessment of the fee or rebate so that market participants are able to determine what fee or rebate level would be applicable to any submitted order at the time of execution.

Please discuss whether we should take a similar approach in Canada.

Question 9: If adopted as proposed by the SEC, please provide your views on a Canadian approach to fee caps, including with respect to:

(a) harmonization with an amended SEC rule, including with respect to application to inter-listed and/or non-inter-listed securities,

(b) methodology used, including with respect to:

---

9 UMIR 1.1 defines a "better price" to mean, in respect of each trade resulting from an order for a particular security:
(a) in the case of a purchase, a price that is at least one trading increment lower than the best ask price at the time of the entry of the order to a marketplace provided that, if the best bid price is one trading increment lower than the best ask price, the price shall be at least one-half of one trading increment lower; and
(b) in the case of a sale, a price that is at least one trading increment higher than the best bid price at the time of the entry of the order to a marketplace provided that, if the best ask price is one trading increment higher than the best bid price, the price shall be at least one-half of one trading increment higher.

10 For example, see the requirements respecting dark liquidity under UMIR 6.6 as well as the ability to execute intentional crosses at fractional trade increments provided the execution price is a "better price" for both the order to purchase and the order to sell under UMIR 6.1(3).

11 The "maker-taker" marketplace fee model charges a fee for the execution of an order that removes liquidity from an order book and pays a rebate to the provider of liquidity for the same transaction.
The "taker-maker" fee model pays a rebate to an order that removes liquidity from an order book and charges a fee for the execution of an order that provides liquidity.

i. application to all securities, regardless of price,

ii. consideration of a fee cap that reflects tick size, similar to the methodology proposed by the SEC, and

iii. consideration of a percentage-based fee cap for securities priced under CAD1.00.

iii) Enhance Transparency about Better Priced Orders Available in the Market

On December 9, 2020, the SEC adopted the MDI Rules, but has not set an effective date for them. These rules expanded the content of core market data that will be made available for dissemination in the NMS and adopted a new decentralized model for its consolidation, collection, and dissemination.

The MDI Rules amendments relevant to the SEC Proposed Amendments discussed in this notice are with respect to the Regulation NMS Amendments regarding the inclusion of a definition for "round lots," as opposed to relying on exchange rules, and to require odd-lot order details be made available on market data feeds.

In the U.S., information on NMS stock quotations is provided in round lots, which, until the round lot definition adopted pursuant to the MDI Rules is implemented, continues to be defined in exchange rules, which for most NMS stocks is 100 shares. To increase transparency about the best priced quotations available in the market, the U.S. MDI Rules specifically prescribe the following round lot size based on its share price:

(i) for NMS stocks priced $250.00 or less per share, a round lot will be 100 shares;

(ii) for NMS stocks priced $250.01 to $1,000.00 per share, a round lot will be 40 shares;

(iii) for NMS stocks priced $1,000.01 to $10,000.00 per share, a round lot will be 10 shares; and

(iv) for NMS stocks priced $10,000.01 or more per share, a round lot will be 1 share.

For Canadian equity (or similar) securities, CIRO's UMIR defines "standard trading unit" to mean:

(i) 1,000 units of a security trading at less than $0.10 per unit,

(ii) 500 units of a security trading at $0.10 or more per unit and less than $1.00 per unit, and

(iii) 100 units of a security trading at $1.00 or more per unit.

In Canada, any order with volume less than a standard trading unit is considered an odd lot order. Odd lot orders are not currently considered in the national best bid and offer as they are considered "special terms orders" that do not trade in regular order books. Despite this, information about odd lot orders is readily available in marketplace data feeds.

Our preliminary view is that enhancing the transparency of better priced orders does not need to be addressed in Canada. The transparency of order and trade data is sufficient in Canada due to the availability of odd lot data and the lack of off-exchange trading.

Question 10: Please discuss if you share our assessment and provide any additional considerations in this area.

Regulation Best Execution

NI 23-101 and CIRO's Investment Dealer and Partially Consolidated (**IDPC**) Rules[12] define "best execution" as obtaining the most advantageous execution terms for a client order reasonably available under the circumstances. Dealers are required to have appropriate policies and procedures and make reasonable efforts to achieve best execution. Factors to consider include price, overall cost of the transaction, liquidity, and speed and certainty of execution. Dealers should regularly review their best execution policies and procedures, and at least annually according to CIRO IDPC Rules.[13]

With respect to the provision of the SEC Proposed Amendment relating to best execution to address potentially conflicted transactions in connection to PFOF, we note that UMIR 7.5 has the effect of prohibiting PFOF by a dealer.

Our preliminary view is that the SEC Proposed Amendments in connection to Regulation Best Execution are not dissimilar to the existing best execution requirements in Canada and therefore, should likely have no implications for the Canadian best execution regime and no impact on Canadian capital markets.

[12] IDPC Rule 3100 Part C – Best Execution of Client Orders.
[13] IDPC Rule section 3126 – Review of best execution policies and procedures.

Question 11: Please discuss if you share our assessment and provide any additional considerations in this area.

Disclosure of Order Execution Information

Currently, the Canadian securities regulatory framework does not include requirements for disclosure by dealers and marketplaces of information related to order execution quality.

In 2007[14] and 2008,[15] the CSA published for public comment certain amendments to the relevant national instruments that would have introduced such disclosure requirements. In particular, marketplaces would have been required to publish monthly reports on liquidity, trading statistics and speed and certainty of execution, similar to SEC Rule 605.

Dealers would have been required to publish quarterly reports on routing of orders when acting as agent, including information as to which marketplaces orders were being routed to for execution, and specifying the percentage of those orders routed at the direction of the client as opposed to the dealer's discretion, similar to SEC Rule 606.

Since the public comments received in response to these proposals were mixed and did not communicate a clear stakeholder position, a decision was made at that time to not proceed with the proposals, but rather to continue to monitor developments in other jurisdictions regarding best order execution reporting requirements, and to monitor the impact of the evolving multiple marketplace environment.

Our preliminary view is that, since we do not have equivalent disclosure requirements as SEC Rule 605, the SEC Proposed Amendments with respect to disclosure of order execution information should not affect Canadian markets.

Question 12: Please discuss if you share our assessment and provide any additional considerations in this area.

Order Competition Rule

Under National Instrument 21-101 *Marketplace Operation*, an "exchange-traded security" is a security listed on a recognized exchange. Correspondingly, CIRO's UMIR 6.4(1) prohibits any marketplace participant from trading in or participating in a trade in listed securities by means other than entry of an order on a marketplace unless an exemption is available. Additionally, Companion Policy 21-101CP *Marketplace Operation* clarifies that two characteristics of a marketplace are that it brings together orders for securities of multiple buyers and sellers and that it uses established, non-discretionary methods under which the orders interact with each other.

Our preliminary view is that the issues addressed by the SEC Proposed Amendment concerning order competition do not exist in Canada. In Canada, orders are generally not permitted to be executed internally by a trading venue or dealer that restricts order-by-order competition.

Question 13: Please discuss if you share our assessment and provide any additional considerations in this area.

IV. Next Steps

We will continue to engage in dialogue with stakeholders and endeavour to discuss and coordinate any potential rule changes with our U.S. colleagues, where appropriate. Any proposals to introduce or amend requirements under securities law or CIRO rules will be published in separate notices for comment. However, in the interim, we welcome any input or comments by **December 4, 2023** on potential impacts of the SEC Proposed Amendments on Canadian capital markets.

V. Questions

Questions and comments may be referred to:

Tim Baikie Senior Legal Counsel, Market Regulation Ontario Securities Commission tbaikie@osc.gov.on.ca	Yuliya Khraplyva Legal Counsel, Market Regulation Ontario Securities Commission ykhraplyva@osc.gov.on.ca
Alex Petro Trading Specialist, Market Regulation Ontario Securities Commission apetro@osc.gov.on.ca	Serge Boisvert Senior Policy Advisor Direction de l'encadrement des activités de négociation Autorité des marchés financiers serge.boisvert@lautorite.qc.ca

[14] See Notice and Proposed Amendments.
[15] See Notice and Proposed Amendments.

Xavier Boulet Senior Policy Advisor Direction de l'encadrement des activités de négociation Autorité des marchés financiers xavier.boulet@lautorite.qc.ca	Jesse Ahlan Senior Regulatory Analyst, Market Structure Alberta Securities Commission jesse.ahlan@asc.ca
Michael Grecoff Securities Market Specialist British Columbia Securities Commission MGrecoff@bcsc.bc.ca	Kent Bailey Senior Policy Advisor, Market Regulation Policy Canadian Investment Regulatory Organization kbailey@iiroc.ca

This page intentionally left blank

B.2
Orders

B.2.1 Veji Holdings Ltd.

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 466

REVOCATION ORDER

VEJI HOLDINGS LTD.

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

Background

¶ 1 Veji Holdings Ltd. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator or securities regulatory authority in each of British Columbia (the Principal Regulator) and Ontario (each a Decision Maker) respectively on May 8, 2023.

¶ 2 The Issuer has applied to each of the Decision Makers under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207) 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

¶ 4 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

¶ 5 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 Makers to make the decision.

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

¶ 7 October 5, 2023

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

OSC File #: 2023/0402

This page intentionally left blank

B.3
Reasons and Decisions

B.3.1 Netcoins Inc.

Headnote

Application to renew time-limited relief from audited financial statement relief (one year only), suitability requirement, prospectus requirement and trade reporting requirements – relief to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, disclosure and reporting requirements – relief is time-limited to allow the Filer to operate while seeking registration as an investment dealer and membership with CIRO – relief will expire upon two (2) years – conditions include requirement to submit application to become registered as an investment dealer no later than 12 months after the date of the decision and requirement to submit an application to become a CIRO member no later May 15, 2024 – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers – OSC staff unlikely to recommend audited financial statement relief to this filer or other filers in the future absent exceptional circumstances.

Statute cited

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

Instrument, Rule or Policy cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 12.10(2) and 13.3.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

October 6, 2023

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

AND

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

AND

IN THE MATTER OF
NETCOINS INC.
(the Filer)

DECISION

Background

¶ 1 As set out in Joint CSA/IIROC Staff Notice 21-329 Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements (**Staff Notice 21-329**) and CSA Staff Notice 21-327 Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (**Staff Notice 21-327**), securities legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token (the **Crypto Assets**) because the user's contractual right to the Crypto Asset (**Crypto Contract**) may itself constitute a security and/or a derivative.

To foster innovation and respond to novel circumstances, the Canadian Securities Administrators (**CSA**) have considered an interim, time limited registration that would allow CTPs to operate within a regulated framework, with regulatory requirements tailored to the CTP's operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer is currently registered in all provinces in the category of restricted dealer. The Filer previously applied for and received exemptive relief in a decision dated September 29, 2021 (the **First Decision**). The Filer also applied for a revocation of the First Decision and obtained a new decision to replace it on March 24, 2022 (the **Second Decision**). Each of the First Decision and Second Decision (collectively the **Prior Decisions**) provided the Filer with exemptive relief on terms substantially similar to this Decision. Under the terms of the Prior Decisions, the Filer operates, on an interim basis, a CTP that permits clients resident in Canada to enter into Crypto Contracts to purchase and sell Crypto Assets through the Filer. While registered as a restricted dealer, the Filer intends to seek membership with the Canadian Investment Regulatory Organization (**CIRO**).

The Filer has submitted an application to revoke the Second Decision and to replace it with this Decision (as defined below). This Decision has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Jurisdictions will not consider this Decision as constituting a precedent for other filers.

Requested Relief

¶ 2 The securities regulatory authority or regulator in British Columbia and Ontario (**Dual Exemption Decision Makers**) have received an application from the Filer (the **Dual Application**) for a decision under the securities legislation of those jurisdictions (the **Legislation**) for a decision exempting the Filer from:

A. the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients (the **Prospectus Relief**); and

B. the requirement in subsection 12.12(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to deliver annual audited financial statements and a completed Form 31-103F1 *Calculation of Excess Working Capital* to the regulator no later than the 90th day after the end of its financial year as it applies to the Filer financial year ending December 31, 2023 (the **Financial Statement Relief**) and the requirement in section 13.3 of NI 31-103 that, before it opens an account, takes any other investment for a client, or makes a recommendation or exercises discretion to take an investment action, to determine on a reasonable basis, that the action is suitable for the client and puts the client's interest first (the **Suitability Relief**) (together the Financial Statement Relief and the Suitability Relief are referred to as the **Registrant Obligations Relief**).

The securities regulatory authority or regulator in the Jurisdictions referred to in **Appendix A** (the **Coordinated Review Decision Makers**) have received an application from the Filer (collectively with the Dual Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**, and together with the Prospectus Relief and the Registrant Obligations Relief, the **Requested Relief**).

The Filer has applied for the revocation of the exemptive relief in the Second Decision effective as of the date of this Decision.

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

(a) the British Columbia Securities Commission is the principal regulator for this Application (the **Principal Regulator**),

(b) the Decision is the decision of the Principal Regulator and the Decision evidences the decision of the securities regulatory authority or regulator in Ontario,

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

(d) the decision in respect of the Trade Reporting Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker.

Interpretation

¶ 3 For the purposes of this decision,

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

2. The following terms have the following meanings:

"**Acceptable Third-Party Custodian**" means an entity that:

(a) is one of the following:

(i) a Canadian Custodian or Canadian Financial Institution;

(ii) a custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 of National Instrument 81-102 *Investment Funds*;

(iii) a custodian that meets the definition of an "acceptable securities location" in accordance with CIRO's Investment Dealer and Partially Consolidated Rules and Form 1;

(iv) an entity that does not meet the criteria for a Qualified Custodian and for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Jurisdiction(s);

(b) is functionally independent of the Filer within the meaning of NI 31-103;

(c) has obtained audited financial statements within the last 12 months, which

(i) are audited by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction,

(ii) are accompanied by an auditor's report that expresses an unqualified opinion, and

(iii) unless otherwise agreed to by the Principal Regulator, disclose on their statement of financial position or in the notes of the audited financial statements the amount of liabilities that it owes to its clients for holding their assets, and the amount of assets held by the custodian to meet its obligations to those custody clients, broken down by asset;

(d) has obtained a Systems and Organization Controls (SOC) 2 Type 1 or SOC 2 Type 2 report within the last 12 months, or has obtained a comparable report recognized by a similar accreditation board satisfactory to the Filer's Principal Regulator and the regulator or securities regulatory authority of the Jurisdiction(s).

"**Canadian Custodian**" has the meaning ascribed to that term in NI 31-103;

"**Canadian Financial Institution**" has the meaning ascribed to that term in NI 31-103;

"**Qualified Custodian**" has the meaning ascribed to that term in NI 31-103;

"Staking" means the act of committing or locking Crypto Assets in smart contracts to permit the owner or the owner's delegate to act as a Validator for a particular proof-of-stake consensus algorithm blockchain;

"Staking Services" means any and all services conducted by the Filer and third parties in order to enable the Staking of Crypto Assets that are held on the Platform (as defined below) for the benefit of clients;

"**Validator**" in connection with a particular proof-of-stake consensus algorithm blockchain, means a node meeting protocol requirements that participates in consensus by broadcasting votes and committing new blocks to the blockchain; and

"Value-Referenced Crypto Asset" means a Crypto Asset that is designed to maintain a stable value over time by referencing the value of a fiat currency or any other value or right, or combination thereof.

In this Decision, a person or company is an affiliate (an "**Affiliate**") of the Filer if

(a) one of them is, directly or indirectly, a subsidiary of the other, or

(b) each of them is controlled, directly or indirectly, by the same person.

Representations

¶ 4 This decision (the **Decision**) is based on the following facts represented by the Filer:

The Filer

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

2. The Filer is an indirect wholly owned subsidiary of BIGG Digital Assets Inc. (formerly BIG Blockchain Intelligence Group Inc.) (**BIGG**). The securities of BIGG are publicly traded on the Canadian Securities Exchange, the OTCQX and the Frankfurt Stock Exchange.

3. The Filer is registered as a dealer in the category of restricted dealer in the Jurisdictions.

4. The Filer's personnel consists, and will consist, of software engineers, executives and compliance professionals who each have experience operating in a regulated financial services environment and expertise in blockchain technology. All of the Filer's personnel have passed criminal records and credit checks, and new personnel will be hired after they pass criminal records and credit checks.

5. The Filer has adopted a business continuity plan designed to ensure the uninterrupted availability of the resources required to support its essential and critical business activities.

6. The Filer's parent company, BIGG, is a public company that is required to have audited financial statements that must be completed on or before the 120th day following the end of BIGG's financial year. These financial statements are prepared on a consolidated basis and include information related to BIGG and all of its Affiliates, including the Filer. In part, because of issues relating to auditing a company that carries out a business relating to crypto assets, BIGG auditors typically do not complete the audited financial statements for BIGG until on or immediately before the 120th day following the end of BIGG's financial year.

7. Beginning for their 2022 financial year, the Filer prepares stand alone audited financial statements. The same auditors of BIGG's financial statements perform the audit of these stand alone statements and utilize information derived from those financial statements. As a result, the Filer might not, in 2024, be able to deliver annual audited financial statements or a completed Form 31-103F1 *Calculation of Excess Working Capital* to the regulator on or before the 120th day after the end of its financial year. The Filer will deliver its non-consolidated annual audited financial statements and completed Form 31-103F1 *Calculation of Excess Working Capital* to the regulator on or before the 130th day after the end of its financial year.

8. The Filer is not liable for debt of an Affiliate or Affiliates that could have a material negative effect on the Filer.

9. Neither the Filer nor BIGG is in default of securities legislation of any of the Jurisdictions or any terms or conditions of its registration as a restricted dealer other than the conditions of the Second Decision that the Filer submit an application to the Principal Regulator, the Ontario Securities Commission (the **OSC**), the Autorité des marchés financiers (the **AMF**) and CIRO by March 24, 2023, to become registered as an investment dealer and to become a CIRO dealer member.

Netcoins (The Platform)

10. The Filer, under the business name of "Netcoins", operates a proprietary web, and mobile based platform (the **Platform**), which enables clients to trade Crypto Contracts based on Crypto Assets through the Filer and to enter into arrangement to "stake" Crypto Assets held by the Filer that relate to Crypto Contracts.

11. The Filer's role under the Crypto Contract is to facilitate the buying, selling, and staking of Crypto Assets and to provide custodial services for all Crypto Assets held in Client Accounts (as defined below).

12. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.

13. The Filer currently operates the Platform and offers trading access to clients in each Jurisdiction. If the Filer provides access to the Platform to clients in jurisdictions outside of Canada, the Filer will take reasonable steps to ensure that the Filer complies with applicable securities or derivatives laws in such jurisdictions before providing such access.

14. Each transaction executed on the Platform results in a Crypto Contract. A Crypto Contract imposes rights and obligations on the Filer and each client. These rights and obligations are set out in an electronic document that is made available to each client (the **Terms of Service**). The client is required to review and accept the Terms of Service at the time the client opens an account (the **Client Account**). When the Filer intends to make a change to the Terms of Service, the Filer will provide each client with advanced notice of such change. If there is a material change to the Terms of Service applicable to a client, the client will be required to review and accept the new Terms of Service before the client will be allowed to execute a transaction.

15. Under the Terms of Service, the Filer maintains certain controls over client Crypto Assets to ensure compliance with applicable law and provide secure custody of the client assets.

16. The Filer also offers Staking Services for certain Crypto Assets through the Platform.

17. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not manage any discretionary accounts.

18. The Filer is not a member firm of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets custodied do not qualify for CIPF coverage.

19. The Risk Statement (defined in paragraph 34 of these Representations, below) will include disclosure that there will be no CIPF coverage for the Crypto Assets.

Crypto Assets Made Available through the Platform

20. The Filer has established and applies policies and procedures to review each Crypto Asset and to determine whether to allow clients on its Platform to enter into Crypto Contracts to buy and sell the Crypto Asset on its Platform in accordance with the know-your-product (**KYP**) provisions in NI 31-103 (**KYP Policy**). Such review includes, but is not limited to, publicly available information concerning:

    (a) the creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;

    (b) the supply, demand, maturity, utility and liquidity of the Crypto Asset;

    (c) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

    (d) legal and regulatory risks associated with the Crypto Asset, including any pending, potential, or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the Crypto Asset.

21. The Platform only transact Crypto Contracts based on Crypto Assets that the Platform has reasonably determined not to be securities or derivatives or that are Value-Referenced Crypto Assets and the Filer complies with the provisions of paragraph 26 of the Conditions to this Decision.

22. The Filer does not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps to

(a) assess the relevant aspects of the Crypto Asset, including the information specified in paragraph 20 of these Representations, to determine whether it is appropriate for its clients,

(b) approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients, and

(c) monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

23. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuer or Affiliates or associates of such persons.

24. As set out in the Filer's KYP Policy, the Filer determines whether a Crypto Asset available to be bought and sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:

(a) consideration of statements made by any regulators or securities regulatory authorities of the Jurisdictions, other regulators in IOSCO-member jurisdictions, or the regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security or derivative; and

(b) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security or derivative under securities legislation of the Jurisdictions.

25. The Filer monitors ongoing developments related to Crypto Assets available on its Platform that may cause a Crypto Asset's status as a security and/or derivative, or the determination made by the Filer pursuant to its KYP Policy and as described in paragraphs 20 and 24 of these Representations, above, to change.

26. The Filer acknowledges that any determination made by the Filer as set out in paragraphs 20 and 24 of these Representations does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell is a security or derivative.

27. The Filer acknowledges that the Principal Regulator may implement additional terms and conditions that will require the Platform to stop trading of any Crypto Contract, where it is in the public interest to do so.

28. As set out in the Filer's KYP Policy, the Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

Account Opening and Risk Disclosure

29. Prospective clients of the Filer will be required to complete an onboarding process which includes:

(a) identity verification, applicable "know your client" account opening requirements under applicable legislation and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations;

(b) the provision of information relating to the prospective client, including the following (the **Account Appropriateness Factors**):

(i) the client's experience and knowledge in investing in Crypto Assets and in using order execution only online brokerages;

(ii) the client's financial assets and income;

(iii) the client's risk tolerance;

(iv) the Crypto Assets approved to be made available to a client by entering into Crypto Contracts on the Platform.

30. The Platform is available to any individual who is a resident in Canada, who has reached the age of majority in the jurisdiction in which they are resident.

31. For each prospective client, the Filer will, prior to opening the Client Account, determine whether it is appropriate for the prospective client to use the Platform to enter into a Crypto Contract in order to buy and sell Crypto Assets.

32. The Filer has adopted and will apply policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client that is not a permitted client or a restricted dealer, as each term is defined in NI 31-103, can incur and what limits on losses will apply to such client based on the Account Appropriateness Factors (the **Client Limit**), and what steps the Filer will take when the client approaches or exceeds the Client Limit. After completion of the assessment, the Filer will implement controls to monitor and apply such policies and procedures, including the Client Limit.

33. After completion of the account-level appropriateness assessment, a prospective client receives appropriate messaging about using the Platform to enter into Crypto Contracts, which, in circumstances where the Filer has evaluated that entering into Crypto Contracts with the Filer is not appropriate for the client, will include prominent messaging to the client that this is the case and that the client will not be permitted to open a Client Account with the Filer.

34. As part of the account opening process, the Filer will provide a prospective client with a separate statement of risks that clearly explains the following, in plain language (the **Risk Statement**),

    (a) the Crypto Contracts,

    (b) the risks associated with Crypto Contracts,

    (c) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or any of the Crypto Assets made available through the Platform,

    (d) the due diligence performed by the Filer before making a Crypto Asset available through the Platform, including the due diligence taken by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities legislation of each of the Jurisdictions and, if applicable, the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative,

    (e) that the Filer has prepared a plain language description of each Crypto Asset, including the risks of the Crypto Asset, made available through the Platform, with instructions as to where on the Platform the client may obtain the descriptions (each a **Crypto Asset Statement**),

    (f) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Platform, including criteria that would be considered by the Filer, options available to clients holding such a Crypto Asset, any notification periods and any risks to clients,

    (g) how and where the Crypto Assets that are the basis for the Crypto Contracts are held and the benefits and risks to the client of the Crypto Assets being held in that manner, including the impact of the insolvency of the Filer or a custodian (as defined below),

    (h) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner,

    (i) that the Filer is not a member of CIPF and the Crypto Contracts and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection,

    (j) that the statutory rights in sections 131 through 132.2 of the *Securities Act* (British Columbia), and, if applicable, similar statutory rights under the securities legislation of the other Non-Principal Jurisdictions and Ontario, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief, and

    (k) the date on which the information was last updated.

35. In order for a prospective client to open and operate a Client Account with the Filer, the Filer will obtain an electronic acknowledgment from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgment will be prominent and separate from other acknowledgments provided by the prospective client as part of the account opening process.

36. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Platform.

37. Before a client enters an order relating to Crypto Contract to "buy" a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement, which will include a link to the Crypto Asset Statement.

38. The Crypto Asset Statement will include:

    (a) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed any Crypto Contract or Crypto Asset made available through the Platform,

    (b) a description of the Crypto Asset, including the background of the team that first created the Crypto Asset, if applicable, and any risks specific to the Crypto Asset,

    (c) a description of the due diligence performed by the Filer with respect to the Crypto Asset,

    (d) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets,

    (e) a statement that the statutory rights in sections 131 through 132.2 of the *Securities Act* (British Columbia), and, if applicable, similar statutory rights under the securities legislation of the Non-Principal Jurisdictions and Ontario, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief,

    (f) the date on which the information was last updated.

39. In addition to the determination referred to in paragraph 31 of these Representations, the Filer has also established, and will maintain and apply, policies and procedures that are reasonably designed to monitor client activity, and will contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a Client Account. The Filer monitors compliance with the Client Limits established in paragraph 32 of these Representations. If warranted, the client will receive messaging when their Client Account has met their Client Limit and receive instructions on options to proceed.

40. The Filer has established, and will maintain and apply, policies and procedures that are reasonably designed to update the Risk Statement, to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and Crypto Assets, and the Crypto Assets Statement, to reflect any material changes relating to specific Crypto Assets. In the event the Risk Statement or Crypto Asset Statement is updated, existing clients of the Filer will be promptly notified and provided with a copy of the updated Risk Statement or Crypto Asset Statement, as applicable.

41. The Filer will also prepare and make available to its clients, on an ongoing basis and in response to emerging issues in Crypto Assets, educational materials and other informational updates about trading on the Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets.

Deposit of Assets

42. A client can only execute transactions once the client has deposited assets in an amount that would allow the client to fulfill their obligations under any Crypto Contract that the client enters into.

43. Clients can fund their Client Accounts with fiat currencies (currently, CAD) or United States dollars (USD)) or supported Crypto Assets, and can use those funds to execute transactions of Crypto Contracts related to Crypto Assets made available through the Platform.

44. The Filer allows clients to fund their Client Accounts with fiat currency by way of electronic funds transfer, e-transfer, online bill payment and wires, as well as credit card payments which are fulfilled through a third-party service provider. In addition, the Filer allows clients to deposit Crypto Assets to a wallet in the name of the Filer that holds the Crypto Assets to facilitate its obligations under each Crypto Contract (the **custodian**) in accordance with the terms of this Decision.

Platform Operations

45. Clients are able to submit orders, either in units of the applicable underlying Crypto Asset or in fiat currency, 24 hours a day, 7 days a week. Clients are able to deposit and withdraw certain Crypto Assets and fiat Currency, 24 hours a day, 7 days a week (or where applicable, for fiat currency during banking hours).

46. The Filer does not provide recommendations or advice to clients or conduct a trade-by-trade determination for clients but rather performs account and product assessments, taking into account the Account Appropriateness Factors. These will be used by the Filer to

    (a) evaluate whether entering into a Crypto Contract with the Filer is appropriate for prospective clients before the opening of a Client Account. After completion of the assessments, a prospective client will receive appropriate messaging about using the Platform to enter into a Crypto Contract, which could include messaging to a prospective client that the Filer believes that using the Platform to enter into Crypto Contract is not appropriate for them and that as a result the client will not be permitted to open a Client Account with the Filer, and

    (b) conduct the assessment described in subparagraph 22(a) of these Representations.

47. The Filer relies upon multiple crypto asset trading firms (**Liquidity Providers**) to act as sellers of Crypto Assets that may be purchased by the Filer to facilitate the Filer's obligations to clients. Liquidity Providers will also buy any Crypto Assets from the Filer that the Filer has purchased to facilitate the Filer's obligations to its clients or that a client has deposited onto the Platform and wishes to sell.

48. In accordance with the Filer's policies and procedures, after the order has been placed by a client, the Platform will obtain a price for the Crypto Asset from at least two unaffiliated Liquidity Providers, after which the Platform will incorporate a 'spread' to compensate the Filer, and will present this adjusted price to the client as the price at which the Filer is willing to transact with the client.

49. After an order has been placed by a client, the Filer obtains a price for the related Crypto Asset from a Liquidity Provider, after which the Filer incorporates a spread and fee to compensate the Filer, and presents it to the client. If the price is agreeable, the client confirms the Crypto Contract trade. The client has approximately 10 seconds from the time they receive the price to confirm the trade. After client confirmation, the Filer confirms the related Crypto Asset transaction with the Liquidity Providers and records in its books and records the particulars of the trade.

50. In order for a client to initiate a transaction, their Client Account must be pre-funded with the applicable asset (fiat currency or Crypto Asset).

51. The Filer will not extend margin or otherwise offer leverage to clients and will not trade derivatives based on Crypto Assets with clients other than Crypto Contracts. The Filer will not allow clients to enter into a "short position" with respect to any Crypto Asset.

52. In accordance with the Filer's policies and procedures, the Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to clients.

53. The Filer has established, and will maintain and apply, policies and procedures that are reasonably designed to verify on an ongoing basis, that each Liquidity Provider is appropriately registered and/or licensed to transact in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Jurisdictions.

54. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.

55. A Crypto Contract is a bilateral contract between a client and the Filer. Accordingly, the Filer will be the counterparty to each buy or sell transaction initiated by a client. For each client transaction, the Filer will also be a counterparty to a corresponding Crypto Assets buy or sell transaction with a Liquidity Provider. The Filer will transact as a riskless principal, in that the Filer will not take any proprietary positions when trading with clients or with a Liquidity Provider.

56. The Filer confirms the transaction with the Liquidity Providers.

57. The Filer records in its books and records the particulars of each transaction.

58. The Filer promptly, and no later than two days after the Crypto Contract transaction, settles the related Crypto Asset transactions with a Liquidity Provider on a net basis. Where transactions of Crypto Contracts result in a net increase in a client's rights in relation to Crypto Assets, the Filer arranges for the cash to be transferred to the Liquidity Provider and related Crypto Assets to be sent by the Liquidity Provider to the Filer's hot wallets which are reconciled daily with the Filer's custodial wallets. Where transactions of Crypto Contracts result in a net decrease in a client's rights in relation to Crypto Assets, the Filer arranges for the related Crypto Assets to be sent from the Filer's hot wallets to the Liquidity Provider and will deposit the cash received by the Filer from the Liquidity Providers in the account referred to in paragraph 89 of these Representations.

59. The Platform is an "open loop" system. Clients are permitted to deposit Crypto Assets acquired outside the Platform into their Client Accounts with the Filer. Crypto Assets deposited will be promptly delivered to the custodian to be held in trust for the benefit of the client. Clients also have the right to obtain delivery of Crypto Assets to which they have an interest in pursuant to their Crypto Contracts with the Filer by requesting that the Filer deliver the Crypto Assets.

OTC Operations

60. The Filer will also offer over-the-counter (**OTC**) trading services. These services will be subject to securities legislation, including the terms and conditions of this Decision. The OTC trading services offered by the Filer will allow clients to place orders relating to Crypto Contracts "off Platform" through one of the Filer's designated representatives. The OTC trading services provide clients with more liquidity sources and a personalized service and are intended to primarily service institutions and high net-worth individuals.

61. In accordance with paragraph 29 of these Representations, the Filer uses technology to facilitate the determination of whether entering into a Crypto Contract is appropriate for a client before using OTC trading services to enter into the Crypto Contract.

62. Each transaction a client undertakes that results from the matching of orders on the Platform, or from its use of the OTC trading services described in paragraph 60 of these Representations results in a bilateral contract between the client and the Filer.

63. An affiliate of the Filer may also operate an OTC trading platform (the **Affiliate OTC Platform**) that provides for immediate delivery, as described in Staff Notice 21-327, of the Crypto Asset being traded. The Filer will complete an assessment of all Crypto Assets traded on or through the Affiliate OTC Platform, and determined that the assets are not securities or derivatives. Clients of the Affiliate OTC Platform are not required to open an account with the Filer.

Staking Operations

64. The Filer offers optional Staking Services to its clients through an approved Staking Service provider. Clients are able to identify the type of Crypto Assets (e.g. ETH) held under the Filer's Crypto Contracts with the clients that they wish to be Staked under the Staking Service.

65. The Staking Services are offered to clients through the Platform pursuant to the terms and conditions imposed on the Filer's registration.

Reports to Clients

66. Clients will have access to information relating to their Crypto Contract transactions. The Platform has a transaction history screen that provides detailed information about all transactions completed by a client. The Filer will, during each calendar month, send an electronic communication to each client that indicates that information relating to their Client Account is available to the client through the Platform.

67. Clients will receive electronic transaction confirmations and monthly statements setting out the details of the transaction history in their Client Account with the Filer.

68. Clients will, on a continuous basis, except during periods where the Platform is not available due to systems maintenance, have access to information relating to their Client Accounts with the Filer, including:

    (a) a list of all positions in Crypto Assets including the value of the Crypto Assets;

    (b) transaction details and history;

    (c) the amount of all currency deposits into the Client Account;

    (d) value of all crypto asset deposits to the Client Account as at the time of deposit;

(e) the fees paid per transaction.

69. The information made available to clients through the Platform will provide clients with information regarding the transactions conducted through the Platform and their Client Accounts with the Filer, including the following information:

(a) the quantity and description of each Crypto Asset that is the underlying interest related to a Crypto Contract transacted;

(b) the amount, denominated in either CAD or USD, at the client's option, paid or received by the client under the transaction, including the price paid or received for each Crypto Asset that is the underlying interest of the Crypto Contract;

(c) the amount of each transaction charge, deferred sales charge or other charge in respect of the transaction and the total amount of all charges in respect of the transaction denominated in either CAD or USD, at the client's option;

(d) the date on which the transaction took place;

(e) the name and quantity of each Crypto Asset that is the underlying interest related to a Crypto Contract in the Client Account;

(f) the market value of each Crypto Asset that is the underlying interest related to a Crypto Contract in the Client Account;

(g) any cash balance in the Client Account;

(h) the total market value of all cash and Crypto Assets that are the underlying interest related to a Crypto Contract in the account denominated in either CAD or USD, at the client's option.

70. The Filer will provide clients with real-time, continuous access to information relating to each transaction executed by the client on the Platform, including information related to the price for each transaction. The Filer will also provide clients with access to real- time, continuous information relating to assets held in the Client Accounts, including Crypto Assets and fiat currency. This information will be available to the client through the Filer's Platform.

Fees Payable by Clients

71. The Filer will be compensated by the spread on transactions and by charging transaction fees. All transaction fees are disclosed to the clients at the time of a transaction and are available in the Platform's terms of use.

Custody of Crypto Assets and Cash

72. The Filer holds Crypto Assets in an account with an approved custodian in an account designated as a trust account, for the benefit of clients separate and apart from its own assets and from the assets of any custodial service provider. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets held on behalf of its clients.

73. The Filer has and will retain the services of a custodian to hold not less than 80% of the total value of Crypto Assets held on behalf of clients to facilitate its obligations under each Crypto Contract. The Filer uses BitGo Trust Company, Inc. (**BitGo**) as custodian, and will, after reasonable due diligence, use other custodians as necessary. Up to 20% of the Filer's total client Crypto Assets may be held online in hot wallets secured by Fireblocks Ltd. (**Fireblocks**).

74. BitGo is a trust company organized under the laws of the State of South Dakota and regulated as a trust company by the Division of Banking in South Dakota. BitGo meets the requirements of the definition of "foreign custodian" in NI 31-103.

75. BitGo has completed a Service Organization Controls (**SOC**) report under SOC 1 – Type 2 standards from a leading global audit firm. The Filer has conducted due diligence on BitGo, including reviewing a copy of the SOC 1 – Type 2 audit report prepared by BitGo's auditors, and has not identified any material concerns. The Filer has also reviewed the SOC 2 – Type 2 audit report completed for BitGo Inc., an affiliated entity of BitGo, prepared by BitGo Inc.'s auditors regarding its multi- signature wallet services system (i.e., hot wallets) offered by BitGo Inc. and have not identified any material concerns. BitGo has advised the Filer that it relies on technology licensed from BitGo Inc., which technology was audited pursuant to the SOC2 – Type 2 audit report prepared by BitGo Inc.'s auditors.

76. BitGo currently maintains a comprehensive insurance policy for digital assets in BitGo's cold storage system, covering US$100,000,000 in losses due to third party hacks, copying, theft or loss of private keys, insider theft or dishonest acts by BitGo employees or executives and loss of keys. The Filer has assessed BitGo's insurance policy and has determined, based on information that is publicly accessible and on information provided by BitGo and considering the scope of BitGo's business, that the amount of insurance is appropriate.

77. BitGo will operate a custody account for the Filer, for the purpose of holding Crypto Assets to ensure that the Filer will meet its obligations under each Crypto Contract. The Filer will ensure that the amount of Crypto Assets held by the custodian will be not less than the obligations of the Filer to clients under Crypto Contracts, subject to delays in the settlement of Crypto Assets transactions with Liquidity Providers. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets held by the custodian or the Filer, that relate to a client's transaction.

78. BitGo will hold all Crypto Assets related to Crypto Contracts in an account designated as a trust account, for the benefit of clients of the Filer. This account will be an omnibus account in the name of the Filer. and the assets in this account will be held separate and apart from the assets of the Filer, the Filer's affiliates, the custodian or the Crypto Assets of any of the custodian's other clients.

79. BitGo has established, and will maintain and apply, policies and procedures that are reasonably designed to manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents.

80. BitGo has established, and will maintain and apply, written disaster recovery and business continuity plans.

81. The Filer has assessed the risks and benefits of using BitGo as the custodian for Crypto Assets and, has determined that, in comparison to a Canadian custodian (as that term is defined in NI 31-103), it is more beneficial to its clients to have BitGo, a custodian that is a financial institution that is subject to prudential regulation, hold the Crypto Asset that are the underlying interests of Crypto Contracts, than using a Canadian custodian.

82. The Filer licenses software from Fireblocks which includes a crypto asset wallet that stores private and public keys and interacts with various blockchains to send and receive crypto assets and monitor balances. Fireblocks uses secure multi-party computation technology to secure keys and application programing interface credentials in order to share signing responsibility for a particular blockchain address among multiple independent persons.

83. Fireblocks has obtained a SOC report under the SOC 2 – Type 2 standards from a leading global audit firm. The Filer has reviewed a copy of the SOC 2 – Type 2 audit report prepared by the auditors of Fireblocks, and has not identified any material concerns.

84. The Filer has licensed software from Digital Assets Services Limited (trading as Coincover) (**Coincover**) to provide additional security for keys to Crypto Assets held by the Filer using Fireblocks, including key pair creation, key pair storage, device access recovery and account access recovery.

85. The third-party insurance obtained by the Filer includes coverage for the Crypto Assets held by the Filer in Fireblocks hot wallets in the event of loss or theft in accordance with the terms of the insurance policy in question.

86. As outlined in paragraph 75 of these Representations, there is insurance coverage on Crypto Assets underlying the Filer's crypto obligations and held in BitGo custodial cold storage. In addition, the Filer has obtained coverage through Coincover. The Coincover coverage will cover the full amount of client commitments held in hot wallets with Fireblocks. The Filer will supplement the coverage by setting aside cash that will be held in an account at a Canadian financial institution, separate from the Filer's operational accounts and Filer's client accounts, in an amount not less than the value of client crypto obligations held by Fireblocks less the amount of the Fireblocks insurance coverage. Depending on the circumstances, either funds from the coverage or the bank account would be available in the event of loss of Crypto Assets held in the Filer's hot wallet.

87. The Filer is proficient and experienced in holding Crypto Assets and has established and applied policies and procedures that manage and mitigate custodial risks, including but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets. The Filer also maintains appropriate policies and procedures related to IT security, cyber resilience, disaster recovery capabilities and business continuity plans.

88. A client can maintain their Crypto Contracts with the Filer indefinitely.

89. All fiat currency owned by clients that is being held by the Filer will be held by a Canadian Financial Institution in a designated trust account, in the name of the Filer, in trust for Clients and separate and apart from the Filer's fiat currency balances.

Marketplace and Clearing Agency

90. The Filer does not currently operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, subsection 1(1) of the *Securities Act* (Ontario).

91. The Filer will not operate a "clearing agency" as defined in securities legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of a Crypto Contract dealer and related to the Filer arranging or providing for settlement of obligations resulting from Crypto Contracts entered into on a bilateral basis and without a central clearing counterparty.

Decision

¶5 The Dual Exemption Decision Makers are satisfied that the Decision satisfies the test set out in the Legislation for the Dual Exemption Decision Makers to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief satisfies the test set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief.

The Decision of the Dual Exemption Decision Makers under the Legislation is that the Second Decision is revoked and the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation of its jurisdiction is that the Trade Reporting Relief is granted, provided that:

1. Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other jurisdiction of Canada, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.

2. The Filer is registered as a restricted dealer or investment dealer in the Jurisdiction and in each Jurisdiction in which a client is a resident.

3. The Filer will work actively and diligently with the Principal Regulator to transition to a final regulatory framework.

4. The Filer, and any representatives of the Filer, will not provide recommendations or advice to any client or prospective client on the Platform.

5. The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets, and in performing its obligations under those contracts. The Filer will seek the appropriate approvals from the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other jurisdiction of Canada, prior to undertaking any other activity relating to securities or derivatives.

6. Before trading Crypto Contracts relating to any new Crypto Asset, the Filer will conduct a thorough due diligence relating to the features of and risks relating to the Crypto Asset in accordance with paragraph 20 of the Representations.

7. The Filer will not operate a "marketplace" as the term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, in subsection 1(1) of the *Securities Act* (Ontario) or a "clearing agency" as the term is defined in securities legislation.

8. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets with a third-party custodian that meets the definition of an "Acceptable Third-Party Custodian", unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with a "Qualified Custodian".

9. Before the Filer holds Crypto Assets with a custodian referred to in paragraph 8 of these Conditions, the Filer will take reasonable steps to verify that the custodian:

    (a) maintains a comprehensive insurance policy to cover losses of Crypto Assets held by the custodian, including the assets owned by Platform clients;

    (b) has established, and will maintain and apply, policies and procedures that are reasonably designed to manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the client Crypto Assets for which it acts as custodian;

(c) has obtained a SOC 2 Type 2 report within the previous 12 months, unless the Filer has notified the Principal Regulator and the Principal Regulator has provided written notice that it does not object to the Filer relying on a SOC 1 Type 1 or Type 2 or a SOC 2 Type 1 report obtained within the previous 12 months;

(d) holds the Crypto Assets in an account, designated as a trust account, for the benefit of the Filer's clients;

(e) holds the Crypto Assets of the Filer's clients separate and apart from the Crypto Assets of the Filer, the Filer's non-Canadian clients and the custodian;

(f) is an Acceptable Third-Party Custodian unless the Filer has obtained the prior written approval of the Principal Regulator to use custodian that is not an Acceptable Third-Part Custodian.

10. The Filer will promptly notify the Principal Regulator if

(a) the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, the Division of Banking in South Dakota, the New York State Department of Financial Services any other regulatory authority applicable to the Filer's current or future custodians makes a determination that the Filer's custodian is not permitted by that regulatory authority to hold client Crypto Assets, or

(b) if there is any change in the status of the Filer's custodian as a regulated financial institution.

11. For the Crypto Assets held by the Filer, the Filer:

(a) will hold the Crypto Assets in an account, designated as a trust account, for the benefit of the Filer's clients separate and distinct from the assets of the Filer;

(b) will ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and

(c) has established and will maintain and apply written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

12. The Filer will use at least two Liquidity Providers that are not Affiliates of the Filer and that each Liquidity Provider is registered and/or licensed, to the extent required, in the jurisdiction or foreign jurisdiction, as applicable, where their head office or principal place of business is located, to execute transactions in the Crypto Assets.

13. The Filer has established, and will maintain and apply, policies and procedures reasonably designed to provide fair and reasonable prices to its clients, including policies and procedures to evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and transition to new Liquidity Providers, as appropriate.

14. Before each prospective client opens a Client Account, the Filer will deliver to the client a Risk Statement. The Filer will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

15. The disclosure referred to in paragraph 14 of these Conditions will be prominent and separate from other disclosures given to the client at that time, and the acknowledgement will be separate from other acknowledgements by the client at that time.

16. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Platform.

17. The Filer will promptly update the Risk Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts or Crypto Assets and, in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the updated Risk Statement.

18. Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of that Risk Statement to the Principal Regulator.

19. Before allowing a client to transact a Crypto Contract relating to "buying" a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset that will include the information

described in paragraph 38 of the Representations. The instructions will include a link to the Crypto Asset Statement on the Filer's website.

20. The Filer will promptly update each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Asset. In the event of an update to a Crypto Asset Statement, the Filer will promptly notify clients of the update, with links provided to the updated Crypto Asset Statement.

21. For each new client, prior to opening a Client Account, the Filer will perform the assessments as described in paragraphs 31 to 33 of the Representations. The Filer will regularly, and at least once in each 12 month period, review and update the assessment described in paragraphs 31 to 33 of the Representations.

22. In accordance with the requirements in paragraph 39 of the Representations, the Filer will monitor trading activity in Client Accounts. Clients will be contacted to discuss their trading behaviour where, in the opinion of a reasonable person, their trading activity reflects lack of knowledge or understanding of Crypto Asset trading or is inconsistent with the client's account assessment referred to in paragraph 31 of the Representations. This initiative is meant to deter clients from inappropriate trading activity that can be potentially harmful to them and identify that additional education is required.

23. The Filer will ensure that the maximum amount of Crypto Contracts based on Crypto Assets, other than Crypto Contracts based on Bitcoin, Ether, Bitcoin Cash, or Litecoin, that a client, except a client resident in Alberta, British Columbia, Manitoba and Québec, may enter into Crypto Contracts to purchase and sell on the Platform (calculated on a net basis and is an amount not less than $0) in the preceding 12 months does not exceed a net acquisition cost of $30,000.

24. In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that jurisdiction.

25. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any

    (a) change of or use of a new custodian, and

    (b) material changes to the Filer's ownership or its business operations, including its systems, or its business model.

26. The Filer will only trade Crypto Contracts based on Crypto Assets that (a) are not securities or derivatives, or (b) that are Value-Referenced Crypto Assets, provided that the Principal Regulator and the regulator or securities regulatory authority of the applicable Jurisdiction(s) have provided their prior written consent and subject to such terms and conditions as may be imposed on the Filer and the issuer of the Value-Referenced Crypto Assets by the regulator or securities regulatory authority.

27. The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a customer in a Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, fine or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of anti-money laundering laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct. For the purposes of this condition, the term "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, Republic of Korea, New Zealand, Singapore, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America

28. The Filer will not engage in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuer or Affiliates or associates of such persons unless it has obtained the prior written approval of, and subject to such terms and conditions as may be imposed by, the Principal Regulator.

29. Except to allow clients to liquidate their positions in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts where the underlying is a Crypto Asset if (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most

significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, a security and/or derivative.

30. The Filer will evaluate Crypto Assets in accordance with its KYP Policy and as set out in paragraphs 20, 24 and 25 of the Representations.

31. The Filer will establish, apply and monitor policies and procedures that establish appropriate Client Limits a client can incur, as set out in paragraph 32 of the Representations.

32. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of its custodian's system of controls or supervision, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Asset will be considered a material breach or failure.

33. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of the Filer's system of controls or supervision and of steps taken to address such breach or failure. The loss of any amount of Crypto Asset or of any fiat currency held on behalf of a client will be considered a material breach or failure.

34. The Filer will ensure that clients have access to information relating to their Client Accounts and to past transaction activity that is updated continuously. The Filer will notify the Principal Regulator if the information is not available to a client for a material period of time.

Data Reporting

35. The Filer will provide the Principal Regulator for each client, and each securities regulatory authority or regulator in each of the other Jurisdictions with respect to clients in those jurisdictions individually, within 30 days of the end of each March, June, September and December, the data described in Appendix B.

36. If applicable, within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Jurisdictions, a report of all Client Accounts for which the Client Limits that may be established pursuant to paragraph 32 of the Representations were exceeded during that month.

37. The Filer will deliver annual audited financial statements and a completed Form 31-103F1 *Calculation of Excess Working Capital* to the regulator no later than the 130th day after the end of its financial year.

38. The Filer will exclude from the excess working capital calculation all the Crypto Assets it holds for which there is no offsetting by a corresponding current liability.

39. The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either:

    (a) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets and authorizations to access the wallets) previously delivered to the Principal Regulator; or

    (b) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

40. In addition to any other reporting required by the Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian and the Crypto Assets held by the Filer's custodian, that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with Legislation and these Conditions, in a format acceptable to the Principal Regulator.

41. Upon request, the Filer will provide the Principal Regulator, the securities regulatory authority or regulator in Ontario and the securities regulatory authorities or regulators of each of the Non-Principal Jurisdictions with aggregated and/or anonymized data concerning client demographics and activity on the Platform that may be useful to advance the development of the Canadian regulatory framework for trading Crypto Assets.

42. The Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer or by the Principal Regulator arising from the operation of the Platform.

43. The Filer will, if it wishes to operate the platform in Ontario and Québec after the expiry of the Decision, take the following steps:

(a) submit an application to the Principal Regulator, the AMF and the OSC to become registered as an investment dealer no later than 12 months after the date of the Decision;

(b) submit an application to become a CIRO member no later May 15, 2024;

(c) work actively and diligently with the Principal Regulator and CIRO to transition the platform to investment dealer registration and obtain CIRO membership.

44. Except in relation to the Financial Statement Relief described in paragraph 37 of these Conditions, this Decision shall expire on September 29, 2025. The Financial Statement Relief will expire on May 10, 2024.

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

"Mark Wang"
Director, Capital Markets Regulation
British Columbia Securities Commission

Application File #: 2023/0398

Appendix A - Local Trade Reporting Rules

In this Decision the “Local Trade Reporting Rules” collectively means each of the following**:**

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

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

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

Appendix B – Reporting Requirements

Part A - Data Reporting

1. Commencing January, 2024, The Filer will deliver the following information to the Principal Regulator and each of the Coordinated Review Decision Makers in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers with respect to Clients residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December:

    (a) aggregate reporting of activity conducted pursuant to the Platform's operations that will include the following:

        (i) number of Client Accounts opened each month in the quarter;

        (ii) number of Client Accounts frozen or closed each month in the quarter;

        (iii) number of Client Account applications rejected by the platform each month in the quarter based on the account appropriateness factors described in paragraph 29 of the Representations;

        (iv) number of trades each month in the quarter;

        (v) average value of the trades in each month in the quarter;

        (vi) number of Client Accounts with a net acquisition cost greater than $30,000 of Crypto Assets at the end of each month in the quarter;

        (vii) number of Client Accounts that in the preceding 12 months, excluding Specified Crypto Assets, exceeded a net acquisition cost of $30,000 at the end of each month in the quarter;

        (viii) number of Client Accounts at the end of each month in the quarter;

        (ix) number of Client Accounts with no trades during the quarter;

        (x) number of Client Accounts that have not been funded at the end of each month in the quarter;

        (xi) number of Client Accounts that hold a positive amount of Crypto Assets at end of each month in the quarter;

        (xii) number of Client Accounts that exceeded their Client Limit at the end of each month in the quarter.

    (b) the details of any client complaints received by the Filer during the calendar quarter and how such complaints were addressed;

    (c) a listing of all blockchain addresses, except for deposit addresses, that hold Crypto Assets on behalf of Clients, including all hot and cold wallets;

    (d) the details of any fraudulent activity or cybersecurity incidents on the Platform during the calendar quarter, any resulting harms and effects on clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future;

    (e) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.

2. The Filer will deliver to the Principal Regulator and each of the Coordinated Review Decision Makers, in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers, a report that includes the anonymized account-level data for the Platform's operations for each client residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December for data elements outlined below in Part B.

Part B. - Data Element Definitions, Formats and Allowable Values

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Unique Client					
1	Unique Client Identifier	Alphanumeric code that uniquely identifies a customer.	Varchar(72)	An internal client identifier code assigned by the CTP to the client. The identifier must be unique to the client.	ABC1234
2	Unique Account Identifier	Alphanumeric code that uniquely identifies an account.	Varchar(72)	A unique internal identifier code which pertains to the customer's account. There may be more than one Unique Account Identifier linked to a Unique Client Identifier.	ABC1234
3	Jurisdiction	The Province or Territory where the client, head office or principal place of business is, or under which laws the client is organized, or if an individual, their principal place of residence.	Varchar(5)	Jurisdiction where the client is located using ISO 3166-2 - See the following link for more details on the ISO standard for Canadian jurisdictions codes. https://www.iso.org/obp/ui/#iso:code:3166:CA	CA-ON
Data Elements Related to each Unique Account					
4	Account Open Date	Date the account was opened and approved to trade.	YYYY-MM-DD, based on UTC.	Any valid date based on ISO 8601 date format.	2022-10-27
5	Cumulative Realized Gains/Losses	Cumulative Realized Gains/Losses from purchases, sales, deposits, withdrawals and transfers in and out, since the account was opened as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in, transfers out, deposits and withdrawals of the Digital Token to determine the cost basis or the realized gain or loss.	205333
6	Unrealized Gains/Losses	Unrealized Gains/Losses from purchases, deposits and transfers in as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in or deposits of the Digital Token to determine the cost basis.	-30944
7	Digital Token Identifier	Alphanumeric code that uniquely identifies the Digital Token held in the account.	Char(9)	Digital Token Identifier as defined by ISO 24165. See the following link for more details on the ISO standard for Digital Token Identifiers. https://dtif.org/	4H95J0R2X

[1] Note: Digital Token refers to either data associated with a Digital Token, or a Digital Token referenced in an investment contract.

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Digital Token Identifier Held in each Account					
8	Quantity Bought	Number of units of the Digital Token bought in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	4358.326
9	Number of Buy Trans-actions	Number of transactions associated with the Quantity Bought during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	400
10	Quantity Sold	Number of units of the Digital Token sold in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	125
11	Number of Sell Transactions	Number of transactions associated with the Quantity Sold during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3325
12	Quantity Transferred In	Number of units of the Digital Token transferred into the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	10.928606
13	Number of Transactions from Transfers In	Number of transactions associated with the quantity transferred into the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3
14	Quantity Transferred Out	Number of units of the Digital Token transferred out of the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	603
15	Number of Transactions from Transfers Out	Number of transactions associated with the quantity transferred out of the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	45
16	Quantity Held	Number of units of the Digital Token held in the account as of the end of the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	3641.25461
17	Value of Digital To-ken Held	Value of the Digital Token held as of the end of the reporting period.	Num(25,0)	Any value greater than or equal to zero rounded to the nearest dollar in CAD. Use the unit price of the Digital Token as of the last business day of the reporting period multiplied by the quantity held as reported in (16).	45177788

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
18	Client Limit	The Client Limit established on each account.	Num(25,2)	Any value greater than or equal to zero rounded to the nearest dollar in CAD, or if a percentage, in decimal format.	0.50
19	Client Limit Type	The type of limit as reported in (18).	Char(3)	AMT (amount) or PER (percent).	PER

B.3.2 Auspice Capital Advisors Ltd.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to investment funds from margin deposit limits contained in subsection 6.8(1) and paragraph 6.8(2)(c) of NI 81-102 to invest in specified derivatives using dealers in Canada and the United States – conditional on the amount of margin held by any one dealer on behalf of a fund not exceeding 35% of the net asset value of that fund and the amount of margin held by dealers in the aggregate on behalf of that fund not exceeding 70% of the net asset value of that fund, as at the time of the deposit.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 6.8(1), 6.8(2)(c) and 19.1.

October 12, 2023

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

AND

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

AND

IN THE MATTER OF
AUSPICE CAPITAL ADVISORS LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting Auspice Diversified Trust (**ADT**) and Auspice One Fund Trust (**AOFT** and together with ADT, the **Funds** and individually, a **Fund**) exemptions from

(a) subsection 6.8(1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or with a dealer that is a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund for a transaction in Canada involving certain specified derivatives in excess of 10% of the net asset value (**NAV**) of the investment fund at the time of deposit; and

(b) paragraph 6.8(2)(c) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or a dealer for a transaction outside of Canada involving certain specified derivatives in excess of 10% of the NAV of the investment fund as at the time of deposit,

to permit the deposit by the Funds as margin portfolio assets of up to 35% of the Funds' NAV as at the time of deposit with any one futures commission merchant in Canada or the United States (each a **Dealer**) and up to 70% of the Funds' NAV as at the time of deposit with all Dealers in the aggregate, in each case for transactions in standardized futures, clearing corporation options, options on futures or cleared specified derivatives, subject to certain conditions proposed in this application (the **Exemption Sought**).

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

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

(b) the Filer has 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 jurisdiction of Canada, other than Alberta and Ontario, and

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

Interpretation

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

Representations

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

The Filer, ADT and AOFT

1. The Filer is a quantitative investment specialist that was established in 2006.

2. The Filer is registered as a portfolio manager, investment fund manager and exempt market dealer in Alberta, as a commodity trading manager, investment fund manager and exempt market dealer in Ontario, as an investment fund manager in British Columbia, Québec, and Newfoundland and Labrador, and as an exempt market dealer in

British Columbia and Québec. The Filer's head office is in Calgary, Alberta.

3. ADT is a trust that is governed by the laws of Alberta, established in June 2009.

4. The investment objective of ADT is to generate returns on investments in, trading in or exposure to exchange traded futures, options, forward contracts for commodities, financial instruments and currencies, including physical commodities, and exchange traded funds (**Commodity Interests**) that generate returns that are independent of equity, fixed income, and real estate investments.

5. AOFT is a trust that is governed by the laws of Alberta, established in June 2021.

6. The investment objective of AOFT is to achieve superior absolute and risk-adjusted returns as compared to balanced fund approaches, or a long-only equity fund, with the added benefits of protection and performance during sustained downward trends while earning a yield.

7. ADT and AOFT are alternative mutual funds, as defined in NI 81-102.

8. The Filer and the Funds are not in default of securities legislation in any jurisdiction of Canada.

9. Units of each Fund are offered pursuant to a simplified prospectus and fund facts prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

10. Each Fund is a reporting issuer in each jurisdiction of Canada.

Margin Deposit Limits

11. The Filer's diversified program is a rules-based, unconstrained (e.g., ADT and AOFT are not constrained from participating in opportunities, long and short, in a variety of asset classes), systematic multi-strategy investment program that is designed to deliver superior, non-correlated returns at critical times.

12. To achieve their investment objectives, the Funds will invest directly or indirectly in long-term and short-term holdings of Commodity Interests. Commodity Interests will be purchased from reputable trading platforms (commonly referred to as commodity exchanges) and over-the-counter counterparties in order to provide the Funds with a convenient, safer alternative to a direct investment in futures.

13. The Filer is authorized to establish, maintain, change, and close brokerage accounts on behalf of the Funds. In order to facilitate transactions in Commodity Interests on behalf of the Funds, the Filer will establish one or more accounts (each an **Account**) with one or more Dealers.

14. Each Dealer in Canada is a member of the Canadian Investment Regulatory Organization and is registered in the applicable jurisdictions as a future commission merchant or equivalent.

15. Each Dealer in the United States (each a **U.S. Dealer**) is regulated by the Commodity Futures Trading Commission (the **CFTC**) and the National Futures Association (the **NFA**) in the United States and is required to segregate all assets held on behalf of clients, including the Funds. Each U.S. Dealer is subject to regulatory audit and must have insurance to guard against employee fraud. Each U.S. Dealer has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of C$50 million. Each U.S. Dealer has an exchange assigned to it as its designated self-regulatory organization (the **DSRO**). As a member of a DSRO, each U.S. Dealer must meet capital requirements, comply with the conduct rules of the CFTC, NFA and its DSRO, and participate in an arbitration process with a complainant.

16. A Dealer will require, for each Account, that the portfolio assets of the Funds be deposited with the Dealer as collateral for transactions in Commodity Interests (**Initial Margin**). Initial Margin represents the minimum initial amount of portfolio assets that must be deposited with a Dealer to initiate trading in specified derivatives transactions or to maintain the Dealer's open position in standardized futures.

17. Levels of Initial Margin are established at a Dealer's discretion. At no time will more than 70% of the NAV of the Funds be deposited as Initial Margin with one or more Dealers in the aggregate.

18. Each Dealer is required to hold all Initial Margin, including cash and government securities, in segregated accounts and the Initial Margin will not be available to satisfy claims against the Dealer made by creditors of the Dealer.

Reasons for the Exemption Sought

19. The use of Initial Margin is an essential element of investing in Commodity Interests for the Funds.

20. The Exemption Sought would allow the Funds to invest in standardized futures more extensively with any one Dealer, which would allow the Funds to pursue their investment strategies more efficiently and flexibly.

21. Opening Accounts and transacting with multiple Dealers adds complexity and cost to the management of the Funds. Using fewer Dealers will considerably simplify the Funds' investments and operations and will reduce the cost of implementing the Funds' investment strategies. Using fewer Dealers also simplifies compliance and risk management, as monitoring the data, controls

and policies of a smaller number of Dealers is less complex.

Decision

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

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

(a) each Fund will only use Initial Margin such that the amount of Initial Margin held by any one Dealer on behalf of that Fund does not exceed 35% of the NAV of that Fund, taken at market value as at the time of the deposit;

(b) each Fund shall only use Initial Margin such that the amount of Initial Margin held by Dealers in aggregate on behalf of that Fund does not exceed 70% of the NAV of that Fund as at the time of the deposit; and

(c) all Initial Margin deposited with any Dealer is and will be held in segregated accounts and is not, and will not be available to satisfy claims against such Dealer made by creditor of the Dealer.

"Denise Weeres"
Director, Corporate Finance
Alberta Securities Commission

Application File #: 2023/0282
SEDAR+ File #: 3552900

B.3.3 I.G. Investment Management, Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – relief granted to permit investment funds subject to NI 81-102 to invest in securities of related underlying investment funds that are not reporting issuers.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 2.5(2)(c) and 19.1.

October 12, 2023

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

AND

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

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(IGIM)

DECISION

I. BACKGROUND

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application (the **Application**) from IGIM on behalf of iProfile International Equity Private Pool (the **Initial Top Fund**) and any additional existing mutual funds or those mutual funds established in the future of which IGIM is the manager (the **Additional Top Funds** and together with the **Initial Top Funds**, the **Top Funds** and individually a **Top Fund**) for relief from:

1. Paragraph 2.5(2)(a) of NI 81-102, to permit each Top Fund that is a mutual fund to invest in securities of Northleaf IG European PE Holdings (the **Underlying Northleaf Fund**), which will be a non-redeemable investment fund that is not subject to NI 81-102; and

2. Paragraph 2.5(2)(c) of NI 81-102, to permit each Top Fund that is a mutual fund to invest in securities of the Underlying Northleaf Fund, which will not be a reporting issuer in any jurisdiction.

(the **Requested Relief**)

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

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

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

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

II. INTERPRETATION

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

III. REPRESENTATIONS

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

IGIM

1. IGIM is a corporation continued under the laws of Ontario. It is the trustee, portfolio advisor and manager of the Top Fund. IGIM's head office is in Winnipeg, Manitoba.

2. IGIM is registered as a Portfolio Manager and an Investment Fund Manager in Manitoba, Ontario and Quebec and as an Investment Fund Manager in Newfoundland and Labrador.

3. IGIM is not in default of the securities legislation in any of the Jurisdictions.

The Top Fund

4. The Top Funds are, or will be, mutual funds subject to NI 81-102, organized and governed by the laws of a jurisdiction of Canada.

5. Each Top Fund distributes, or will distribute, its securities under a simplified prospectus and annual information form prepared in accordance with National Instrument 81-101 Mutual Fund Prospectus Disclosure (**NI 81-101**) and Form 81-101F1.

6. Securities of each Top Fund are, or will be, qualified for distribution in the Jurisdictions.

7. The Top Funds are, or will be, reporting issuers in the provinces and territories of Canada in which their securities are distributed.

8. The simplified prospectus of each Top Fund discloses, or will disclose, in its description of the Top Fund's investment strategies that the Top Fund may invest up to 10% of its assets directly or indirectly in a diversified portfolio of privately held companies. This limit is consistent with the classification of the Underlying Northleaf Fund as illiquid assets for purposes of NI 81-102.

9. Each Top Fund is, or will be, subject to National Instrument 81-107 – Independent Review Committee for Investment Funds (**NI 81-107**) and IGIM has established an independent review committee (**IRC**) to review conflict of interest matters pertaining to the Top Funds as required by NI 81-107.

Northleaf and the Underlying Northleaf Fund

10. Northleaf Capital Partners (Canada) Ltd. (together with its affiliates, **Northleaf**) is a global private markets investment firm with more than US$23 billion in private equity, private credit and infrastructure commitments under management on behalf of more than 200 public, corporate and multi-employer pension plans, endowments, foundations, financial institutions and family offices. Northleaf is led by an experienced group of professionals, who collectively have significant experience in structuring, investing and managing global private markets investments and in evaluating, negotiating, structuring and executing complex financial transactions.

11. On October 28, 2020 affiliates of IGIM, Mackenzie Financial Corporation (**Mackenzie**) and Great-West Lifeco Inc. (**Lifeco**) entered into a strategic partnership with Northleaf whereby Mackenzie and Lifeco jointly acquired a 49.9% non-controlling voting interest and 70% economic interest in Northleaf.

12. The Underlying Northleaf Fund will be a non-redeemable investment fund and it will seek to provide each Top Fund with access to European private equity assets consisting of a combination of mid-market and growth-oriented primary investments, secondary investments and direct investments (each a **Portfolio Investment** and collectively the **Portfolio Investments**). A "primary investment" is an investment in non-redeemable securities of a private equity fund issued directly by the issuer fund, whereas a "secondary investment" generally involves purchasing securities in an existing private equity fund from an existing securityholder through a private purchase and sale transaction between the existing securityholder and the buyer. A "direct investment" is an investment made directly in the securities of a private company, generally alongside other investment

partners. The Underlying Northleaf Fund will seek to earn a long-term rate of return in excess of returns generally available through conventional investments in public equity markets. The Underlying Northleaf Fund's strategy is European in scope and, in making primary and secondary investments for the Underlying Northleaf Fund, Northleaf intends to focus on making investments in or alongside a core group of private equity managers with well-established franchises, strong, long-term track records and demonstrated access to privileged deal flow.

13. The Underlying Northleaf Fund will fall within the definition of "investment fund" under the Securities Act (Manitoba) (the **Act**) as it will invest in a portfolio of securities and will not invest for the purpose of exercising or seeking to exercise control over issuers. While certain investments in the portfolio of the Underlying Northleaf Fund, particularly direct investments, may include "control" characteristics including the right to appoint voting or observer members to an issuer's board of directors (or similar), the majority of the exposure to private assets in the fund will be achieved through investments in other private funds rather than direct holdings in portfolio companies. Further, direct investments made by the Underlying Northleaf Fund will be generally minority investments in issuers which do not include "control" characteristics.

14. The Underlying Northleaf Fund will be managed by Northleaf. Northleaf is registered as an Exempt Market Dealer in Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan, as an Investment Fund Manager in Manitoba, Ontario and Quebec and as a Portfolio Manager in Manitoba and Ontario.

15. The Underlying Northleaf Fund will not be subject to NI 81-102, and will not prepare a simplified prospectus or annual information form in accordance with NI 81-101 or a long form prospectus in accordance with NI 41-101.

16. The Underlying Northleaf Fund will not be a reporting issuer in any of the Jurisdictions or listed on any recognized stock exchange.

17. The Top Funds will be the sole investors of the Underlying Northleaf Fund.

18. The Top Funds qualify to invest in the Underlying Northleaf Fund pursuant to an exemption from the prospectus requirement under applicable Canadian securities laws.

19. Northleaf is not in default of the securities legislation of any of the Jurisdictions.

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

21. As the Underlying Northleaf Fund will be a closed-end, non-redeemable investment fund, and there are no redemption rights, the Top Funds neither subscribe nor redeem based on the net asset value (**NAV**) of the Underlying Northleaf Fund

22. The Underlying Northleaf Fund will invest in other private equity funds sponsored by, and direct investments in partnership with, third party fund managers with whom Northleaf has an investment relationship. The Underlying Northleaf Fund will be valued quarterly by Northleaf. In preparing the quarterly valuations of the Underlying Northleaf Fund, Northleaf considers the quarterly valuations that it receives in respect of each Portfolio Investment from the applicable fund manager in respect of the Underlying Northleaf Fund's proportionate share of the Portfolio Investment. For valuation purposes, the Underlying Northleaf Fund's Portfolio Investments are stated at fair value based on financial statements and other relevant information as supplied by the relevant fund manager at each quarter end. Northleaf reviews each quarterly valuation for reasonability as compared to the prior quarter utilizing various performance metrics. Such valuations remain subject to adjustment in the event that Northleaf concludes that the valuation provided by the relevant fund manager does not accurately reflect the fair value of the Portfolio Investment. In such situations, Northleaf may consider other sources of fair value, such as trading comparables, transaction multiples or prior financing rounds.

23. On an annual basis the financial statements of the Underlying Northleaf Fund will be, audited by Northleaf's external auditors for its private equity funds, currently Ernst & Young LLP (Canada) (**E&Y**), where E&Y independently confirms the fair value of each Portfolio Investment. E&Y also audits the controls and processes in place to ensure Portfolio Investments are accurately valued in accordance with Northleaf's valuation policy.

24. Northleaf's private equity valuation policy is consistent with the *International Private Equity and Venture Capital Valuation Guidelines*.

General

25. Absent the Requested Relief, a Top Fund would be prohibited by sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 from purchasing or holding securities of the Underlying Northleaf Fund because the Underlying Northleaf Fund (i) will not be subject to NI 81-102:

and (ii) will not be a reporting issuer in the Jurisdictions.

26. IGIM believes that a meaningful allocation to private equity investments provides Top Funds' investors with unique diversification opportunities and represents an appropriate investment tool for the Top Funds that has not been widely available in the past. Private equity investments have historically performed well in down markets; IGIM believes that permitting the Top Funds to invest in private equity, a subset of alternative investments, offers the potential to improve the Top Funds' risk adjusted returns.

27. An investment in the Underlying Northleaf Fund by a Top Fund is an efficient and cost-effective way for the Top Fund to implement a private equity investment strategy. IGIM believes it is in the best interests of the Top Funds to make use of Northleaf's experience and expertise as a private equity investor to achieve a Top Fund's desired exposure to a diversified portfolio of private companies. An investment in the Underlying Northleaf Fund will provide a Top Fund with exposure to top-tier private equity funds and assets the Top Fund would not be able access directly. Without established relationships and internal private equity expertise, which Northleaf possesses but IGIM does not, it is extremely difficult to invest with leading global private equity managers, due to capped fund sizes and limited access to the funds. As an asset class, there has historically been a much larger dispersion of returns across private equity managers than there is for public equity managers. Accessing the top performing funds in private equity has historically made a material difference to returns. For this reason, there is significant competition to access the strongest performers and many are closed to new investors. Northleaf's longstanding relationships with and access to strong performing private equity funds provides a distinct advantage that would be very difficult for IGIM to generate directly.

28. Further, Northleaf provides an active and purposeful approach to private equity portfolio construction, risk management and diversification that IGIM does not have the expertise to replicate. Northleaf engages in extensive due diligence of each investment opportunity to ensure that the investment meets the expected risk/return profile for the Underlying Northleaf Fund participating in the investment. In summary, investing in the Underlying Northleaf Fund will provide the Top Funds with access to investments in hard to access private equity funds and assets that the Top Funds would not otherwise have exposure to through portfolios of private equity investments diversified across different strategies, industry sectors and geographies constructed by Northleaf's experienced private equity professionals.

29. We note that the private equity funds that the Underlying Northleaf Fund will invest in will not be considered "investment funds" under securities laws and, from a regulatory perspective, would be directly accessible by the Top Funds without regulatory relief.

30. We believe that Northleaf's expertise is also extremely beneficial in the secondaries market. As described above, the secondaries market involves purchasing interests in private equity funds from current investors or general partners who are seeking liquidity. The secondaries market has grown considerably over the past decade but can generally only be accessed by firms like Northleaf that have extensive relationships with private equity managers and other investors in private equity funds. These relationships provide Northleaf with significant "deal flow". These interests can take many forms, including interests in one or more private equity funds sold as a portfolio and "single asset" vehicles where, as the name indicates, a sole company or asset is purchased in the secondary market indirectly through a managed vehicle structure. Since IGIM does not possess the applicable expertise internally, these opportunities cannot be accessed by the Top Funds except through a specialized secondaries manager like Northleaf.

31. The reason for this proposed "fund-of-one" structure is that Northleaf does not currently offer a pooled fund focused on European private equity that fits with a Top Fund's investment objectives and strategies. Furthermore, this "fund-of-one" structure will ensure that Northleaf can efficiently provide portfolio monitoring, treasury, accounting, and other reporting tasks that the Top Funds are not set up to undertake. Northleaf has proven success in structuring, investing and managing more than $5 billion across private equity and venture capital/growth mandates on behalf of leading institutional investors, including other "fund-of-one" structures for leading Canadian institutional investors.

32. The Top Funds being the sole investor of an underlying fund is permissible under section 2.5 of NI 81-102 and therefore, but for the lack of applicability of section 2.5(2)(a) of NI 81-102 and 2.5(2)(c) 81-102 to the Underlying Northleaf Fund, no additional relief would be necessary to organize the funds in this manner.

33. Investments in the Underlying Northleaf Fund are considered illiquid investments under NI 81-102 and therefore are not permitted to exceed 10% of the NAV of a Top Fund. The investments in the Underlying Northleaf Fund are included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of NI 81-102 for a Top Fund. NI 81-102 allows holdings in illiquid investments so long as the aggregate exposure to illiquid investments is within the thresholds of the

rule. IGIM has its own liquidity policy and manages the Top Funds' liquidity prudently under the policy.

34. As with any other illiquid investment, the portfolio managers of a Top Fund will carefully monitor the portfolio holdings and the liquidity needs of the Top Fund. Further, while the Top Funds may go up to 10% in illiquid assets in accordance with NI 81-102, IGIM intends to keep the percentage of a Top Fund that is invested in illiquid assets at a moderately lower percentage to allow for fluctuations in the size of the Top Fund in order to manage compliance with the 10% restriction.

35. IGIM expects that the main source of liquidity for a Top Fund's interest in the Underlying Northleaf Fund would be for the Top Fund to turn to the secondary market where a Top Fund could seek out other institutional investors who, subject to Northleaf's approval, could purchase a Top Fund's interest in the Underlying Northleaf Fund in a secondary transaction.

36. The decision to permit the Top Funds to invest in the Underlying Northleaf Fund represents IGIM's business judgment and is not influenced by factors other than the best interests of the Top Funds.

37. Aside from the sections covered by the Requested Relief, the Top Funds will comply with section 2.5 of NI 81-102 with respect to any investment in the Underlying Northleaf Fund.

IV. DECISION

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

1. No Top Fund will actively participate in the business or operations of the Underlying Northleaf Fund.

2. In respect of an investment by a Top Fund in the Underlying Northleaf Fund, no sales or redemption fees will be paid as part of the investment in the Underlying Northleaf Fund.

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

4. Where applicable, a Top Fund's investment in the Underlying Northleaf Fund, will be disclosed to investors in such Top Fund's quarterly portfolio holding reports, financial statements and fund facts.

5. The prospectus of each Top Fund will disclose in the next renewal or amendment the fact that the Top Fund is invested in the Underlying Northleaf Fund, which are managed by Northleaf and that Mackenzie, an affiliate of IGIM holds a significant ownership interest in Northleaf.

6. The manager of each of the Top Funds complies with section 5.1 of NI 81-107 and the manager and the IRC of the Top Funds will comply with section 5.4 of NI 81-107 for any possible standing instructions concerning an investment by a Top Fund in the Underlying Northleaf Fund.

"Chris Besko"
Director
The Manitoba Securities Commission

Application File #: 2023/0420
SEDAR+ File #: 6025427

B.3.4 Brookfield Reinsurance Ltd.

Headnote

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirement to call a meeting of holders of affected securities to consider a proposed related party transaction and to send an information circular to such holders – issuer is a paired entity whose exchangeable securities are exchangeable into securities of the paired entity – paired entity is the sole beneficial holder of all of the issuer's equity securities and the only party eligible to vote for the purposes of minority approval under Part 8 of MI 61-101 – issuer and the paired entity filed a preliminary prospectus with respect to the exchange of a specified number of shares of the paired entity for exchangeable shares of the issuer, on a one-for-one basis – insiders of the issuer who hold shares of the paired entity may elect to participate in the exchange offer – the degree of participation by insiders and the availability of an exemption from the minority approval requirement in MI 61-101 will not be known until the expiry of the exchange offer – concurrently with the filing of the preliminary prospectus, the paired entity, as the sole beneficial holder of affected securities of the issuer, provided its written consent to the exchange offer – the issuer held a meeting and obtained disinterested shareholder approval, excluding the votes attached to shares held by its insiders, in accordance with exchange requirements – the sole affected securityholder was familiar and aware of the terms of the exchange offer, is a co-issuer of the preliminary prospectus, and had significant advance notice of the exchange offer – exemption sought granted, subject to conditions, including that the written consent is not revoked or withdrawn prior to the expiry time of the exchange offer.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 5.3, 5.6, 8.1 and 9.1(2).
Companion Policy 61-101CP to Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, s. 3.1.

October 16, 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
BROOKFIELD REINSURANCE LTD.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Reinsurance Ltd. (the **Filer**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filer from the requirement in subsection 5.3(2) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) to call a meeting of holders of affected securities to consider the Proposed Transaction (as defined below) and to send an information circular to such holders (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Québec and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, and MI 61-101 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:

Relevant Entities

The Filer

1. The Filer is an exempted company limited by shares established, registered and in good standing under the laws of Bermuda. The Filer's head and registered office is located at Ideation House, 1st Floor, 94 Pitts Bay Road, Pembroke HM08, Bermuda.

2. The Filer is a reporting issuer in all of the provinces and territories of Canada and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and satisfies its continuous disclosure obligations by complying with U.S. federal securities laws as is permitted under NI 71-102. The Filer is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized capital of the Filer consists of:

   (a) 1,000,000,000 class A exchangeable limited voting shares, of which there were 10,450,952 class A exchangeable limited voting shares issued and outstanding as of September 13, 2023;

   (b) 500,000,000 class A-1 exchangeable non-voting shares (and together with the class A exchangeable limited voting shares, the **exchangeable shares**), of which there were no class A-1 exchangeable non-voting shares issued and outstanding as of September 13, 2023;

   (c) 500,000 class B limited voting shares, of which there were 24,000 class B limited voting shares issued and outstanding as of September 13, 2023;

   (d) 1,000,000,000 class C non-voting shares, of which there were 102,056,784 class C non-voting shares issued and outstanding as of September 13, 2023;

   (e) 1,000,000,000 class A junior preferred shares (issuable in series), of which there were 98,351,547 class A junior preferred shares, series 1, and 2,108,733 class A junior preferred shares, series 2 issued and outstanding, in each case, as of September 13, 2023;

   (f) 1,000,000,000 class B junior preferred shares (issuable in series), of which there were no class B junior preferred shares issued and outstanding as of September 13, 2023;

   (g) 100,000,000 class A senior preferred shares (issuable in series), of which there were no class A senior preferred shares issued and outstanding as of September 13, 2023; and

   (h) 100,000,000 class B senior preferred shares (issuable in series), of which there were no class B senior preferred shares issued and outstanding as of September 13, 2023.

4. The class A exchangeable limited voting shares are listed on the Toronto Stock Exchange (the **TSX**) and the New York Stock Exchange (**NYSE**) under the symbol "BNRE".

Brookfield Corporation

5. Brookfield Corporation is a corporation existing and in good standing under the *Business Corporations Act* (Ontario). Brookfield Corporation's head and registered office is located at Brookfield Place, 181 Bay Street, Suite 100, Toronto, Ontario M5J 2T3.

6. Brookfield Corporation is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

7. The class A limited voting shares of Brookfield Corporation (the **Brookfield Class A Shares**) are listed on the NYSE and the TSX under the symbol "BN".

8. Brookfield Corporation is the sole beneficial owner of all of the issued and outstanding class C non-voting shares.

The Proposed Transaction

9. On August 18, 2023, the Filer and Brookfield Corporation filed a preliminary short form prospectus on SEDAR+ (the **Preliminary Prospectus**) with respect to the exchange of up to 40,000,000 Brookfield Class A Shares for class A-1 exchangeable non-voting shares (the **Proposed Transaction**). Pursuant to the Proposed Transaction, each holder of Brookfield Class A Shares who has properly tendered Brookfield Class A Shares, and who has not properly withdrawn such Brookfield Class A Shares, will receive one class A-1 exchangeable non-voting share for each Brookfield Class A Share tendered, on the terms and subject to the conditions described in the Preliminary Prospectus.

10. The Proposed Transaction was approved by the Governance and Nominating Committee of the board of directors of the Filer, which consists solely of independent directors who hold, in aggregate, less than 0.01% of the Brookfield Class A Shares and none of whom intends to tender any Brookfield Class A Shares in the Proposed Transaction.

11. Insiders of the Filer who hold Brookfield Class A Shares may elect to participate in the Proposed Transaction (each such participating insider, a **Participating Insider**). As each Participating Insider is a related party, if any of them tenders (and does not withdraw) Brookfield Class A Shares held by them in the Proposed Transaction, the Proposed Transaction, if consummated, would constitute a related party transaction for the purposes of MI 61-101 and would require the provision of a formal valuation and the receipt of minority approval, subject to the availability of applicable exemptions.

12. If Participating Insiders participate in the Proposed Transaction, absent the availability of an exemption, the Filer would be required to obtain a formal valuation in respect of the non-cash assets involved in the Proposed Transaction pursuant to subsection 6.3(1)(d) of MI 61-101. However, the Filer would be entitled to rely on the exemption from the requirement to obtain a formal valuation of non-cash consideration or assets set out in subsection 6.3(2) of MI 61-101 as:

    (a) the non-cash assets in respect of the Proposed Transaction (being the class A-1 exchangeable non-voting shares and any class A exchangeable limited voting shares or Brookfield Class A Shares issuable on conversion or exchange thereof) are securities of a reporting issuer;

    (b) the final short form prospectus of the Filer and Brookfield Corporation in respect of the Proposed Transaction (the **Final Prospectus**) will contain a statement that (i) the Filer has no knowledge of any material information concerning the Filer or its securities that has not been generally disclosed, and (ii) to the knowledge of the Filer after reasonable inquiry, none of the Participating Insiders have knowledge of any material information concerning the Filer or its securities that has not been generally disclosed; and

    (c) the Final Prospectus will include a description of the effect of the Proposed Transaction on the direct or indirect voting interest of the Participating Insiders.

13. If Participating Insiders participate in the Proposed Transaction, absent the availability of an exemption, the Filer would be required, pursuant to section 5.6 of MI 61-101, to obtain minority approval in accordance with Part 8 of MI 61-101 (the **Minority Approval**). Subsection 5.3(2) of MI 61-101 would require that the Filer call a meeting of holders of affected securities and send an information circular to those holders.

14. Until the expiry of the Proposed Transaction, it will not be known whether and to what degree Participating Insiders will tender to the Proposed Transaction, and whether the Filer would be entitled to rely on the exemption from the minority approval requirement set out in subsection 5.7(1)(a) of MI 61-101.

15. The Preliminary Prospectus includes a statement that certain insiders of the Filer who hold Brookfield Class A Shares may elect to participate in the Offer and that, as a result, the Offer, if consummated, may constitute a related party transaction for the purposes of MI 61-101. The Preliminary Prospectus also indicates that Brookfield Corporation, as the sole holder of affected securities of the Filer, has provided its consent to the Proposed Transaction.

16. As required by section 611(b) of the TSX Company Manual, at its annual and special meeting on August 17, 2023 (the **Meeting**), the Filer sought and obtained disinterested shareholder approval from the holders of the class A exchangeable limited voting shares and the class B limited voting shares, each voting as a separate class, to permit the Filer to issue up to a maximum of 101,899,808 exchangeable shares during the twelve-month period from the date of the Meeting in connection with one or more exchange transactions whereby holders of Brookfield Class A Shares would have the option to exchange their Brookfield Class A Shares for newly-issued exchangeable shares on a one-for-one basis (the **Reverse Exchange Resolution**, and each such exchange transaction, a **Reverse Exchange**).

17. The information circular in respect of the Meeting (the **Meeting Circular**) included a statement that insiders of the Filer who hold Brookfield Class A Shares may elect to participate in one or more Reverse Exchange.

18. At the Meeting, 7,466,977 class A exchangeable limited voting shares (or 71.45% of the issued and outstanding class A exchangeable limited voting shares as of the record date for the Meeting) were represented. 5,597,476 class A exchangeable limited voting shares (or 96.98% of the class A exchangeable limited voting shares cast on the Reverse

Exchange Resolution) were cast in favour of the Reverse Exchange Resolution, excluding the 1,274,532 class A exchangeable limited voting shares held by insiders of the Filer. All of the class B limited voting shares, which are held by BAM Re Partners Trust, voted in favour of the Reverse Exchange Resolution.

19. An affected security for a related party transaction is defined to mean an equity security of the issuer. The Filer's only class of equity securities are the class C non-voting shares, all of which are beneficially owned by Brookfield Corporation. Accordingly, Minority Approval for the Proposed Transaction would be approval by Brookfield Corporation.

20. Concurrently with filing of the Preliminary Prospectus, the Filer obtained a written consent from Brookfield Corporation evidencing its consent to the Proposed Transaction (the **Consent**).

21. As Minority Approval for the Proposed Transaction is certain, the Filer wishes for the Consent to evidence receipt of Minority Approval for the Proposed Transaction and not to be required to call a meeting of class C non-voting shares in order to obtain Minority Approval for the Proposed Transaction from Brookfield Corporation.

22. The Filer is a "paired entity" to Brookfield Corporation because (a) the exchangeable shares (i) are exchangeable into Brookfield Class A Shares on a one-for-one basis and (ii) receive distributions at the same time and in the same amounts as dividends on the Brookfield Class A Shares, and (b) Brookfield Corporation owns all of the equity securities of the Filer. As a result of this relationship and the nature of the Proposed Transaction, Brookfield Corporation was actively involved in the Proposed Transaction, and familiar and aware of its terms.

23. Brookfield Corporation, as a shareholder of the Filer, received the Meeting Circular in advance of executing the Consent. Brookfield Corporation is also a co-issuer of the Preliminary Prospectus and was involved in its preparation. Accordingly, Brookfield Corporation has had significant advance notice of the Proposed Transaction.

Decision

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

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

(a) Brookfield Corporation does not revoke or withdraw the Consent prior to the expiry time of the Proposed Transaction;

(b) each of the news release announcing the making of the Proposed Transaction and the Final Prospectus discloses that the Filer has applied for the Exemption Sought, and describes the nature of the Exemption Sought and its implications;

(c) Brookfield Corporation receives of a copy of this decision; and

(d) there are no other outstanding approvals required in respect of the Proposed Transaction which must be obtained at a meeting of shareholders of the Filer.

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

B.3.5 EssilorLuxottica SA

Headnote

Dual application for Exemptive Relief Applications – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in section 2.24 of Regulation 45-106 respecting Prospectus Exemptions as the securities are not being offered to Canadian employees directly but rather through special purpose entities – Canadian participants will receive disclosure documents – The special purpose entities or FCPEs are subject to the supervision of the local securities regulator – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – Relief granted, subject to conditions – 5 years sunset clause.

Applicable Legislative Provisions

Securities Act (Québec), ss. 11, 148 and 263.
Regulation 45-106 respecting Prospectus Exemptions, s. 2.24.
Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.16.

[Original text in French]

SEDAR+ filing No.: 06024742

October 13, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUEBEC
AND
ONTARIO
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
ESSILORLUXOTTICA SA
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator of each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for:

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to:

   a) trades of:

      i) units (the **Principal Classic Units)** of a *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle commonly used in France for the custody of shares held by employee-investors, named "EssilorLuxottica" (the **Principal Classic Fund**); and

      ii) units (the **Temporary Classic Units,** and together with the Principal Classic Units, the **Units**) of future temporary FCPEs that may be established for Subsequent Employee Offerings (as defined below) (each, a **Temporary Classic Fund,** and together with the Principal Classic Fund, the **Funds**), made pursuant to an Employee Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, and Newfoundland and Labrador

(collectively, the **Canadian Employees,** and Canadian Employees who subscribe for Units, the **Canadian Participants**);

b) trades of ordinary shares of the Filer (the **Shares**) by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants (the term **"Classic Fund"** used herein means, for the 2023 Employee Offering (as defined below), the Principal Classic Fund, and, for Subsequent Employee Offerings, either the Principal Classic Fund, or, if applicable, the relevant Temporary Classic Fund prior to the Merger (as defined below), and following the Merger, the Principal Classic Fund); and

2. an exemption from the dealer registration requirement (together with the Prospectus Relief, the **Exemption Sought**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Classic Fund and Societe Generale Gestion (the **Management Company**) in respect of:

a) trades in Units made pursuant to an Employee Offering to or with Canadian Employees; and

b) trades in Shares by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants.

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

a) the Autorite des marches financiers is the principal regulator for this application;

b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System,* CQLR, c. V-1.1, r. 1 (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta, Manitoba, Nova Scotia, New Brunswick and Newfoundland and Labrador; and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions,* CQLR, c. V-1.1, r. 3, Regulation 11-102 and *Regulation 45-106 respecting Prospectus Exemptions,* CQLR, c. V-1.1, r. 21 (**Regulation 45-106**) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not and has no current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext Paris.

2. The Filer has established a global employee share offering (the **2023 Employee Offering**) and expects to establish subsequent global employee share offerings following 2023 for the next four years that are substantially similar (**Subsequent Employee Offerings**, and together with the 2023 Employee Offering, the **Employee Offerings**) for Qualifying Employees of the Filer and its participating related entities, including related entities that employ Canadian Employees (**Local Related Entities**, and together with the Filer and other related entities of the Filer, the **EssilorLuxottica Group**). Each Local Related Entity is a direct or indirect controlled subsidiary of the Filer and no Local Related Entity is a reporting issuer nor has any intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the EssilorLuxottica Group in Canada is located in Quebec.

3. As of the date hereof, "Local Related Entities" include EssilorLuxottica Canada Inc., DAC Vision Inc., Satisloh North America Inc., Walman Optical Canada Ltd., Optique Cristal (1988) Inc., Riverside Opticalab Ltd., Omics Software Inc., Technologies Humanware Inc., Shamir Canada Optical Inc., FGx Canada Corporation, Axis Medical Canada Inc., Vision Rx Lab Canada Inc., Bugaboos Eyewear Corporation, 8336083 Canada Inc. For any Subsequent Employee Offering, the list of "Local Related Entities" may change.

4. As of the date hereof and after giving effect to any Employee Offering, the Filer is and will be a "foreign issuer" as such term is defined in section 2.15(1) of *Regulation 45-102 respecting Resale of Securities*, CQLR, c. V-1.1, r. 20 (**Regulation 45-102**), section 2.8(1) of Ontario Securities Commission Rule 72-503 - *Distributions Outside Canada* (**OSC Rule 72-503**) and section 11(1) of Alberta Securities Commission Rule 72-501 - *Distributions to Purchasers Outside Alberta* (**ASC Rule 72-501**).

5. The 2023 Employee Offering involves an offering of Shares to be acquired through the Principal Classic Fund. Each Subsequent Employee Offering will involve an offering of Shares to be subscribed through either the Principal Classic Fund, or a Temporary Classic Fund, which will be merged with the Principal Classic Fund after completion of the Subsequent Employee Offering (the **Classic Plan**, which for greater certainty, includes the 2023 Employee Offering), subject to the decision of the supervisory boards of the Funds and the approval of the Autorite des marches financiers in France (the **French AMF**).

6. Only persons who are employees of an entity forming part of the EssilorLuxottica Group during the subscription period for an Employee Offering and who meet other employment criteria (the **Qualifying Employees**) will be allowed to participate in the relevant Employee Offering.

7. The Principal Classic Fund was established for the purpose of implementing the employee offerings generally. There is no intention for the Principal Classic Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada. There is no intention for any Temporary Classic Fund that may be established for the purpose of implementing Subsequent Employee Offerings to become a reporting issuer under the securities legislation of any jurisdiction of Canada.

8. The Principal Classic Fund was registered with, and has been approved by, the French AMF, as of July 26, 2006. It is expected that each Temporary Classic Fund established for Subsequent Employee Offerings will be an FCPE and will be registered with, and approved by, the French AMF.

9. The total amount invested by a Canadian Employee pursuant to an Employee Offering cannot exceed the lesser of (i) four Units, and (ii) 25% of his or her estimated gross annual compensation. The value of the Bonus Shares (as defined below) is not included in this calculation.

10. The maximum number of Shares that may be subscribed for by the Qualifying Employees under the 2023 Employee Offering is 600,000 Shares. A different maximum offering size may apply to Subsequent Employee Offerings. If subscriptions received from Qualifying Employees under an Employee Offering would result in an acquisition of value of Shares by the Fund in excess of the maximum offering size, the largest individual subscription or subscriptions will be reduced until the aggregate number of Shares subscribed for under the Employee Offering is below the maximum offering size.

11. Under the Classic Plan, each Employee Offering will be made as follows:

    a) Canadian Participants will subscribe for the relevant Units, and the Principal Classic Fund under the 2023 Employee Offering, or the Principal Classic Fund or relevant Temporary Classic Fund under Subsequent Employee Offerings, will then subscribe for Shares on behalf of Canadian Participants.

    b) For the 2023 Employee Offering, the Shares will be subscribed for at a subscription price that is the Canadian dollar equivalent of the average opening price of Shares (expressed in Euros) on Euronext Paris for the 20 trading days preceding the date of the fixing of the subscription price by the chief executive officer of the Filer (the **Subscription Price**). For Subsequent Employee Offerings, the Subscription Price will be determined in the same manner, except that the Filer may offer Shares at a specified discount to the Subscription Price (a **Discounted Subscription Price**). For a Subsequent Employee Offering where a Discounted Subscription Price is offered, Canadian Participants will subscribe for Units in a Temporary Classic Fund, which will subscribe for Shares on behalf of Canadian Participants.

    c) For the 2023 Employee Offering, the Principal Classic Fund, and for Subsequent Employee Offerings, the Principal Classic Fund or relevant Temporary Classic Fund, as the case may be, respectively, will apply the cash received from the Canadian Participants to subscribe for Shares.

    d) For Subsequent Employee Offerings, the Shares subscribed for will be held in either: (i) the Principal Classic Fund; or (ii) if a Temporary Classic Fund is utilized, in the relevant Temporary Classic Fund, initially, and the Canadian Participants will receive Units of the relevant Temporary Classic Fund.

    e) Following the completion of a Subsequent Employee Offering where a Temporary Classic Fund is utilized, the relevant Temporary Classic Fund will be merged with the Principal Classic Fund (subject to the approval of the supervisory board of the FCPE and the French AMF). The Temporary Classic Units held by Canadian Participants will be replaced with the Principal Classic Units on a *pro rata* basis and the Shares subscribed for will be held in the Principal Classic Fund (such transaction being referred to as the **Merger**). The Merger is made by the transfer of all assets held in the Temporary Classic Fund into the Principal Classic Fund and the liquidation of the Temporary Classic Funds after such transfer.

f) All Units acquired by Canadian Participants will be subject to a hold period of approximately three years (the **Lock-Up Period**), subject to certain exceptions prescribed by French law and adopted for an Employee Offering (such as release on death, disability, or termination of employment).

g) Any dividends paid on the Shares held in the Classic Fund will be contributed to the Classic Fund and used to purchase additional Shares, and additional Units (or fractions thereof) will be issued to the Canadian Participants to reflect this reinvestment.

h) At the end of the relevant Lock-Up Period, a Canadian Participant may (i) request the redemption of Units in the Classic Fund in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (ii) continue to hold Units in the Classic Fund and request the redemption of those Units at a later date in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares.

i) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, the Canadian Participant may request the redemption of Units in the Classic Fund in consideration for a cash payment equal to the then fair market value of the underlying Shares.

ii) In addition, each Employee Offering provides that the Filer will also contribute additional Shares (**Bonus Shares**) into the Classic Plan based on predetermined matching contribution rules, for the benefit of, and at no cost to, eligible Canadian Participants. Canadian Participants will receive Units representing their interest in the Bonus Shares.

12. For the 2023 Employee Offering, the number of Bonus Shares which a Canadian Participant is eligible to receive will be determined according to the following matching schedule:

Canadian Participant's Subscription	**Matching Ratio**
1/2 Share	1/2 Bonus Share
1 Share	1 Bonus Share
2 Shares	2 Bonus Shares
3 Shares	3 Bonus Shares
4 Shares	4 Bonus Shares

For each Subsequent Employee Offering, the matching contribution rules may change.

13. Under French law, an FCPE is a limited liability entity. The portfolio of the Funds will consist almost entirely of Shares, but may, from time to time, also include cash in respect of dividends paid on the Shares which will be reinvested in Shares and cash or cash equivalents pending investments in Shares and for the purposes of Unit redemptions.

14. The Funds are managed by the Management Company, which is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada. For any Subsequent Employee Offering, the "Management Company' may change. In the event of such a change, the successor to the Management Company will comply with the terms and conditions described in this paragraph.

15. The Management Company's portfolio management activities in connection with an Employee Offering and the Funds are limited to subscribing for Shares, selling such Shares as necessary in order to fund redemption requests and investing available cash in cash equivalents.

16. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents of the Funds. The Management Company's activities will not affect the underlying value of the Shares.

17. None of the entities forming part of the EssilorLuxottica Group, the Classic Fund or the Management Company, or any of their directors, officers, employees, agents or representatives will provide investment advice to Canadian Employees with respect to an investment in Shares or Units.

18. None of the entities forming part of the EssilorLuxottica Group, the Funds or the Management Company is currently in default of securities legislation of any jurisdiction of Canada.

19. Shares issued pursuant to an Employee Offering will be deposited in the Classic Fund through Societe Generale (the Depositary), a large French commercial bank subject to French banking legislation. For any Subsequent Employee Offering, the "Depositary" may change. In the event of such a change, the successor to the Depositary will remain a large French commercial bank subject to French banking legislation. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow the Classic Fund to exercise the rights relating to the securities held in their portfolio.

20. The Management Company and the Depositary are obliged to act exclusively in the best interests of the holders of the Units (including Canadian Participants) and are jointly and severally liable to them under French legislation for any violation of the rules and regulations governing FCPEs, any violation of the rules of the Funds, or for any self-dealing or negligence.

21. Participation in an Employee Offering is voluntary, and the Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.

22. The Unit value of the Classic Fund will be calculated and reported to the French AMF on a regular basis, based on the net assets of the Classic Fund divided by the number of Units outstanding. The value of the Units will be correlated with the value of the underlying Shares.

23. The Shares and Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares or the Units so listed.

24. All management charges relating to the Classic Fund will be paid from the assets of the Classic Fund or by the Filer, as provided in the rules of the Classic Fund.

25. Canadian Employees will receive an information package in the French or English language, according to their preference, which will include a summary of the terms of the relevant Employee Offering and a description of the relevant Canadian income tax consequences of subscribing for and holding Units of the Classic Fund and requesting the redemption of such Units at the end of the applicable Lock-Up Period. The information package will be made available through a link that will be emailed to each Canadian Employee. Canadian Employees will also have access to the Filer's French Document d'Enregistrement Universel filed with the French AMF in respect of the Shares and a copy of the rules of the Principal Classic Fund and relevant Temporary Classic Fund, if applicable. Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of Shares generally and that are available on the Filer's website. Canadian Participants will receive an initial statement of their holdings under the Classic Plan, together with an updated statement, at least once per year.

26. As at August 11, 2023, for the 2023 Employee Offering, there are approximately 1,239 Qualifying Employees resident in Canada, with the greatest number resident in Ontario (508), and the remainder in Quebec (468), British Columbia (165), Alberta (37), New Brunswick (33), Nova Scotia (16), Manitoba (10), and Newfoundland and Labrador (2), who represent, in the aggregate, less than 1% of the number of employees in the EssilorLuxottica Group worldwide.

27. Units are not transferable by holders of such Units except upon redemption and other than as reflected in the decision document.

Decision

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

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

1. with respect to the 2023 Employee Offering, the prospectus requirement will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision unless the following conditions are met:

    a) the issuer of the security:

        i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

        ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

    b) the issuer of the security was a foreign issuer on the distribution date, as such term is defined in section 2.15(1) of Regulation 45-102, section 2.8(1) of OSC Rule 72-503 and section 11(1) of ASC Rule 72-501; and

c) the first trade is made:

i) through an exchange, or a market, outside of Canada, or

ii) to a person outside of Canada; and

2. for any Subsequent Employee Offering completed within five years from the date of this decision:

a) the representations other than those in paragraphs 3 and 26 remain true and correct in respect of that Subsequent Employee Offering, and

b) the conditions set out in paragraph 1 apply to any such Subsequent Employee Offering (varied such that any references therein to the 2023 Employee Offering are read as references to the relevant Subsequent Employee Offering); and

3. in the Provinces of Ontario and Alberta, the prospectus exemption above, for the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision, is not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a trade to a person or company in Canada.

“Frederic Belleau”
Directeur principal des produits d'investissement et de la finance durable
Autorite des marches financiers

OSC File #: 2023/0411

This page intentionally left blank

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
Vegano Foods Inc.	October 10, 2023	
Oracle Commodity Holding Corp	August 14, 2023	October 16, 2023

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

Company Name	Date of Order	Date of Lapse
NioCorp Developments Ltd.	September 29, 2023	October 12, 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	
HAVN Life Sciences Inc.	August 30, 2023	
NioCorp Developments Ltd.	September 29, 2023	October 12, 2023

This page intentionally left blank

B.6
Request for Comments

B.6.1 CSA Notice and Request for Comment – Proposed Amendments to National Instrument 81-102 Investment Funds

CSA NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

October 19, 2023

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are proposing amendments to facilitate a voluntary decision by a mutual fund to shorten the settlement cycle for purchases and redemptions of its securities from two days after the date of a trade (**T+2**) to one day after the date of a trade (**T+1**) in anticipation of a reduction of the settlement cycle for equity and long-term debt market trades in Canada to T+1.

We are publishing for a 90-day comment period proposed amendments (the **Proposed Amendments**) to National Instrument 81-102 *Investment Funds* (**NI 81-102**).

The text of the Proposed Amendments is contained in Annex A of this Notice and will also be available on the websites of the following CSA jurisdictions:

www.lautorite.qc.ca
www.asc.ca
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Summary, Substance and Purpose

The purpose of the Proposed Amendments is to accommodate a range of settlement cycles and particularly for those mutual funds that voluntarily decide to shorten the settlement cycle for purchases and redemptions of their securities from T+2 to T+1 when the underlying assets held by the fund move to a T+1 settlement cycle.

The Proposed Amendments introduce drafting changes to clarify that payments must be made no later than the reference settlement date of the purchase order. The reference settlement date of the purchase order is the business day determined by the mutual fund and disclosed in writing to the principal distributor, the participating dealer, or the person or company providing services to the principal distributor or participating dealer, which must be on or before the second business day after the pricing date.

The Proposed Amendments also introduce a change to paragraph 9.4(4)(a) of NI 81-102 to require a mutual fund that voluntarily decides to shorten the settlement cycle for purchase or redemption of its securities from T+2 to T+1 to redeem its securities for non-payment on the next business day after the reference settlement date of the purchase order, which would be on T+2 rather than T+3 as currently required.

Background

On December 15, 2022, the CSA published for comment proposed amendments (the **NI 24-101 Amendments**) to National Instrument 24-101 *Institutional Trade Matching and Settlements*. Among other things, the NI 24-101 Amendments focus on facilitating the shortening of the standard settlement cycle for equity and long-term debt market trades in Canada from T+2 to T+1.

Concurrent with the publication of the NI 24-101 Amendments, CSA staff published CSA Staff Notice 81-335 *Investment Fund Settlement Cycles* (**Staff Notice 81-335**). Staff Notice 81-335 explained that CSA staff did not propose to amend sections 9.4 and 10.4 of NI 81-102 to mandate the shortening of the settlement cycle for primary distributions and redemptions of mutual fund securities from T+2 to T+1. However, it was CSA staff's view that mutual funds should settle primary distributions and redemptions of their securities on T+1 voluntarily if the standard settlement cycle for listed securities moves from two days to one day in Canada.

The comment period for the NI 24-101 Amendments closed on March 17, 2023, and we received one comment letter regarding Staff Notice 81-335. The commenter stated that, to facilitate a voluntary decision by a mutual fund to shorten the settlement cycle for purchase or redemption of its securities from T+2 to T+1, a technical amendment to the forced redemption for non-payment requirement in paragraph 9.4(4)(a) of NI 81-102 should be made. The commenter noted that the intent of paragraph 9.4(4)(a) of NI 81-102 is that a mutual fund must redeem its securities that were issued to a purchaser if the purchaser fails to pay for those securities the day after settlement. Because settlement is currently required on T+2, current paragraph 9.4(4)(a) of NI 81-102 effectively mandates redemption three days after the date of the trade (**T+3**). If a mutual fund voluntarily shortens its settlement cycle for a sale of its securities to T+1, the mutual fund should be required to redeem for non-payment on the date after settlement, which would be on T+2 rather than T+3.

Without the Proposed Amendments, current paragraph 9.4(4)(a) of NI 81-102 would make a voluntary movement to a T+1 settlement cycle by a mutual fund administratively challenging because it could not redeem its securities for non-payment until two days after the settlement date.

Content of Annexes

This Notice contains the following annexes:

- Annex A – Proposed Amendments to National Instrument 81-102 *Investment Funds*
- Annex B – Local Matters

How to Provide Your Comments

Please provide your comments in writing by **January 17, 2024**.

We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at www.asc.ca, the Ontario Securities Commission at www.osc.ca and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Thank you in advance for your comments.

Please address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-8381
Email: consultation-en-cours@lautorite.qc.ca

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission
James Leong
Senior Legal Counsel, Corporate Finance
Tel : 604-899-6681
Email: jleong@bcsc.bc.ca

Alberta Securities Commission
Chad Conrad
Senior Legal Counsel, Investment Funds
Tel: 403-297-4295
Email: Chad.Conrad@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan
Heather Kuchuran
Director, Corporate Finance
Tel: 306-787-1009
Email: heather.kuchuran@gov.sk.ca

Manitoba Securities Commission
Patrick Weeks
Deputy Director – Corporate Finance
Tel: 204-945-3326
Email: Patrick.weeks@gov.mb.ca

Ontario Securities Commission
Michael Tang
Senior Legal Counsel, Investment Funds and Structured Products Branch
Tel: 416-593-2330
Email: mtang@osc.gov.on.ca

Autorité des marchés financiers
Philippe Lessard
Securities Analyst, Investment Products Oversight
Tel: 514-395-0337 # 4364
Email: Philippe.Lessard@lautorite.qc.ca

Financial and Consumer Services Commission (New Brunswick)
Joe Adair, Senior Securities Analyst
Tel: 506-643-7435
Email: joe.adair@fcnb.ca

Nova Scotia Securities Commission
Abel Lazarus
Director, Corporate Finance Branch
Tel: 902-424-6859
Email: abel.lazarus@novascotia.ca

Peter Lamey
Legal Analyst, Corporate Finance Branch
Tel: 902-424-7630
Email: peter.lamey@novascotia.ca

ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

1. National Instrument 81-102 Investment Funds is amended by this Instrument.

2. Section 9.4 is amended

(a) by adding the following subsection:

(0.1) In subsections (1), (2), and (4), "reference settlement date" means the earlier of:

(a) the business day determined by the mutual fund and disclosed in writing to the principal distributor or participating dealer referred to in subsection (1), or to the person or company referred to in subsection (1) providing services to the principal distributor or participating dealer, and

(b) the second business day after the pricing date.***,***

(b) in subsections (1), (2) and (4), by replacing "second business day after the pricing date*" with "***reference settlement date"***, and***

(c) by replacing in paragraph 4(a) "third business day after the pricing date***" with "***next business day after the reference settlement date***".***

Effective Date

3. (1) This Instrument comes into force on [**DATE**].

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [**DATE**], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX B

LOCAL MATTERS

ONTARIO SECURITIES COMMISSION

1. Introduction

The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice and Request for Comment (the **CSA Notice**) and to set out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**).

Unless otherwise defined in this Annex, defined terms or expressions used in this Annex share the meanings provided in the CSA Notice.

Please refer to the main body of the CSA Notice.

2. Background and Current Regulatory Framework

On December 15, 2022, the CSA published for comment the NI 24-101 Amendments. Among other things, the NI 24-101 Amendments focus on facilitating an industry led effort to shorten the standard settlement cycle for equity and long-term debt market trades in Canada from T+2 to T+1 to align with proposed changes to settlement cycles in the United States.

Concurrent with the publication of the NI 24-101 Amendments, the CSA published Staff Notice 81-335, which explained that CSA staff did not propose to amend sections 9.4 and 10.4 of NI 81-102 to mandate shortening of the settlement cycle for primary distributions and redemptions of mutual fund securities from T+2 to T+1. However, it was CSA staff's view that mutual funds should settle primary distributions and redemptions of their securities on T+1 voluntarily if the standard settlement cycle for listed securities moves from two days to one day in Canada. Staff Notice 81-335 explained that moving to T+1 settlement would present operational difficulties for funds that have a significant portion of their portfolio assets that settle at T+2 or longer and so the CSA is not proposing amendments to sections 9.4 and 10.4 of NI 81-102 to mandate a T+1 settlement cycle for all mutual fund securities.

We agree with the flexible approach set out in Staff Notice 81-335. Without the Proposed Amendments, current paragraph 9.4(4)(a) of NI 81-102 would make a voluntary movement to a T+1 settlement cycle by a mutual fund administratively challenging because they could not redeem their securities for non-payment until two days after the settlement date.

3. Rationale for Intervention

The intent of paragraph 9.4(4)(a) of NI 81-102 is that a mutual fund must redeem its securities that were issued to a purchaser if the purchaser fails to pay for those securities by the day after the settlement date. Because settlement is currently required on T+2, current paragraph 9.4(4)(a) of NI 81-102 mandates redemption for non-payment on T+3. If a mutual fund voluntarily shortens its settlement cycle for a sale of its securities to T+1, the mutual fund should be permitted to redeem for non-payment on the date after settlement, which would be on T+2 rather than T+3. Without the Proposed Amendments, current paragraph 9.4(4)(a) of NI 81-102 would be a large disincentive for mutual funds to voluntarily move to a T+1 settlement cycle because they could not redeem its securities for non-payment until two days after the settlement date.

4. Proposed Intervention

The Proposed Amendments change paragraph 9.4(4)(a) of NI 81-102 to refer to the business day after the reference settlement date rather than the third business day after the pricing date. The Proposed Amendments also make drafting changes to clarify that payments must be made no later than the reference settlement date of the purchase order. The reference settlement date of the purchase order is the business day determined by the mutual fund and disclosed in writing to the principal distributor, the participating dealer, or the person or company providing services to the principal distributor or participating dealer, which must be on or before the second business day after the pricing date.

5. Affected Stakeholders

a. Mutual Funds

The Proposed Amendments would provide the necessary flexibility to mutual funds that wish to voluntarily move to a T+1 settlement cycle and promotes CSA staff's view in Staff Notice 81-335 (outlined above). These mutual funds will be able to redeem their securities that were issued to a purchaser if the purchaser fails to pay for those securities by the business day after the reference settlement date.

As of December 2022, there were approximately 2900 mutual funds with net asset values of at least $10 million.[1] While we do not have any estimates as to how many mutual funds will voluntarily change their settlement cycle to T+1, industry has indicated that almost half of funds have greater than 10% exposure to jurisdictions that will not be moving to a T+1 settlement cycle, highlighting the importance of the flexible approach explained in Staff Notice 81-335.[2]

b. Investors

Investors in a mutual fund's securities will generally benefit if the mutual fund voluntarily moves to a T+1 settlement cycle, following the adoption of the Proposed Amendments. Buyers and sellers of securities will receive their cash and securities a day earlier under a T+1 settlement cycle. While we do not have estimates on the share of investors' assets that could be affected, we note that Canadian mutual funds assets totalled $1.9 trillion at the end of April 2023.[3]

c. Mutual Fund Dealers

Mutual fund dealers intermediating the purchase of mutual fund securities may incur incremental costs to track the settlement cycles of specific mutual funds as a result of any increase in the number of mutual funds voluntarily moving to a T+1 settlement cycle following the adoption of the Proposed Amendments.

6. Anticipated Benefits of the Proposed Amendments

a. Benefits to Mutual Funds

The Proposed Amendments would benefit mutual funds that wish to voluntarily move to a T+1 settlement cycle as well as investors in their funds. These mutual funds will be able to redeem its securities that were issued to a purchaser if the purchaser fails to pay for those securities by the business day after the reference settlement date rather than being forced to wait until the third business day after the pricing date. Being able to force redemption the day after non-payment will benefit the mutual fund by improving liquidity.

The Proposed Amendments provide no direct benefits to mutual funds that do not voluntarily move to a T+1 settlement cycle.

b. Benefits to Investors

Investors of a mutual fund's securities will generally benefit if the Proposed Amendments facilitate the mutual fund's voluntary move to a T+1 settlement cycle. Buyers and sellers of mutual fund securities will receive their securities or cash a day earlier under a T+1 settlement cycle.

7. Anticipated Costs of the Proposed Amendments

a. Costs to Mutual Funds

We anticipate that mutual funds will spend some time reviewing the Staff Notice 81-335 and the Proposed Amendments to determine if they should voluntarily move to a T+1 settlement cycle. We assume each fund will spend a total of 1 hour on these activities incurring a total cost of approximately $97.50 per fund,[4] which results in a total of around $283,000 across the approximately 2900 funds with net asset values of more than $10 million.[5]

The Proposed Amendments impose no other direct costs on mutual funds regardless of whether they decide to voluntarily move to a T+1 settlement cycle or retain a T+2 settlement cycle.

b. Costs to Investors

The Proposed Amendments impose no direct costs on Investors of a mutual fund's securities. Buyers of securities should have their mutual fund securities redeemed the business day after the reference settlement date if they do not pay for those securities by the reference settlement date. Buyers of securities in mutual funds that move to a T+1 settlement cycle may face a small opportunity cost from being required to pay for securities a day earlier than under the existing requirement. However, we expect the benefit to investors noted above from receiving cash earlier outweigh this.

1 OSC Investment Fund Survey.
2 https://www.ific.ca/en/articles/investment-funds-and-the-move-to-t1/.
3 IFIC Monthly Investment Fund Statistics – April 2023: https://www.ific.ca/en/stats/
4 Compliance Analyst for 0.75 hours at $80 per hour and Chief Compliance Officer for 0.25 hours at $150 per hour. Hourly rates are based on the 2021 Robert Half Accounting and Finance Salary Guide.
5 2022 OSC Investment Fund Survey.

c. Costs to Mutual Fund Dealers

As noted, mutual fund dealers intermediating the purchase of mutual fund securities may incur incremental costs to track the settlement cycles of specific mutual funds as a result of any increase in the number of mutual funds voluntarily moving to a T+1 settlement cycle following the adoption of the Proposed Amendments.

8. Rule-making Authority

The Proposed Amendments are being made under paragraph 143(1)31 of the Act. It authorizes the Commission to make rules regulating investment funds and the distribution and trading of the securities of investment funds, including prescribing procedures applicable to investment funds, registrants and any other person or company in respect of sales and redemption of investment fund securities and payments for sales and redemptions.

9. Alternatives Considered

An alternative considered was to maintain the *status quo*, which would mean that the Proposed Amendments would not be adopted. Not proceeding with the Proposed Amendments would result in a disincentive for mutual funds to voluntarily move to a T+1 settlement cycle and a likelihood that few mutual funds would voluntarily shorten their settlement cycles.

10. Reliance on Unpublished Studies

The Commission is not relying on any unpublished study, report or other written material in proposing the Proposed Amendments.

This page intentionally left blank

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:
Sun Life Net Zero Target Bond Fund
Sun Life Risk Managed U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Oct 11, 2023
NP 11-202 Preliminary Receipt dated Oct 11, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06034534

Issuer Name:
Evolve Enhanced Yield Bond Fund
Evolve NASDAQ Technology Enhanced Yield Index Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 6, 2023
NP 11-202 Final Receipt dated Oct 12, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06026217

NON-INVESTMENT FUNDS

Issuer Name:
Surge Energy Inc.
Principal Regulator – Alberta
Type and Date:
Final Short Form Prospectus dated Oct 13, 2023
NP 11-202 Final Receipt dated Oct 13, 2023
Offering Price and Description:
$42,000,000.00
8.50% Series 3 Convertible Unsecured Subordinated Debentures Due December 31, 2028
Price: $1,000.00 per Offered Debenture
Filing # 06031002

Issuer Name:
Greenridge Exploration Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Oct 6, 2023
NP 11-202 Preliminary Receipt dated Oct 10, 2023
Offering Price and Description:
2,793,005 Common Shares on Exercise of 2,793,005 Outstanding Special Warrants
Filing # 06033840

Issuer Name:
Delta 9 Cannabis Inc.
Principal Regulator – Manitoba
Type and Date:
Final Shelf Prospectus dated Oct 12, 2023
NP 11-202 Final Receipt dated Oct 13, 2023
Offering Price and Description:
$40,000,000.00 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06033373

Issuer Name:
Cameo Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated Oct 9, 2023
NP 11-202 Amendment Receipt dated Oct 11, 2023
Offering Price and Description:
Common Shares
Number of Securities - 7,500,000
Price per Security- $0.10
Filing # 03559643

Issuer Name:
Gibson Energy Inc.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated Oct 10, 2023
NP 11-202 Final Receipt dated Oct 11, 2023
Offering Price and Description:
Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Share Purchase Contracts, Units
Filing # 06034341

Issuer Name:
Organigram Holdings Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Oct 6, 2023
NP 11-202 Final Receipt dated Oct 11, 2023
Offering Price and Description:
$500,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06029276

Issuer Name:
Red Canyon Resources Ltd.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Oct 12, 2023
NP 11-202 Final Receipt dated Oct 13, 2023
Offering Price and Description:
No securities are being offered pursuant to this prospectus
Filing # 06023597

Issuer Name:
Fairfax Financial Holdings Limited
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Oct 11, 2023
NP 11-202 Final Receipt dated Oct 11, 2023
Offering Price and Description:
Subordinate Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06034497

Issuer Name:
Fury Gold Mines Limited
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated Oct 12, 2023
NP 11-202 Final Receipt dated Oct 13, 2023
Offering Price and Description:
$75,000,000.00 - Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt, Securities, Units
Filing # 03550157

Issuer Name:
Golden Rapture Mining Corporation
Principal Regulator – Alberta
Type and Date:
Preliminary Long Form Prospectus dated Oct 10, 2023
NP 11-202 Preliminary Receipt dated Oct 11, 2023
Offering Price and Description:
Minimum offering: 666,667 units
Maximum offering: 6,666,667 units
Price per Security: $0.15 per Unit
Filing # 06031497

Issuer Name:
UGE International Ltd.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated Oct 10, 2023
NP 11-202 Preliminary Receipt dated Oct 10, 2023
Offering Price and Description:
Up to US$4,999,850.00 - 9% Secured Debentures
Maturing December 31, 2028
Filing # 06034114

_____

This page intentionally left blank

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	iA Private Wealth Inc./iA Gestion privée de patrimoine	From: Investment Dealer To: Investment Dealer and Mutual Fund Dealer	October 11, 2023

This page intentionally left blank

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

B.11.2 Marketplaces

B.11.2.1 Aequitas Innovations Inc. and Neo Exchange Inc. – Application by Aequitas Innovations Inc. and Neo Exchange Inc. for Variation of Recognition as Exchanges to Reflect Proposed Amalgamation of Aequitas Innovations Inc., Neo Exchange Inc., and TriAct Canada Marketplace LP into Cboe Canada Inc. – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION BY
AEQUITAS INNOVATIONS INC. AND NEO EXCHANGE INC.
FOR VARIATION OF RECOGNITION AS EXCHANGES TO REFLECT PROPOSED AMALGAMATION OF AEQUITAS INNOVATIONS INC., NEO EXCHANGE INC., AND TRIACT CANADA MARKETPLACE LP INTO CBOE CANADA INC.

A. Introduction

Aequitas Innovations Inc. (**Aequitas**) and Neo Exchange Inc. (**Neo Exchange**) have applied to the Ontario Securities Commission (**Commission**), under section 144 of the *Securities Act* (Ontario) (**Act**), for a variation and restatement of the Commission's order recognizing Aequitas and Neo Exchange as exchanges to reflect the proposed amalgamation (the **Proposed Amalgamation**) of Aequitas, Neo Exchange, and TriAct Canada Marketplace LP (**TriAct**), operating as MATCHNow, into a single legal entity named Cboe Canada Inc. (**Cboe Canada**).

Staff of the Commission is publishing this Notice and Request for Comment, together with the following documentation, for a 30-day public comment period:

- Appendix A -- Application by Aequitas and Neo for approval of the varied and restated Recognition Order (**Application**); and
- Appendix B -- Draft varied and restated Recognition Order, with terms and conditions (**Draft RO**).

The comment period for this Notice and Request for Comment will close on November 20, 2023. Please see Part E of this Notice for information on how to provide comment.

B. Application and Draft Varied RO

In the Application, Aequitas and Neo represented that the Proposed Amalgamation is intended to simplify the current legal structure of Cboe Global Markets, Inc.'s (**CGM**) Canadian subsidiaries by reducing the number of regulated entities and holding companies and creating a single legal entity to house the integrated Canadian regulated business.

After completion of the Proposed Amalgamation:

- MATCHNow will cease to be a separately regulated ATS and, instead, will become an order book of Cboe Canada (in addition to the existing Neo Exchange order books).

- Cboe Canada will continue to operate in the same manner as Neo Exchange operates today, in that the exchange's day-to-day operations will be managed by the Cboe Canada management team.

The Proposed Amalgamation does not involve any merger or other business combination of Neo Exchange or Aequitas with any of the regulated exchanges, trading platforms, or other subsidiaries operated or wholly owned by CGM, other than TriAct and its general partner, MATCHNow GP ULC (**GPCo**).

C. Terms and Conditions of Recognition

The proposed amendments ensure that any terms and conditions applicable to each of Aequitas and Neo Exchange will continue to apply to Cboe Canada. References to "Aequitas" and/or "Neo Exchange" have been replaced by "Cboe Canada" throughout, as applicable. The following are other notable amendments: (1) Deletion of *Schedule 3 (Terms and Conditions Applicable to*

Aequitas) to reflect the Proposed Amalgamation, and (2) Change of cadence of the reporting requirement under section 2(f) of Appendix A under *Schedule 2 (Terms and Conditions Applicable to Neo Exchange)* from quarterly to annually.

D. Amendments to Trading Policies and Listing Manual

In light of the Proposed Amalgamation, Neo Exchange is proposing public interest rule amendments to its Trading Policies, which are also being published for comment today. Neo Exchange also plans to adopt certain housekeeping rule amendments to its Trading Policies and its Listing Manual.

E. Comment Process

The Commission is publishing for public comment the Application and Draft RO for 30 days. We are seeking comment on all aspects of the Application and Draft RO.

Please provide your comments in writing, via e-mail, on or before November 20, 2023, to the attention of:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

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

Questions on the content of this Notice and the Draft RO may be directed to:

Christopher Byers
Senior Legal Counsel, Market Regulation
Email: cbyers@osc.gov.on.ca

Alex Petro
Trading Specialist, Market Regulation
Email: apetro@osc.gov.on.ca

Yan Kiu Chan
Senior Legal Counsel, Market Regulation
Email: ychan@osc.gov.on.ca

Questions on the content of the Application may be directed to:

Audrey Chénard
Legal Counsel, Regulatory
Cboe Canada
Email: achenard@cboe.com

APPENDIX A

CBOE CANADA APPLICATION LETTER

Appendix A – Cboe Canada Application Letter is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Appendix.

65 Queen St. W. #1900
Toronto, ON, M5H 2M5

VIA EMAIL

September 29, 2023

Susan Greenglass
Director, Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, Suite 800
Toronto, Ontario M5H 3S8
SGREENGLASS@osc.gov.on.ca

Dear Ms. Greenglass:

Re: Proposed Amalgamation of Aequitas Innovations Inc., Neo Exchange Inc., and TriAct Canada Marketplace LP into Cboe Canada Inc.

In connection with the proposed amalgamation (the "**Proposed Amalgamation**") of Aequitas Innovations Inc. ("**Aequitas**"), Neo Exchange Inc. ("**Neo Exchange**"), and TriAct Canada Marketplace LP ("**TriAct**"), operating as MATCHNow[1], into a single legal entity named Cboe Canada Inc. ("**Cboe Canada**"), with Cboe Canada existing as a direct wholly owned subsidiary of Cboe Canada Holdings, ULC ("**Cboe Canada Holdings**"), Aequitas and Neo Exchange hereby apply to the Ontario Securities Commission (the "**Commission**") for an amendment and restatement of the recognition order in respect of Aequitas and Neo Exchange (the "**Draft Recognition Order**") to reflect the amalgamation and revisions to the terms and conditions applicable to Cboe Canada and Cboe Global Markets, Inc. ("**CGM**"), which are described in further detail below. The target effective date for the Proposed Amalgamation is January 1, 2024.

As an initial matter, it is important to note that the Proposed Amalgamation will have no substantive impact on the Canadian regulatory oversight regime applicable to the resulting operating entity, Cboe Canada, as compared to the current regulatory oversight of Aequitas and Neo Exchange. The integration of TriAct into Cboe Canada will result in Cboe Canada offering a new "MATCHNow" order book that is in addition to the order books currently available within the Neo Exchange. Preserving MATCHNow as its own order book (but not as its own independent corporate entity and business) is critical, considering the specific client strategies that MATCHNow and the various existing NEO order books enable, respectively.[2] We anticipate revising the Neo Exchange Trading Policies, amending the Neo Exchange Member Agreement, submitting

[1] For greater clarity, throughout this letter, when referring to the wholly-owned CGM subsidiary that is an Ontario limited partnership (which is expected to be dissolved), we will use the term "TriAct," and when referring to the marketplace business activities carried on by that entity (which is expected to continue as an order book of Cboe Canada), we will use the term "MATCHNow."

[2] The "new" order book referred to in this letter will be new to Cboe Canada; however, in terms of how it functions, the new order book will be identical in every practical way to the existing MATCHNow alternative trading system ("**ATS**"). Integrating MATCHNow within one of the existing NEO order books would affect the offering and provide clients with a lesser experience. Maintaining MATCHNow as its own order book also minimizes disruption to our clients' existing workflows and technology solutions, while minimizing costs and the risk of any client confusion.

certain corresponding amendments to the current Form 21-101F1, and taking other appropriate steps to achieve the intended result.[3]

The Proposed Amalgamation will strengthen several benefits of the transaction described in our application letter published for comment in the April 7, 2022, OSC Bulletin (Volume 45, Issue 14) (the "**2022 Application**"), approved by the Commission in May 2022.

After completion of the Proposed Amalgamation, Cboe Canada will continue to operate in the same manner as Neo Exchange operates today, in that the exchange's day-to-day operations will be managed by the Cboe Canada management team. The overall strategy of Cboe Canada will be subject to the oversight and direction of the board of directors of Cboe Canada (the "**Cboe Canada Board**"). CGM will provide strategic direction to ensure organizational alignment with the global organization and support to pursue operational excellence. The Proposed Amalgamation does not involve any merger or other business combination of Neo Exchange or Aequitas with any of the regulated exchanges, trading platforms, or other subsidiaries operated or wholly owned by CGM, other than TriAct and its general partner, MATCHNow GP ULC ("**GPCo**").

The application has been divided into the following sections:

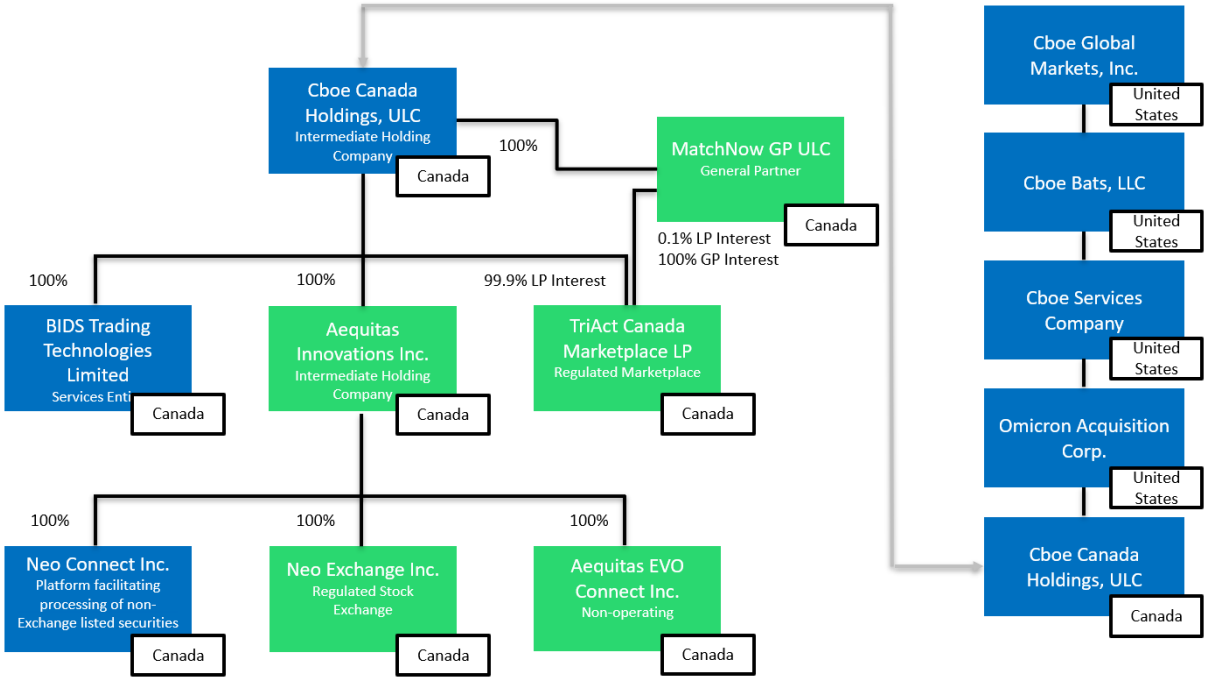
I. Description of the Proposed Amalgamation
II. Benefits of the Proposed Amalgamation
III. Governance, Information Sharing, and Draft Recognition Order
IV. Enclosures

I. Description of the Proposed Amalgamation

A. Cboe Canada

The Proposed Amalgamation is intended to simplify the current legal structure of CGM's Canadian subsidiaries by reducing the number of regulated entities and holding companies and creating a single legal entity to house the integrated Canadian regulated business. This will allow Cboe Canada to carry on the existing businesses of Neo Exchange and MATCHNow as a single Canadian recognized exchange and enable the Canadian business of CGM as a whole to be operated and managed more efficiently. The chart below depicts the current ownership structure.

[3] Please note that the various actions that must be taken by TriAct (or its general partner, GPCo) in order to wind down the independently-operated MATCHNow ATS in connection with the Proposed Amalgamation—including, for example, the relinquishing of its provincial registration as an investment dealer, its resignation as a dealer member of the Canadian Investment Regulatory Organization ("**CIRO**"), and the filing of Form 21-101F4 *Cessation of Operations Report for Alternative Trading System* —will be addressed by TriAct itself under separate cover at a later date. Similarly, an application to continue the exemption order currently held by TriAct (available at https://www.osc.ca/en/securities-law/orders-rulings-decisions/triact-canada-marketplace-lp-operating-matchnow-s-151-ni-21-101-marketplace-operation-0) as an order in respect of Cboe Canada will also be filed at a later date.



As a result of the Proposed Amalgamation, Aequitas, Aequitas EVO Connect Inc., TriAct and GPCo will cease to exist as distinct legal entities, and Neo Connect Inc. will be held directly by Cboe Canada Holdings. Furthermore, from an operations perspective, MATCHNow will cease to be a separately regulated ATS and, instead, will become an order book of Cboe Canada (in addition to the existing Neo Exchange order books).

B. Implementation

The Proposed Amalgamation will take place in three steps, although the order in which the steps take place may be rearranged to ensure that the transaction takes place in an efficient manner from an administrative and tax perspective. The steps are outlined below.

Step 1: Aequitas will distribute Neo Connect Inc. to Cboe Canada Holdings.

Step 2: Aequitas, Aequitas EVO Connect Inc., Neo Exchange Inc. and GPCo will amalgamate to form Cboe Canada.

- Cboe Canada will be directly and wholly owned by Cboe Canada Holdings.
- Cboe Canada will be the legal successor to the businesses, assets, and liabilities of all of the amalgamating companies.
- Cboe Canada will be governed by identical governing documents as Neo Exchange, subject to any required changes to reflect the new corporate structure (e.g., elimination of Aequitas, etc.).

Step 3: Cboe Canada Holdings will transfer its interest in TriAct (i.e., its 99.9% limited partnership interest) to Cboe Canada in exchange for shares of Cboe Canada.

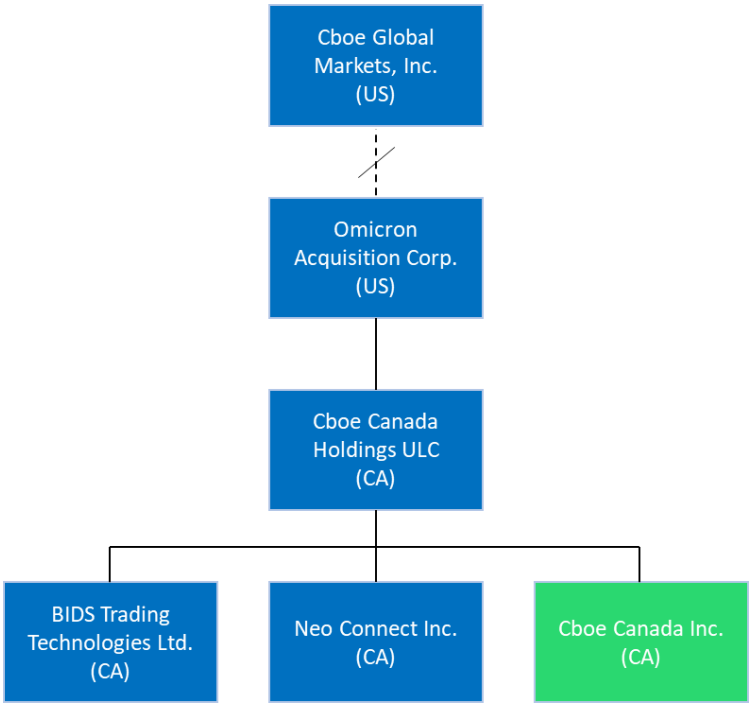
- As a consequence of the dissolution of its general partner (GPCo), TriAct will automatically be dissolved pursuant to section 21 of the *Limited Partnerships Act*

(Ontario). (Cboe Canada will also receive the 0.1% limited partnership interest previously owned by the now-dissolved GPCo.)

- The effect of this will be the transfers of TriAct's entire business (all assets, employees, etc.) to Cboe Canada.

C. Post-Closing Corporate Structure

The chart below depicts the ownership chain of Cboe Canada post-completion of Step 3 of the Proposed Amalgamation.



For further information regarding the structure of the broader Cboe Group, please see Cboe's Annual Report on Form 10-K for the fiscal year ended December 31, 2022 ("**Cboe's 10-K**") filed with the U.S. Securities and Exchange Commission.[4]

D. Post-Closing Organizational Structure

Cboe Canada will be subject to the direction of CGM on strategic, policy, and organizational alignment matters and may receive support from CGM personnel in certain core areas, but the ultimate responsibility for day-to-day Canadian operations will continue to reside with its CEO, other officers, and the Cboe Canada Board.

After the completion of the Proposed Amalgamation, the Neo Exchange and MATCHNow teams will be integrated. Most notably, MATCHNow's current CEO, Mr. Bryan Blake, will become an officer of Cboe Canada and the former Neo Exchange and MATCHNow trade desk support teams will be combined.

[4] Cboe's 10-K can be found on EDGAR here.

II. Benefits of the Proposed Amalgamation

The Proposed Amalgamation further enables several of the benefits of the original acquisition as described in Appendix A to our 2022 Application.

A. Integrated Global Platform with Enhanced Product Offerings and Data Analytics

In anticipation of the Proposed Amalgamation, Neo Exchange, TriAct, Cboe Canada Holdings, and CGM have entered into an intercompany services agreement permitting the intra-group sharing of technology, staffing, and resources (including analytical capabilities) to facilitate organizational alignment and create business synergies. The full integration of the Canadian regulated businesses is expected to simplify and streamline the development of enhancements to existing product offerings and the provision of data insights to exchange members and listed issuers. Providing existing and enhanced product offerings and data analytics under a consolidated entity, will also create clarity and certainty amongst industry stakeholders about who they are dealing with.

B. Reduced Regulatory Burden

The simplified legal structure will significantly reduce regulatory burden for the integrated regulated entity and the regulator. In particular:

- The incorporation of MATCHNow as an order book of Cboe Canada will reduce the number of points of contact between Commission staff and regulated entities; and
- Cboe Canada will benefit from a reduction in the number of periodic filings required to meet its regulatory obligations.

These changes will enable the combined business to be operated and regulated more efficiently.

III. Governance, Information Sharing, and Draft Recognition Order

A. Board Composition

After the completion of the Proposed Amalgamation, the exchange will, as described above, continue to be operated by its CEO and other officers under the direction of the Cboe Canada Board. The Cboe Canada Board is expected to consist of a maximum of 12 and a minimum of 6 members. At least 50% of the Cboe Canada Board members will be independent, consistent with the higher independence standard applicable to Neo Exchange under the terms and conditions of the current recognition order (the "**Recognition Order**"). The non-independent Cboe Canada Board members will include one or more senior executive management members of Cboe Canada and other representatives of CGM.

Initially, the Cboe Canada board is expected to comprise current members of the Aequitas and NEO boards and will continue to meet the relevant recognition criteria in the same manner as the Aequitas and NEO boards do today. The current independent board members of Aequitas and NEO include seasoned capital markets leaders with more than a century of combined auditor, law firm, regulator, financial institution, and issuer experience. The independent board members will ensure a proper balance among the interests of the different persons or companies using the services and facilities of the exchange. Furthermore, as board members of other capital markets stakeholders, they are uniquely positioned to ensure a balanced and impartial view of the interests of the different persons or companies using the services and facilities of the exchange, as required under the terms of the Recognition Order.

Consistent with the current framework for the Aequitas and Neo Exchange boards, the Nominations and Governance Committee of the Cboe Canada Board will, on an annual basis, recommend to the board for

election an independent member of the board to serve as Lead Director. The Chair of the Cboe Canada Board will be a non-independent director. This is consistent with the current governance model.

Moreover, similar to the terms and conditions of the current Recognition Order, Cboe Canada will continue to maintain the following committees: (i) a Finance and Audit Committee; (ii) a Nominations and Governance Committee; (iii) a Regulatory Oversight Committee; and (iv) a Human Resources and Compensation Committee.

B. Intra-group Information Sharing

In order to fully evaluate the scope of potential business opportunities and to avail marketplace participants of the entirety of CGM's scope of products and services, relevant information, including order and trade information, will need to be shared between Cboe Canada, CGM, and its affiliated entities.

A revised membership agreement will address the scope of intra-group information sharing and document the consent of Cboe Canada members to that information sharing prior to the completion of the Proposed Amalgamation (to be effective upon the date of the Proposed Amalgamation). We will issue a detailed client notice regarding the revised agreement. It is our expectation that the notice will be sent electronically to clients (and posted on cboe.ca) on or around November 1, 2023, thereby ensuring that all clients receive more than the minimum 45 days' notice required for any contractual amendments, per existing section 27 of the Neo Exchange Inc. member agreement (which provision is not changing in any substantive way in the new Cboe Canada version).

C. Conflicts of Interest

Conflicts of interest may arise in the interim period for intra-group dealings of the regulated entities of Neo Exchange, TriAct, and Cboe Canada prior to the completion of the Proposed Amalgamation. Interim conflicts will be addressed by the respective conflicts-of-interest policies and procedures maintained at the regulated entity level or be resolved pursuant to the CGM global policies. We do not expect any conflicts or potential conflicts to effect marketplace participants, the operation of our marketplaces, or the public prior to the completion of the Proposed Amalgamation.

D. Description of Proposed Amendments to Recognition Order

Most of the terms and conditions of the current Recognition Order will not be impacted by the Proposed Amalgamation and related housekeeping changes. The proposed amendments ensure that any terms and conditions applicable to each of Aequitas and Neo Exchange will continue to apply to Cboe Canada. As a result, the provisions of the Recognition Order will remain in effect, subject to the modifications described below.

1. Schedule 1 – Criteria for Recognition

Schedule 1 of the Recognition Order has been revised to incorporate minor formatting edits and grammatical updates (mainly the addition of commas). We confirm that Cboe Canada will continue to meet the applicable criteria post-closing.

2. Schedule 2 – Terms and Conditions Applicable to Neo Exchange

In addition to minor formatting edits, grammatical updates, and the correction of typographical errors, Schedule 2 of the Recognition Order has been revised to reflect the below amendments:

- References to "Aequitas" and/or "Neo Exchange" have been replaced by "Cboe Canada" throughout the schedule, as applicable.

- The defined term "Cboe Global Markets, Inc. (**Cboe**)" has been replaced by "Cboe Global Markets, Inc. (**CGM**)" on the first page of the Recognition Order for clarity purposes and to avoid any confusion with "Cboe Canada Inc. (**Cboe Canada**)", and references to "Cboe" have been replaced by "CGM" throughout the schedule, as applicable.
- The definition of the term "Board" in section 1(a) was updated to delete "as the context requires" considering there will only be the Cboe Canada Board as opposed to having two boards of directors (one for Neo Exchange and one for Aequitas).
- The terms "Cboe Canada issuer" (formerly "Neo Exchange issuer"), "Cboe Canada marketplace participant" (formerly "Neo Exchange marketplace participant"), and "CIRO" were re-ordered in section 1(a) so that they would appear in alphabetical order.
- The definition of the term "Nominating Committee" in section 1(a) was updated to delete "or by Aequitas pursuant to section 26 of Schedule 3, as the context requires" to reflect the deletion of Schedule 3 – *Terms and Conditions Applicable to Aequitas* in its entirety.
- Section 1(c)(iii) was updated to include "of the waiver" to clarify what Cboe Canada needs to provide advance notice to the Commission for.
- The reference to "Schedule 5" in section 8(a)(ii) has been replaced by "Schedule 4" to reflect the deletion of Schedule 3 – *Terms and Conditions Applicable to Aequitas* in its entirety.
- Section 18(a) was updated to reflect the inclusion of the word "Canadian" before "affiliated entities" for clarification purposes.
- Section 1(a) of Appendix A – *Additional Reporting Obligations* was updated to reflect the correction of a typographical error; more specifically, "self-regulatory obligation" was replaced by "self-regulatory organization".
- Section 2(b)(iii) of Appendix A – *Additional Reporting Obligations* was updated to reflect the replacement of specific references to certain sections of the Listing Manual with a generic reference to Cboe Canada's requirements.
- Section 2(f) of Appendix A – *Additional Reporting Obligations* was updated to reflect the change of cadence of the reporting requirement from quarterly to annually as those reviews are routinely performed on a monthly basis with minimal findings. Therefore, moving the cadence to an annual report will eliminate unnecessary nil reports. As a result of this change of cadence, section 2(f) was moved to section 3 (Annual Reporting) and became section 3(b). Additionally, the term "material" was added to qualify the instances of non-compliance that will be included as part of the annual report.

3. Schedule 3 – Terms and Conditions Applicable to Aequitas

Schedule 3 of the Recognition Order has been deleted in its entirety to reflect the Proposed Amalgamation, as described under section "*I. Description of the Proposed Amalgamation*" above.

4. Schedule 4 – Terms and Conditions Applicable to Cboe

In addition to minor formatting edits and necessary grammatical updates (certain plural words changed for singular ones), Schedule 4 of the Recognition Order was updated to reflect the below changes:

- References to "Aequitas" and/or "Neo Exchange" have been replaced by "Cboe Canada" throughout the schedule, as applicable.
- References to "Cboe" have been replaced by "CGM" throughout the schedule, as applicable.
- As a result of the deletion of former Schedule 3 – *Terms and Conditions Applicable to Aequitas* in its entirety, Schedule 4 was re-numbered as "Schedule 3", and its four sections were re-numbered as follows:

- Section 36 became section 20;
- Section 37 became section 21;
- Section 38 became section 22; and
- Section 39 became section 23.

5. Schedule 5 – Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto

In addition to minor formatting edits, grammatical updates, and the correction of typographical errors, Schedule 5 of the Recognition Order was updated to reflect the below changes:

- As a result of the deletion of former Schedule 3 – *Terms and Conditions Applicable to Aequitas* in its entirety, Schedule 5 was re-numbered as "Schedule 4".
- Section 11(a) was updated to remove "(Act)" and subsequently replace the word "Act" by the "*Securities Act* (Ontario)" for clarification purposes.

IV. Enclosures

Appendix A – Blacklined Copy of the Draft Recognition Order

Respectfully,

Aequitas Innovations, Inc.

"*Jos Schmitt*"

_____

Jos Schmitt
President & CEO

Cboe Global Markets, Inc.

"Patrick Sexton"

_____

Patrick Sexton
General Counsel & Corporate Secretary

APPENDIX B

Headnote

Subsection 144(1) of the Securities Act (Ontario) – application for order varying the Commission's order recognizing Aequitas Innovations Inc. and Neo Exchange Inc. as exchanges – variation required to reflect the proposed amalgamation of Aequitas Innovations Inc., Neo Exchange Inc., and TriAct Canada Marketplace LP – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144(1).

December XX, 2023

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

AND

IN THE MATTER OF
CBOE CANADA INC.

AND

IN THE MATTER OF
CBOE GLOBAL MARKETS, INC.

ORDER
(Sections 21 and 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated November 13, 2014, effective as at March 1, 2015, which was varied on February 27, 2015, September 29, 2015, February 8, 2019, August 31, 2020, and May 27, 2022, recognizing Aequitas Neo Exchange Inc. and its sole shareholder, Aequitas Innovations Inc. (**Aequitas**), as exchanges pursuant to section 21 of the Act (**Recognition Order**);

AND WHEREAS on January 15, 2019, the name Aequitas Neo Exchange Inc. was changed to Neo Exchange Inc. (**Neo Exchange**);

AND WHEREAS on June 1, 2022, Cboe Canada Holdings, ULC purchased all of the issued and outstanding share capital of Aequitas;

AND WHEREAS the Commission considers the proper operation of exchanges as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of exchanges be dealt with appropriately, the fairness and efficiency of the market not be impaired by any anti-competitive activity, and that systemic risks are monitored and controlled;

AND WHEREAS the Commission has received an application under section 144 of the Act to vary and restate the Recognition Order (**Application**) to reflect the Commission's approval of changes to the manner in which a recognized exchange carries on business in connection with the amalgamation of Aequitas, Neo Exchange, and TriAct Canada Marketplace LP into Cboe Canada Inc. (**Cboe Canada**);

AND WHEREAS Cboe Canada and Cboe Global Markets, Inc. (**CGM**) have agreed to the applicable terms and conditions set out in the Schedules to the Recognition Order;

AND WHEREAS based on the Application, the Commission has determined that:

(a) Cboe Canada, as it will exist on January 1, 2024, will continue to satisfy, as of that date, the recognition criteria set out in Schedule 1 to the Recognition Order,

(b) it is in the public interest to continue to recognize Cboe Canada as an exchange pursuant to section 21 of the Act, and

(c) it is not prejudicial to the public interest to vary and restate the Recognition Order pursuant to section 144 of the Act;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the Recognition Order is granted, and

IT IS ORDERED, pursuant to section 21 of the Act, that Cboe Canada continues to be recognized as an exchange, provided that CGM and Cboe Canada comply with the terms and conditions set out in the Schedules to the Recognition Order, as applicable.

DATED this XX day of December 2023, to take effect January 1, 2024.

[Name]
[Title]

SCHEDULE 1
CRITERIA FOR RECOGNITION

PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101

1.1 Compliance with NI 21-101 and NI 23-101

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

(a) access;

(b) marketplace operations;

(c) exchange rules, policies, and other similar instruments;

(d) order and trade transparency;

(e) transparency of marketplace operations;

(f) record keeping;

(g) marketplace systems and business continuity planning;

(h) confidentiality of information;

(i) outsourcing;

(j) clearing and settlement;

(k) fair and orderly markets;

(l) the management of conflicts of interest; and

(m) filing of financial statements.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;

(c) fair, meaningful, and diverse representation on the board of directors (**Board**) and any committees of the Board, including:

  (i) appropriate representation of independent directors, and

  (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and

(e) there are appropriate qualifications, remuneration, limitation of liability, and indemnity provisions for directors, officers, and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 ACCESS

3.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting, and denying access are fair, transparent, and applied reasonably.

PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE

4.1 Regulation

The exchange has the authority, resources, capabilities, systems, and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 5 RULES AND RULEMAKING

5.1 Rules and Rulemaking

(a) The exchange has rules, policies, and other similar instruments (**Rules**) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.

(b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to

(i) ensure a fair and orderly market; and

(ii) provide a framework for disciplinary and enforcement actions.

PART 6 DUE PROCESS

6.1 Due Process

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 7 CLEARING AND SETTLEMENT

7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts, and circuit breakers.

PART 9 FINANCIAL VIABILITY

9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 10 FEES

10.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those requirements listed in paragraphs 1.1(a) and (e) of this Schedule.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

11.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE 2
TERMS AND CONDITIONS APPLICABLE TO CBOE CANADA

1. DEFINITIONS AND INTERPRETATION

(a) For the purposes of this Schedule:

"accounting principles" means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

"associate" has the meaning ascribed to it in subsection 1(1) of the Act;

"Board" means the board of directors of Cboe Canada;

"Canadian affiliated entity" means any affiliated entity that is incorporated, formed, or created under the laws of Canada or a province or territory of Canada;

"Cboe Canada issuer" means a person or company whose securities are listed on Cboe Canada;

"Cboe Canada marketplace participant" means a marketplace participant of Cboe Canada;

"CIRO" means the Canadian Investment Regulatory Organization;

"Competitor" means a person whose consolidated business, operations, or disclosed business plans are in competition, to a significant extent, with the listing functions, trading functions, market data services, or other material lines of business of Cboe Canada or its Canadian affiliated entities;

"criteria for recognition" means all the criteria for recognition set out in Schedule 1 to the Order;

"dealer" means "investment dealer", as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements*;

"Lead Director" means an independent director who will chair all meetings of the independent directors of the Board and serve as a liaison between the chair of the Board and the independent directors;

"marketplace" has the meaning ascribed to it in subsection 1(1) of the Act; "marketplace participant" has the meaning ascribed to it in section 1.1 of NI 21-101;

"Nominating Committee" means the committee established by Cboe Canada pursuant to section 7 of this Schedule;

"officer" has the meaning ascribed to it in subsection 1(1) of the Act;

"Regulatory Oversight Committee" means the committee established by Cboe Canada pursuant to section 8 of this Schedule;

"Rule" means a rule, policy, or other similar instrument of Cboe Canada;

"shareholder" means a person or company that holds any class or series of voting shares of Cboe Canada;

"significant shareholder" means a person or company that:

(i) beneficially owns or exercises control or direction over more than 10% of the outstanding shares of CGM or Cboe Canada provided, however, that the ownership of or control or direction over CGM shares in connection with the following activities will not be included for the purposes of determining whether the 10% threshold has been exceeded:

(A) investment activities on behalf of the person or company or its affiliated entity where such investments are made (I) by a bona fide third-party investment manager with discretionary authority (subject to such retained discretion in order for the person or company or its affiliated entity to fulfil its fiduciary duties); or (II) by an investment fund or other pooled investment vehicle in which the person or company or such affiliated entity has directly or indirectly invested and which is managed by a third

party who has not been provided with confidential, undisclosed information about CGM,

(B) acting as a custodian for securities in the ordinary course,

(C) normal course trading (including proprietary client facilitation trading) and wealth management activities (including, for greater certainty, in connection with the management of any mutual funds, pooled funds, trust accounts, estate portfolios, and other investor funds and portfolios), including electronic securities trading, conducted for or on behalf of clients of the person or company, provided that any fund manager with discretionary authority carrying out such activities on behalf of such clients, or such clients, have not been provided with confidential, undisclosed information about CGM,

(D) the acquisition of CGM shares in connection with the adjustment of index-related portfolios or other "basket" related trading,

(E) making a market in securities to facilitate trading in shares of CGM by third-party clients or to provide liquidity to the market in the person or company's capacity as a designated market maker for shares of CGM securities, in the person or company's capacity as designated market maker for derivatives based on CGM shares, or in the person or company's capacity as market maker or "designated broker" for exchange traded funds which may have investments in shares of CGM, in each case in the ordinary course, (which, for greater certainty, will include acquisitions or other derivative transactions undertaken in connection with hedging positions of, or in relation to, CGM shares), or

(F) providing financial services to any other person or company in the ordinary course of business of its and their banking, securities, wealth, and insurance businesses, provided that such other person or company has not been provided with confidential, undisclosed information about CGM,

and subject to the conditions that the ownership of or control or direction over CGM shares by a person or company in connection with the activities listed in (A) through (F) above:

(G) is not intended by that person or company to facilitate evasion of the 10% threshold set out in clause (i), and

(H) does not provide that person or company the ability to exercise voting rights over more than 10% of the voting shares of CGM in a manner that is solely in the interests of that person or company as it relates to that person or company's ownership of or control or direction over the subject shares, except where the ability to exercise voting rights over more than 10% of the voting shares arises as a result of the activities listed in (E) above in which case the person or company must not exercise its voting rights with respect to those voting shares; or

(ii) is a shareholder whose nominee is on the Board of Cboe Canada, for as long as the nominee of that shareholder remains on the Board of Cboe Canada; and

"unaudited non-consolidated financial statements" means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

(i) they are not audited; and

(ii) investments in subsidiary entities, jointly controlled entities, and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 Separate Financial Statements.

(b) For the purposes of this Schedule, an individual is independent if the individual is "independent" within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:

(i) is a partner, officer, director, or employee of a Cboe Canada marketplace participant or an associate of that partner, officer, or employee;

(ii) is a partner, officer, director, or employee of an affiliated entity of a Cboe Canada marketplace participant who is responsible for or is actively engaged in the day-to-day operations or activities of that Cboe Canada marketplace participant;

(iii) is an officer or an employee of Cboe Canada or any of its affiliates;

(iv) is a partner, officer, or employee of a significant shareholder or any of its affiliated entities or an associate of that partner, officer, or employee;

(v) is a director of a significant shareholder or any of its affiliated entities or an associate of that director;

(vi) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 10% of the shares of Cboe Canada;

(vii) is the director of a person or company that beneficially owns or controls, directly or indirectly, more than 10% of any class or series of voting shares of Cboe Canada;

(viii) is a director that was nominated, and as a result appointed or elected, by a significant shareholder; or

(ix) has, or has had, any relationship with a significant shareholder that could, in the view of the Nomination Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of Cboe Canada.

(c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(v), (vii) and (viii) provided that:

(i) the individual being considered does not have, and has not had, any relationship with a shareholder that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of Cboe Canada;

(ii) Cboe Canada publicly discloses the use of the waiver with reasons why the particular candidate was selected;

(iii) Cboe Canada provides advance notice of the waiver to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and

(iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

2. PUBLIC INTEREST RESPONSIBILITIES

(a) Cboe Canada must conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board must expressly include regulatory and public interest responsibilities of Cboe Canada.

3. SHARE OWNERSHIP RESTRICTIONS

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert may beneficially own or exercise control or direction over:

(i) more than 10% of any class or series of voting shares of Cboe Canada and, thereafter,

(ii) more than 50% of any class or series of voting shares of Cboe Canada.

(b) The articles of Cboe Canada must contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares, and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

4. RECOGNITION CRITERIA

Cboe Canada must continue to meet the criteria for recognition set out in Schedule 1 to the Order.

5. FITNESS

In order to ensure that Cboe Canada operates with integrity and in the public interest, Cboe Canada will take reasonable steps to ensure that each director or officer of Cboe Canada is a fit and proper person. As part of those steps, Cboe Canada will consider whether the past conduct of each director or officer affords reasonable grounds for the belief that the director or officer will perform their duties with integrity and in a manner that is consistent with Cboe Canada's public interest responsibilities.

6. BOARD OF DIRECTORS

(a) Cboe Canada must ensure that at least 50% of its Board members are independent.

(b) The chair of the Board must be independent or, if this is not the case, the Board will have appointed a Lead Director.

(c) In the event that Cboe Canada fails to meet the requirements under (a) or (b), it must immediately advise the Commission and take appropriate measures to promptly remedy such failure.

(d) Cboe Canada must ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, with at least 50% being independent.

7. NOMINATING COMMITTEE

Cboe Canada must maintain a Nominating Committee of the Board that, at a minimum:

(a) is made up of at least three directors, at least 50% of which must be independent;

(b) confirms the status of a nominee to the Board as independent before the individual is appointed to the Board or the name of the individual is submitted to the shareholder(s) of Cboe Canada as a nominee for election to the Board, whichever comes first;

(c) confirms, on an annual basis, that the status of the directors that are independent has not changed;

(d) assesses and approves all nominees of management to the Board; and

(e) has a requirement that the quorum consist of at least 50% of independent directors.

8. REGULATORY OVERSIGHT COMMITTEE

(a) Cboe Canada must establish and maintain a Regulatory Oversight Committee that, at a minimum:

(i) is made up of at least three directors, a majority of which must be independent;

(ii) reviews and decides, or makes recommendations to the Board, on proposed regulation and rules that must be submitted to the OSC for review and approval under Schedule 4 *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* of this Order;

(iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:

(A) ownership interests in Cboe Canada by any Cboe Canada marketplace participant with representation on the Board of Cboe Canada,

(B) significant changes to the ownership of Cboe Canada, and

(C) the profit-making objective and the public interest responsibilities of Cboe Canada, including general oversight of the management of the regulatory and public interest responsibilities of Cboe Canada;

(iv) oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Cboe Canada, including those that are required to be established pursuant to the Schedules of this Order;

(v) reviews the effectiveness of the policies and procedures regarding conflicts of interest on a regular, and at least annual, basis;

(vi) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval for such reporting.

(b) The Regulatory Oversight Committee must provide such information as may be required by the Commission from time to time.

9. CONFLICTS OF INTEREST AND CONFIDENTIALITY

(a) Cboe Canada must establish, maintain, and require compliance with policies and procedures that:

(i) require that confidential information regarding Cboe Canada marketplace operations, Cboe Canada regulation functions, a Cboe Canada marketplace participant or a Cboe Canada issuer that is obtained by a partner, director, officer, or employee of a significant shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of Cboe Canada:

(A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to Cboe Canada, CGM, or CGM's affiliated entities;

provided that nothing in this section will be construed to limit Cboe Canada from providing to CGM and its affiliated entities necessary information.

(b) Cboe Canada must establish, maintain, and require compliance with policies and procedures that identify and manage conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant shareholder or an affiliate of a significant shareholder on Cboe Canada.

(c) Cboe Canada must regularly review compliance with the policies and procedures established in accordance with (a) and (b) and must document each review, and any deficiencies, and how those deficiencies were remedied.

10. ACCESS

Cboe Canada's requirements must provide access to the facilities of Cboe Canada only to properly registered investment dealers that are members of CIRO and satisfy reasonable access requirements established by Cboe Canada.

11. REGULATION OF CBOE CANADA MARKETPLACE PARTICIPANTS AND CBOE CANADA ISSUERS

(a) Cboe Canada must establish, maintain, and require compliance with policies and procedures that effectively monitor and enforce the Rules against Cboe Canada marketplace participants and Cboe Canada issuers, either directly or indirectly through a regulation services provider.

(b) Cboe Canada has retained and will continue to retain CIRO as a regulation services provider to provide, as agent for Cboe Canada, certain regulation services that have been approved by the Commission.

(c) Cboe Canada must perform all other regulation functions not performed by CIRO, and must maintain adequate staffing, systems and other resources in support of those functions. Cboe Canada must obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Cboe Canada.

(d) Cboe Canada must notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

12. FEES, FEE MODELS AND INCENTIVES

(a) Cboe Canada must not, through any fee schedule, any fee model or any contract, agreement, or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or

(ii) any discount, rebate, allowance, price concession, or other similar arrangement for any service or product offered by Cboe Canada or CGM and its affiliated entities and significant shareholders that is conditional upon:

(A) the requirement to have Cboe Canada be set as the default or first marketplace a marketplace participant routes to, or

(B) the router of Cboe Canada being used as the marketplace participant's primary router.

(b) Except with the prior approval of the Commission, Cboe Canada must not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession, or other similar arrangement on any services or products offered by Cboe Canada or CGM and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by Cboe Canada or CGM or any affiliated entity, or

(ii) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.

(c) Cboe Canada must obtain prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to any, incentives relating to arrangements that provide for equity ownership in Cboe Canada for marketplace participants or their affiliated entities based on trading volumes or values on Cboe Canada.

(d) Except with the prior approval of the Commission, Cboe Canada must not require another person or company to purchase or otherwise obtain products or services from Cboe Canada or CGM and its affiliated entities and significant shareholders as a condition of Cboe Canada supplying or continuing to supply a product or service.

(e) If the Commission considers that it would be in the public interest, the Commission may require Cboe Canada to submit for approval by the Commission a fee, fee model, or incentive that has previously been submitted to and/or approved by the Commission.

(f) Where the Commission decides not to approve the fee, fee model, or incentive submitted under (e), any previous approval for the fee, fee model, or incentive must be revoked, if applicable, and Cboe Canada will no longer be permitted to offer the fee, fee model or incentive.

13. ORDER ROUTING

Cboe Canada must not support, encourage, or incent, either through fee incentives or otherwise, Cboe Canada marketplace participants, CGM affiliated entities, or significant shareholders to coordinate the routing of their orders to Cboe Canada.

14. FINANCIAL REPORTING

Cboe Canada must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

15. FINANCIAL VIABILITY MONITORING

(a) Cboe Canada must maintain sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

(b) Cboe Canada must calculate the following financial ratios monthly:

(i) a current ratio, being the ratio of current assets to current liabilities;

(ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses, and other liabilities) to EBITDA (earnings before interest, taxes, stock-based compensation, depreciation, and amortization) for the most recent 12 months; and

(iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,

in each case following the same accounting principles as those used for the unaudited non-consolidated financial statements of Cboe Canada.

(c) Cboe Canada must report quarterly in writing to the Commission the monthly calculations for the previous quarter of the financial ratios as required to be calculated under paragraph (b).

(d) If Cboe Canada determines that it does not have, or anticipates that, in the next twelve months, it will not have sufficient financial resources for the proper performance of its functions and to meet its responsibilities, it will immediately notify the Commission along with the reasons and any impact on the financial viability of Cboe Canada.

(e) Upon receipt of a notification made by Cboe Canada under (d), the Commission may, as determined appropriate, impose additional terms and conditions on Cboe Canada.

16. ADDITIONAL INFORMATION

(a) Cboe Canada must provide the Commission with:

(i) the information set out in Appendix A to this Schedule**,** as amended from time to time; and

(ii) any information required to be provided by Cboe Canada to CIRO, including all order and trade information, as required by the Commission.

17. GOVERNANCE REVIEW

(a) At the request of the Commission, Cboe Canada must engage an independent consultant, or independent consultants acceptable to the Commission to prepare a written report assessing the governance structure of Cboe Canada (**Governance Review**).

(b) The written report must be provided to the Board of Cboe Canada promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.

(c) The scope of the Governance Review must be approved by the Commission.

18. PROVISION OF INFORMATION

(a) Cboe Canada must, and must cause its Canadian affiliated entities to, promptly provide to the Commission, on request, any and all data, information, and analyses in the custody or control of Cboe Canada or any of its Canadian affiliated entities, without limitations, redactions, restrictions, or conditions, including, without limiting the generality of the foregoing:

(i) data, information, and analyses relating to all of its or their businesses; and

(ii) data, information, and analyses of third parties in its or their custody or control.

(b) Cboe Canada must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

19. COMPLIANCE WITH TERMS AND CONDITIONS

(a) Cboe Canada must certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or another executive officer, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance;

(iii) the names and titles of employees who have oversight of compliance.

(b) If Cboe Canada or any of its directors, officers, or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to Cboe Canada under the Schedules to the Order, such person must, within two business days after becoming aware of the breach or possible breach, notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer, or employee of Cboe Canada

must provide to the Regulatory Oversight Committee details sufficient to describe the nature, date, and effect (actual and anticipated) of the breach or possible breach.

(c) The Regulatory Oversight Committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by (d).

(d) The Regulatory Oversight Committee must promptly cause to be conducted an investigation of the breach or possible breach reported under (b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Cboe Canada under the Schedules to this Order, the Regulatory Oversight Committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date, and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX A

Additional Reporting Obligations

1. Ad Hoc

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding, or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, or (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.).

(b) Immediate notification if Cboe Canada:

(i) becomes the subject of any order, directive, or similar action of a governmental or regulatory authority;

(ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

(iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(c) Any strategic plan for Cboe Canada, within 30 days of approval by the Board.

(d) Any information submitted by Cboe Canada to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order, or NI 21-101, provided concurrently.

(e) Copies of all notices, bulletins, and similar forms of communication that Cboe Canada sends to the Cboe Canada marketplace participants or Cboe Canada issuers.

(f) Prompt notification of any suspension or delisting of a Cboe Canada issuer, including the reasons for the suspension or delisting.

(g) Prompt notification of any initial listing application received from a significant shareholder or any of its affiliates.

(h) Prompt notification of any initial listing application received from a Competitor.

(i) Prompt notification of any application for exemption or waiver from requirements received from a significant shareholder or any of its affiliates.

2. Quarterly Reporting

(a) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Cboe Canada marketplace participant or Cboe Canada issuer, which must include the following information:

(i) the name of the Cboe Canada marketplace participant or Cboe Canada issuer;

(ii) the type of exemption or waiver granted during the period;

(iii) the date of the exemption or waiver; and

(iv) a description of Cboe Canada's reason for the decision to grant the exemption or waiver.

(b) A quarterly report regarding initial listing applications containing the following information:

(i) the name of any Cboe Canada issuer whose initial listing application was conditionally approved, the date of such approval, the type of listing, the category of listing and, if known, whether the issuer was denied an application to list its securities on another marketplace;

(ii) the name of any issuer whose initial listing application was rejected and the reasons for rejection, by category of listing; and

(iii) the name of any issuer whose initial listing application was withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category of listing.

The information required by section 2(b)(i) above should disclose whether the issuer is an Emerging Market Issuer, whether the listing involved an agent, underwriter or Canadian securities regulatory authority, and any additional requirements imposed by Cboe Canada.

(c) A quarterly report summarizing all significant incidents of non-compliance by Cboe Canada issuers identified by Cboe Canada during the period, together with a summary of the actions taken to address and resolve the incidents of non-compliance.

(d) A quarterly report listing all the Competitors listed on Cboe Canada.

(e) A quarterly report summarizing instances where conflicts of interest or potential conflicts of interest with respect to Competitors have been identified by Cboe Canada and how such conflicts were addressed.

3. Annual Reporting

(a) At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing Cboe Canada and the plan for addressing such risks.

(b) An annual report, the scope of which must be approved by the Commission, relating to compliance with the use of certain designations by marketplace participants, including the results of reviews of marketplace participants' use of such designations and a description of the actions taken to address and resolve instances of material non-compliance.

SCHEDULE 3
TERMS AND CONDITIONS APPLICABLE TO CGM

20. DEFINITIONS AND INTERPRETATION

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

21. PUBLIC INTEREST RESPONSIBILITIES

CGM shall ensure that Cboe Canada conducts the business and operations of a recognized exchange in a manner that is consistent with the public interest.

22. ALLOCATION OF RESOURCES

(a) To ensure Cboe Canada can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law, CGM shall, for so long as Cboe Canada carries on business as an exchange, facilitate the allocation of sufficient financial and non-financial resources for the operations of the exchange.

(b) CGM shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial or other resources to Cboe Canada, as required under paragraph (a).

23. PROVISION OF INFORMATION

CGM shall promptly provide to the Commission, on request, any and all data, information, and analyses in its custody or control related to the business and operations of Cboe Canada without limitations, redactions, restrictions, or conditions, provided that nothing in this section will be construed to abrogate solicitor-client privilege or any similar doctrines that may apply to communications with and work product produced by counsel.

SCHEDULE 4
PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director. This Protocol also establishes requirements regarding the time at which an Exchange may begin operations following recognition by the Commission.

2. Definitions

For the purposes of this Protocol:

(a) *Change* means a Fee Change, a Housekeeping Change, or a Significant Change.

(b) *Director* means "Director" as defined in subsection 1(1) of the *Securities Act* (Ontario).

(c) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.

(d) *Fee Change subject to Public Comment* means a Fee Change that, in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

(e) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that

(i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(f) *Housekeeping Rule* means a new Rule or an amendment to a Rule that

(i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(g) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.

(h) *Rule* includes a rule, policy, and other similar instrument of the Exchange.

(i) *Significant Change* means an amendment to the information in Form 21-101F1 other than

(i) a Housekeeping Change,

(ii) a Fee Change, or

(iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

(j) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a) or (b) of Companion Policy 21-101 CP, or

(ii) in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

3. Scope

The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules, and Rule amendments.

4. Board Approval

The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

5. Waiving or Varying the Protocol

(a) The Exchange may submit a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

6. Commencement of Exchange Operations

The Exchange must not begin operations until a reasonable period of time after the Exchange is notified that it has been recognized by the Commission.

7. Materials to be Submitted and Timelines

(a) Prior to the implementation of a Fee Change, Public Interest Rule, or Significant Change, the Exchange will provide Staff with the following materials:

(i) a cover letter that, together with the notice for publication submitted under paragraph (a)(ii), if applicable, fully describes:

(A) the proposed Fee Change, Public Interest Rule, or Significant Change;

(B) the expected date of implementation of the proposed Fee Change, Public Interest Rule, or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact, including the quantitative impact, of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers, and the capital markets;

(E) the expected impact of the Fee Change, Public Interest Rule, or Significant Change on the Exchange's compliance with Ontario securities law requirements and in particular requirements for fair access and maintenance of fair and orderly markets;

(F) a summary of any consultations, including consultations with external parties, undertaken in formulating the Fee Change, Public Interest Rule, or Significant Change, and the internal governance process followed to approve the Rule or Change;

(G) for a proposed Fee Change:

1. the expected number of marketplace participants likely to be subject to the new fee, along with a description of the costs they will incur; and

2. if the proposed Fee Change applies differently across types of marketplace participants, a description of this difference, how it impacts each class of affected marketplace participant, including, where applicable, numerical examples, and any justification for the difference in treatment.

(H) if the Public Interest Rule or Significant Change will require members or service vendors to modify their systems after implementation of the Rule or Change, the expected impact of the Rule or Change on the systems of members and service vendors together with an estimate of the amount of time needed to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the Public Interest Rule or Significant Change on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets;

(l) where the proposed Significant Change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment;

(J) a discussion of any alternatives considered; and

(K) if applicable, whether the proposed Fee Change, Significant Change, or Public Interest Rule would introduce a fee model, feature, or Rule that currently exists in other markets or jurisdictions;

(ii) for a proposed Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, a notice for publication that generally includes the information required under paragraph (a)(i), except information that, if included in the notice, would result in the public disclosure of sensitive information or confidential or proprietary financial, commercial, or technical information;

(iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.

(b) The Exchange will submit the materials set out in subsection (a)

(i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and

(ii) at least fifteen business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Rule, the Exchange will provide Staff with the following materials:

(i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;

(ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;

(iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) a notice for publication on the OSC website or in the OSC Bulletin that contains the information in paragraph (ii) as well as the implementation date for the Rule and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.

(d) For a Housekeeping Change, the Exchange will provide Staff with the following materials:

(i) a cover letter that indicates that the change was classified as a Housekeeping Change and, for each Housekeeping Change, provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F1 showing the Change.

(e) The Exchange will submit the materials set out in subsection (d) by the earlier of:

(i) the Exchange's close of business on the 10th calendar day after the end of the calendar quarter in which the Housekeeping Change was implemented; and

(ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

8. Review by Staff of notice and materials to be published for comment

(a) Within 5 business days of the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will review the notice and materials to ensure that they contain an

adequate level of detail, analysis, and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a resubmission of the notice and/or materials.

(b) Where the notice and/or materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and/or materials accordingly, and the date of resubmission will serve as the submission date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 9.

9. Publication of a Public Interest Rule, Significant Change Subject to Public Comment, or Fee Change Subject to Public Comment

(a) As soon as practicable after the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment in accordance with subsection 7(a), Staff will publish in the OSC Bulletin and/or on the OSC website, the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the Exchange will forward copies of the comments promptly to Staff; and

(ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

10. Review and Approval Process for Proposed Fee Changes, Public Interest Rules, and Significant Changes

(a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule, or Significant Change within:

(i) 45 days from the date of submission of a proposed Public Interest Rule or Significant Change; and

(ii) fifteen business days from the date of submission of a proposed Fee Change.

(b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule, or Significant Change will exceed the timelines in subsection (a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule, or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, and promptly after the receipt of the materials submitted under section 7 for all other Changes.

(d) The Exchange will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule, or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule, or Significant Change after it has been deemed withdrawn, the Exchange will have to re-submit it for review and approval in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change, Public Interest Rule, or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection (g), to the Commission, for a decision within the following timelines:

(i) for a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;

(ii) for any other Significant Change, the later of 45 days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

(iii) for any other Fee Change, the later of fifteen business days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.

(g) A Fee Change, Public Interest Rule, or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection (f):

(i) if the proposed Fee Change, Public Interest Rule, or Significant Change introduces a novel feature to the Exchange or the capital markets;

(ii) if the proposed Fee Change, Public Interest Rule, or Significant Change raises significant regulatory or public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the Exchange of the decision.

(i) If a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and/or on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Rule or Change is approved;

(ii) the summary of public comments and responses prepared by the Exchange, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

11. Review Criteria for a Fee Change, Public Interest Rule, and Significant Change

(a) Staff will review a proposed Fee Change, Public Interest Rule, or Significant Change to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard for the purposes of the *Securities Act* (Ontario) as set out in section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:

(i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;

(ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;

(iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose, and effect of the Rule or Change; and

(iv) the Exchange adequately addressed any comments received.

12. Effective Date of a Fee Change, Public Interest Rule, or Significant Change

(a) A Public Interest Rule or Significant Change will be effective on the later of:

(i) the date that the Exchange is notified that the Change or Rule is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website;

(iii) if applicable, the implementation date established by the Exchange's Rules, agreements, practices, policies, or procedures; and

(iv) the date designated by the Exchange.

(b) The Exchange must not implement a Fee Change unless the Exchange has provided stakeholders, including marketplace participants, issuers, and vendors, as applicable, with notice of the Fee Change at least five business days prior to implementation.

(c) Where a Significant Change involves a material change to any of the systems, operated by or on behalf of the Exchange, described in section 12.1 of National Instrument 21-101, the Significant Change will not be effective until a reasonable period of time after the Exchange is notified that the Significant Change is approved.

(d) In determining what constitutes a reasonable period of time for purposes of implementing a Significant Change under paragraph (c), Staff will consider how the Significant Change will impact the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets or otherwise raises regulatory or public interest concerns.

(e) The Exchange must notify Staff promptly following the implementation of a Public Interest Rule, Significant Change, or Fee Change that becomes effective under subsections (a) and (b).

(f) Where the Exchange does not implement a Public Interest Rule, Significant Change, or Fee Change within 180 days of the effective date of the Fee Change, Public Interest Rule, or Significant Change, as provided for in subsections (a) and (b), the Public Interest Rule, Significant Change or Fee Change will be deemed to be withdrawn.

13. Significant Revisions and Republication

(a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.

(b) If a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment is republished under subsection (a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

14. Withdrawal of a Fee Change, Public Interest Rule, or Significant Change

(a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and/or on the OSC website as soon as practicable.

(c) If a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 10(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

15. Effective Date of a Housekeeping Rule or Housekeeping Change

(a) Subject to subsections (c) and (d), a Housekeeping Rule will be effective on the later of

(i) the date of the publication of the notice to be published on the OSC website or in the OSC Bulletin, in accordance with subsection (e), and

(ii) the date designated by the Exchange.

(b) Subject to subsections (c) and (d), a Housekeeping Change will be effective on the date designated by the Exchange.

(c) Staff will review the materials submitted by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange submitted the documents in accordance with subsections 7(c) and 7(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.

(d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, submit the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment, if applicable.

(e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin or on the OSC website as soon as is practicable.

16. Immediate Implementation of a Public Interest Rule or Significant Change

(a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers, or investors.

(b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible, but in any event, at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must follow within five business days following the Exchange receiving notice that Staff agrees with immediate implementation of the Public Interest Rule or Significant Change.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following submission of the notice under subsection (b). If the disagreement is not resolved, the Exchange will submit the Public Interest Rule or Significant Change in accordance with the timelines in section 7.

17. Review of a Public Interest Rule or Significant Change Implemented Immediately

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 16 will be published, if applicable, and reviewed and approved by the Director or by the

Commission in accordance with the procedures set out in section 10, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

18. Application of Section 21 of the *Securities Act* (Ontario)

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.

B.11.2.2 Neo Exchange Inc. – Proposed Public Interest Rule Amendments to the Trading Policies – Request for Comments

NEO EXCHANGE INC.

PROPOSED PUBLIC INTEREST RULE AMENDMENTS TO THE TRADING POLICIES

REQUEST FOR COMMENTS

Introduction

Neo Exchange Inc. ("**NEO**") is publishing proposed public interest rule amendments (the "**Public Interest Rule Amendments**") to the NEO Trading Policies (the "**Trading Policies**") in accordance with Schedule 5 to its recognition order, as amended (the "**Protocol**"). The Public Interest Rule Amendments were filed with the Ontario Securities Commission (the "**OSC**") and are being published for comment. A description of the Public Interest Rule Amendments is set out below and the text of the Public Interest Rule Amendments is set out in Appendix A; and for ease of reference, the Public Interest Rule Amendments are also included in Appendix B (which is primarily intended to capture certain other rule amendments, as further explained below). Subject to any changes resulting from the comments received, the Public Interest Rule Amendments will be effective on January 1, 2024.

NEO will also adopt certain housekeeping rule amendments (the "**Housekeeping Rule Amendments**") to the Trading Policies and the NEO Listing Manual (the "**Listing Manual**"), which will be made effective on January 1, 2024. The OSC has not disagreed with the housekeeping categorization, and therefore, the Housekeeping Rule Amendments are not being published for comment. A description of the Housekeeping Rule Amendments is set out below and the text of the Housekeeping Rule Amendments is included in Appendix B.

NEO is proposing to make the Public Interest Rule Amendments in light of the proposed amalgamation (the "**Proposed Amalgamation**") of Aequitas Innovations Inc., NEO, and TriAct Canada Marketplace LP (operating as "**MATCHNow**") into a single legal entity to be named Cboe Canada Inc., which is intended to continue as the surviving recognized exchange ("**Cboe Canada**" or the "**Exchange**"). The purpose of the proposed Public Interest Rule Amendments is to integrate MATCHNow into the Exchange as a new (fourth) "Trading Book" (as that term is defined in section 1.01 of the Trading Policies). Accordingly, we are proposing to adopt a new standalone section of the Trading Policies that will govern the new Trading Book (which shall continue under the brand name "MATCHNow"), which section shall incorporate and restate certain essential elements of MATCHNow's existing *In Detail Specification* (available here), subject only to certain stylistic adjustments to better conform with the style of the existing Trading Policies.

Description of the Public Interest Rule Amendments

As a result of the integration of MATCHNow as a new (fourth) Trading Book, we are proposing to make the following changes to the Trading Policies:

- Under Part I (Definitions and Interpretations), updates to section 1.01 (Definitions) to reflect the following:
    - Inclusion of new definitions for "Cboe BIDS Canada", "Conditionals", "Conditionals Compliance Mechanism", "MATCHNow", "MATCHNow Odd Lot Facility", "MATCHNow Odd Lot Order", "Odd Lot Liquidity Provider", "Odd Lot Liquidity Providing Order" or "OLLP Order", and "Sponsored User".
    - Updates to the following definitions:
        - "Liquidity Taking Order" – to include "(including a "Market Flow Order" on the MATCHNow Trading Book, sometimes referred to as an "Immediate or Cancel" or "IOC" order, as further described in the *In Detail Specification*, which is an appendix to the Exchange's Trading Functionality Guide)".
        - "Odd Lot Facility" or "OLF" – to include ", other than those sent to the MATCHNow Odd Lot Facility".
        - "Sponsoring Member" – to include "(including, as applicable, a Sponsored User)" after the reference to DEA Client.
        - "Trading Book(s)" – to include MATCHNow.
- Under Part V (Overview of Trading Books and Trading on the Exchange), updates to the following sections:
    - Section 5.01 (Trading Books) – to include MATCHNow to the list of Trading Books.
    - Section 5.04(2) (Exceeding Price Band Parameters (Price Band Limits)) – to include MATCHNow.

- New Part IX (Trading in MATCHNow) replaces former Part IX (Printing Trades in the Crossing Facility) and incorporates and restates certain essential elements of MATCHNow's existing *In Detail Specification*.
    - Former Part IX (Printing Trades in the Crossing Facility) becomes Part X and the sections contained therein (along with all following parts and sections in the Trading Policies) are re-numbered accordingly to reflect the new Part IX (Trading in MATCHNow).
- Under former Part X (General Provisions Regarding Market Making), now Part XI, update to former section 10.03(2)(c), now section 11.03(2)(c), to include "(with the exception of MATCHNow Odd Lot Orders, with respect to which no Market Trading Obligations, as defined in UMIR 1.1, apply)" with regard to Odd Lot orders.

Description of the Housekeeping Rule Amendments to the Trading Policies

The following Housekeeping Rule Amendments will be made to the Trading Policies:

- Minor formatting and typographical changes as well as the correction of certain typographical errors throughout the document.
- The replacement of NEO branding with Cboe Canada branding.
- The replacement of references to "Neo Exchange Inc." with references to "Cboe Canada Inc." to reflect the Proposed Amalgamation.
- Under Part I (Definitions and Interpretations), updates to section 1.01 (Definitions) to reflect the following:
    - Re-ordering of certain definitions so they appear in alphabetical order.
    - Minor revisions to the definitions of "CIRO Rules", "Crossing Facility", and "Exchange Requirements".
    - Update to the definition for "Retail Customer" (now "Retail Client") – to replace "is defined in accordance with CIRO Rules" with "has the same meaning as the defined term "retail client" in section 1201 of CIRO's Investment Dealer and Partially Consolidated Rules".
    - Minor revisions to the commentary following the definition of "NEO Trader™" to replace "Retail" with "retail" (in quotation marks) and "Retail Customer" with "Retail Client".
- Under Part III (Membership), minor revisions to the following sections:
    - Section 3.02(3) (Application and Approval) – to replace the reference to former Part XIV with a reference to new Part XV.
    - Section 3.15(1) (Account Identification Requirements and Prohibition on Use) – to replace references to "Retail Customer" with references to "Retail Client".
- Under Part V (Overview of Trading Books and Trading on the Exchange), updates to the following sections:
    - Section 5.04(1) (Exceeding Price Band Parameters (Price Band Limits)) – to make certain typographical corrections to the references to CIRO rules and guidance.
    - Section 5.06(2) (Cancellation, Amendment, and Corrections of Trades by the Exchange) – to replace "other applicable regulator" with "applicable securities regulatory authority".
    - Commentary following section 5.06(5) (Cancellation, Amendment, and Corrections of Trades by the Exchange) – to make certain minor typographical changes and non-substantive clarifications to the existing text.
    - Section 5.07(1) (Order Types and Order Modifiers (available in all Trading Books) – Order Types):
        - For *Limit Order* – to replace "Defined in UMIR" with "Has the same meaning as the defined term "limit order" in UMIR 1.1" to account for the different capitalization in UMIR and the Trading Policies for this term.
        - For *Market Order* – to replace "Defined in UMIR" with "Has the same meaning as the defined term "market order" in UMIR 1.1" to account for the different capitalization in UMIR and the Trading Policies for this term.

- Commentary following section 5.07(3) (Order Types and Order Modifiers (available in all Trading Books) – Order Modifiers - Functional Attributes) – to replace "order book" with "Trading Book".

- Under former Part XII (Clearing and Settlement), now Part XIII, minor update to the title of former section 12.04 (When Security Disqualified, Suspended or No Fair Market), now section 13.04 (When Security Disqualified, Suspended, or Subject to No Fair Market) for greater clarity.

- Under former Part XIII (Application of UMIR), now Part XIV, update to former section 13.01(2) (Application), now section 14.01(2), to include up-to-date references to the applicable CIRO rules.

- Under former Part XIV (Appeals), now Part XV, updates to the following sections:

  - Former section 14.01(2) (Appeals of Decision), now section 15.01(2) – to include "applicable" prior to "securities regulatory authority" for internal consistency.

- Former section 14.01(3) (Appeals of Decision), now section 15.01(3) – to include up-to-date references to the applicable CIRO rules.

Description of the Housekeeping Rule Amendments to the Listing Manual

The following Housekeeping Rule Amendments will be made to the Listing Manual:

- Minor formatting changes throughout the document.

- The replacement of NEO branding with Cboe Canada branding.

- The replacement of references to "Neo Exchange Inc." and "NEO Exchange" with references to "Cboe Canada Inc.", "Cboe Canada", or "the Exchange", as applicable, to reflect the Proposed Amalgamation.

- The replacement of references to "IIROC" and "Investment Industry Regulatory Organization of Canada" with references to "CIRO" or "Canadian Investment Regulatory Organization", as applicable, to reflect the name change of IIROC to CIRO, and minor revisions to the definition of "CIRO Rules".

Rationale for the Housekeeping Classification

We are of the view that these amendments fall within the definition of "Housekeeping Rule" in section 2(f) of the Protocol as they are of a housekeeping/administrative nature and are comparable to the types of housekeeping changes listed in section 6.1(5)(b) of Companion Policy 21-101CP *Marketplace Operation* (including, in particular, "changes in the routine processes, policies, practices, or administration of the marketplace" and/or "necessary changes to conform to applicable regulatory or other legal requirements").

Expected Date of Implementation

We are seeking to implement the Public Interest Rule Amendments on **January 1**, **2024**. The Housekeeping Rule Amendments will be implemented at the same time.

Rationale and Relevant Supporting Analysis

Integrating MATCHNow as an order book of the Cboe Canada exchange and doing away with its separate legal framework (and the regulatory burden that such a separate legal framework entails) represents a significant streamlining of the Cboe Canada business, which will enable it to be operated and managed more efficiently, without in any way affecting the quality of the regulatory oversight of the resulting integrated legal entity. At the same time, preserving MATCHNow as its own order book (but not as its own independent legal entity and business operation) is critical, considering the specific client strategies that MATCHNow and the various existing NEO order books facilitate, respectively. This approach to the integration also minimizes disruption to our clients' existing workflows and technology solutions, while minimizing costs and the risk of any client confusion.

Expected Impact on Market Structure, Members, Investors, Issuers and Capital Markets

Given that (a) every aspect of the existing MATCHNow functionality will be preserved as part of this integration, (b) no changes are being made to the functionality of the existing NEO order books, and (c) the integration will simply combine legal entities that are already affiliated through a common parent company, the expected impact on market structure, Members, investors, issuers, and capital markets is *de minimis*.

Expected Impact on Exchange's Compliance with Ontario Securities Law and on Requirements for Fair Access and Maintenance of Fair and Orderly Markets

The Public Interest Rule Amendments will not impact NEO's compliance with Ontario securities law and, in particular, the requirements for fair access and maintenance of fair and orderly markets. The rule amendments in question are merely intended to integrate the existing functionality of the (erstwhile) separately-operated ATS known as MATCHNow as a fully integrated "new" order book of the existing NEO exchange. However, there is nothing new about the rules being introduced, except in the sense that the MATCHNow section is "new" to the NEO Trading Policies; that "new" section merely restates, in a more concise manner, the descriptive text of MATCHNow's existing *In Detail Specification*. For greater certainty, we note that no changes whatsoever are being made to the functionality of either MATCHNow or the existing NEO order books, nor are there any substantive technology changes occurring. As such, the impact of the rule amendments on the Exchange's compliance with Ontario securities law will be *de minimis*.

Expected Impact on the Systems of Members or Service Vendors

Since the integration involves no changes whatsoever to the respective technology underlying the existing MATCHNow platform and the existing NEO exchange, and only minimal changes to the contractual relationships that will survive the integration and continue between the combined legal entity (exchange) and its Members and service vendors, the expected impact on their systems will be marginal. For the most part, the change will simply involve the Member or service vendor receiving notice of the revised agreement(s) between it and the new (integrated) legal entity. In a practical, day-to-day sense, the operational systems of both Members and service vendors will continue exactly as they are today.

Alternative Considered

Senior management of both NEO and MATCHNow considered several alternatives. It was ultimately decided that preserving MATCHNow as its own order book (but not as its own independent legal entity and business operation) was critical, considering the specific client strategies that MATCHNow and the various existing NEO order books enable, respectively. Integrating MATCHNow within an existing NEO order book would affect the offering and provide clients with a lesser experience. On top of that, maintaining MATCHNow as its own order book will also minimize disruption to our clients' existing workflows and technology solutions, while minimizing costs and the risk of any client confusion (which was a serious concern with any alternative that would result in MATCHNow ceasing to exist as its own matching functionality).

New Feature or Rule

Not applicable.

Comments

Comments should be provided, in writing, no later than November 20, 2023, to:

Joacim Wiklander
Chief Operating Officer
Neo Exchange Inc. (operating as Cboe Canada)
65 Queen Street West
Suite 1900
Toronto, ON M5H 2M5
jwiklander@cboe.com

with a copy to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8
marketregulation@osc.gov.on.ca

Please note that, unless confidentiality is requested, all comments will be publicly available.

APPENDIX A

TEXT OF THE PUBLIC INTEREST RULE AMENDMENTS

Trading Policies Sections	Amendments
Part I. Definitions and Interpretations *1.01 Definitions*	Added the following definitions: "**Cboe BIDS Canada**" means the platform within MATCHNow that facilitates the matching of Conditionals and related trading activity. "**Conditionals**" means conditional messages and related instructions sent by a Member or a Sponsored User to the Cboe BIDS Canada facility of MATCHNow. "**Conditionals Compliance Mechanism**" means the requirements applicable to Members and Sponsored Users to mitigate information leakage via Cboe BIDS Canada as further described in Part IX. "**MATCHNow**" means the Exchange's electronic trading book for orders and Conditionals entered on the Exchange for execution in accordance with Part IX. "**MATCHNow Odd Lot Facility**" means the standalone odd lot facility that is part of the MATCHNow Trading Book. "**MATCHNow Odd Lot Order**" means an Odd Lot Order (or an odd-lot portion of a Market Order) sent to the MATCHNow Odd Lot Facility. "**Odd Lot Liquidity Provider**" means a Member that has been approved by the Exchange to send Odd Lot Liquidity Providing Orders to the MATCHNow Odd Lot Facility. "**Odd Lot Liquidity Providing Order**" or "**OLLP Order**" means a passive, confidential order that remains in the MATCHNow Odd Lot Facility as a day order. An OLLP Order is, respectively, rejected or canceled back if it is or drops below the Board Lot size minus 1 (e.g., 99, 499, 999 shares). "**Sponsored User**" means a DEA Client that has been onboarded to send Conditionals to, and conduct related trading activity through, Cboe BIDS Canada. Updated the following definitions: "**Liquidity Taking Order**" means an active Limit or Market FOK/IOC order entered in any of the Trading Books (including a "Market Flow Order" on the MATCHNow Trading Book, sometimes referred to as an "Immediate or Cancel" or "IOC" order, as further described in the In Detail Specification, which is an appendix to the Exchange's Trading Functionality Guide). "**Odd Lot Facility**" or "**OLF**" means the facility providing for auto-execution by DMMs and Odd Lot Traders of all Odd Lot Orders and odd lot portions of Mixed Lot Orders entered on the Exchange, other than those sent to the MATCHNow Odd Lot Facility. "**Sponsoring Member**" means a Member that provides electronic access to the Exchange Systems to a DEA Client (including, as applicable, a Sponsored User) in accordance with NI 23-103 and UMIR. "**Trading Book(s)**" means NEO-L, NEO-D ~~and~~, NEO-N, MATCHNow, or any one of them.

Trading Policies Sections	Amendments
Part V. Overview of Trading Books and Trading on the Exchange *5.01 Trading Books* *5.04 Exceeding Price Band Parameters (Price Band Limits)*	Updated as follows: **5.01 Trading Books** (1) The Exchange operates the following Trading Books: (a) NEO-L; (b) NEO-D; ~~and~~ (c) NEO-N; and (d) MATCHNow. **5.04 Exceeding Price Band Parameters (Price Band Limits)** […] (2) The Exchange applies these price bands during NEO-L, NEO-N, NEO-D, MATCHNow, and Crossing Facility Continuous Trading Sessions for the full duration of these sessions.
Part IX. Trading in MATCHNow	See "Part IX. Trading in MATCHNow" below. Former Part IX (Printing Trades in the Crossing Facility) becomes Part X and the sections contained therein (along with all following parts and sections in the Trading Policies) are re-numbered accordingly to reflect the new Part IX (Trading in MATCHNow).
Part XI. General Provisions Regarding Market Making ***DIVISION 1 —DESIGNATED MARKET MAKERS*** *11.03 Responsibilities of Designated Market Makers for their Assigned Securities*	Updated as follows: **11.03 Responsibilities of Designated Market Makers for their Assigned Securities** […] (2) The responsibilities of a Designated Market Maker for an Assigned Security in NEO-L include: […] (c) executing all Odd Lot orders for its applicable Assigned Securities (with the exception of MATCHNow Odd Lot Orders, with respect to which no Market Trading Obligations, as defined in UMIR 1.1, apply).

PART IX. TRADING IN MATCHNOW

9.01 Trading Sessions

(1) The current trading sessions for MATCHNow are prescribed by Notice, as amended from time to time, and displayed on the Exchange's website.

9.02 Additional Orders and Modifiers Available in MATCHNow

Conditionals	A conditional order or message which, if firmed up, becomes an order that may execute during the Continuous Trading Session in MATCHNow against other firmed-up Conditionals or opted-in Market Flow Orders or Liquidity Providing Orders.
Market Flow Order	A Liquidity Taking Order sent to the MATCHNow Trading Book, also known as an Immediate-or-Cancel ("IOC") order. If a match with a Liquidity Providing Order exists, it trades immediately to the extent possible, and any remaining shares are returned.
Minimum Price Improvement Order	A pegged order with a price offset which is automatically adjusted by the Exchange Systems to one tick increment more aggressive than the NBBO, or one-half of a tick increment if the NBBO spread is only one tick increment.
MATCHNow Mixed Lot	A Limit Order or Market Order sent to the MATCHNow Trading Book containing at least one Board Lot and a MATCHNow Odd Lot.
MATCHNow Odd Lot	A Limit Order or Market Order containing less than one Board Lot sent to the MATCHNow Trading Book.
Odd Lot Liquidity Providing Order (or "OLLP Order")	A passive, confidential order that remains in the MATCHNow Odd Lot Facility as a day order. An OLLP Order is, respectively, rejected or canceled back if it is or drops below the Board Lot size minus 1 (e.g., 99, 499, 999 shares).

Commentary

For additional defined terms and other functionality information unique to the MATCHNow Trade Book, please see the In Detail Specification*, which is an appendix to the Exchange's Trading Functionality Guide.*

9.03 Posting Liquidity Providing Orders in MATCHNow

(1) Liquidity Providing Orders posted in MATCHNow may originate from any type of account.

9.04 Continuous Trading Session in MATCHNow

(1) In MATCHNow, orders from all accounts may interact with each other, unless otherwise specified in the *In Detail Specification* (which is an appendix to the Exchange's Trading Functionality Guide).

(2) Trades will execute at or within the NBBO in a manner consistent with UMIR dark rules.

(3) A Liquidity Providing Order resting in MATCHNow at a particular price will be executed in priority to all orders at inferior prices.

9.05 Liquidity Providing Orders Cancelled

(1) All Liquidity Providing Orders remaining in MATCHNow at the end of the Continuous Trading Session will be cancelled back to the originator.

9.06 Transparency

(1) *No Pre-Trade Transparency*. Orders booked in MATCHNow are not displayed or available to the information processor for dissemination on the public data feed.

(2) *Post-Trade Transparency*. Trades executed in MATCHNow are displayed and made available to the information processor for dissemination on the public data feed.

9.07 MATCHNow Odd Lot Facility

(1) MATCHNow Odd Lot Orders (and the odd-lot portion of a Mixed Lot Order sent to MATCHNow) will be eligible for entry and execution in the MATCHNow Odd Lot Facility during the Odd Lot Session.

(2) MATCHNow Odd Lot Orders (and the odd-lot portion of a Mixed Lot Order sent to MATCHNow) may be entered for trading during the Odd Lot Session of MATCHNow.

(3) Incoming MATCHNow Odd Lot Market Orders:

(a) will be executed, if liquidity is available, by an Odd Lot Liquidity Provider at the time of order entry, at the NBBO.

(4) Odd Lot Liquidity Providing Orders (or "OLLP Orders"):

(a) The Exchange does not impose any Marketplace Trading Obligations (as defined in UMIR 1.1) on Odd Lot Liquidity Providers that send OLLP Orders to the MATCHNow Odd Lot Facility.

(b) Odd Lot Liquidity Providers (and, as applicable, their DEA Clients) can submit liquidity into the MATCHNow Odd Lot Facility in as many or as few symbols as they wish.

(c) Each Trader ID is limited to booking one order per side of each symbol at any moment in time.

(d) There is no limit on the number of Trader IDs available to each Odd Lot Liquidity Provider, provided that each Trader ID represents an individual DEA Client, a distinct proprietary trading desk or algorithmic trader of the Member, and/or an individual Approved Trader.

(5) The factors identified in the Commentary for section 6.18 of these Trading Policies ("Unfair Trading in Odd Lots") apply to MATCHNow Odd Lot Orders, subject to appropriate adjustments reasonably and rationally connected to the unique attributes of the MATCHNow Odd Lot Facility (e.g., no Market Trading Obligations, as defined in UMIR 1.1), and in light of applicable CIRO rules (e.g., UMIR 2.2 and 2.3 and CIRO Investment Dealer and Partially Consolidated Rule 1402(1)) and/or guidance from the Market Regulator.

9.08 Cboe BIDS Canada (Conditionals)

(1) Conditionals may be originated by a Member or a Sponsored User.

Commentary

There are three types of Conditional interactions:
- *Subscriber-to-Subscriber (electronic-to-electronic).*
- *Subscriber-to-Sponsored User/Sponsored User-to-Subscriber (electronic-to-human).*
- *Sponsored User-to-Sponsored User (human-to-human).*

For Subscriber-to-Subscriber (i.e., electronic-to-electronic) interactions, the process is as follows:
- *Invitations are synchronous (i.e., simultaneous).*
- *The time limit for firming up is one second.*

For Subscriber-to-Sponsored User (and vice-versa) interactions, the process is as follows:
- *A Sponsored User's trading must be conducted by a human trader.*
- *Invitations are asynchronous: the system is designed to send the invitation to firm up to the Sponsored User first—i.e., before the invitation to firm up is sent to the Subscriber (which is always an electronic user).*
- *The Sponsored User (human trader) has up to 30 seconds to firm up the invitation. This is necessary to give human traders the practical ability to make a deliberate, conscious decision to firm up and/or adjust their Conditional (or firmed-up Conditional).*

For Sponsored User-to-Sponsored User interactions (i.e., interaction is human-to-human), the process is as follows:
- *Invitations are synchronous (i.e., simultaneous).*
- *The time limit for firming up is 30 seconds for both sides.*

(2) Sponsored Users are not permitted to originate Conditionals until such time as all relevant risk controls and other appropriate onboarding-related tasks have been completed in accordance with the relevant Exchange Requirements.

Commentary

Eligible buy-side institutional investors (DEA Clients) that have taken the appropriate steps to be granted the privilege, by a Member, to send Conditionals to MATCHNow (Cboe BIDS Canada), use the Participating Organization number of the Member that they have designated as their sponsoring Member for such purposes. This functionality is referred to the "Sponsored Access Model" for Conditionals.

A front-end interface, known as "BIDS Trader," is made available to Sponsored Users, allowing each Sponsored User to enter and, where contra liquidity is found, firm up Conditionals through a direct FIX connection to MATCHNow.

The BIDS interface for Members (known as the "Admin Client") provides the following features for Subscribers to set for their Sponsored Users:

- *fat-finger checks;*
- *single order limits;*
- *daily open orders plus traded value limits for buys;*
- *daily open orders plus traded value limits for sells; and*
- *gross daily orders plus traded value limits for buys and sells.*

The responsibility for setting and supervising all risk controls remains with the Member, and the Member has the flexibility to configure risk controls in a unique manner for each of its Sponsored Users, as it sees fit. The Exchange will verify that, before granting "Sponsored User" access to any DEA Client, the latter has at least one sponsoring Member that:

- *has set static limits for that DEA Client; and*
- *has the ability to shut off the DEA Client at any time.*

(3) Each Conditional must meet a minimum size of greater than 50 Board Lots and greater than $30,000 notional value, or be of any quantity with greater than $100,000 notional value.

(4) A Conditional can match with another Conditional, an eligible opted-in Liquidity Taking Order, or an eligible opted-in Liquidity Providing Order.

Commentary

Members have the ability to activate an "opt-in" feature that allows large firm orders sent to MATCHNow—i.e., both Liquidity Taking Orders and Liquidity Providing Orders —to interact with Conditionals. To be eligible for the "opt-in" feature, a Liquidity Taking Order or a Liquidity Providing Order is required to meet the following minimum size threshold:

- *greater than 50 Board Lots and greater than $30,000 in notional value; or*
- *greater than $100,000 in notional value.*

Members can elect to opt in on either (1) an order-by-order basis or (2) as a default attribute at the port level.

Where the "opt-in" feature is activated for a particular qualifying firm order, and the MATCHNow system detects a potential match with one or more contra-side Conditionals, the system will automatically generate an invitation to "firm up" and send it to the relevant contra Conditional(s). If one or more Conditionals get firmed up within the allotted time period (one second or 30 seconds, depending on the nature of the participant), the system will then immediately execute the match between the firmed-up Conditional(s) and the relevant qualifying firm order.

(5) Match priority in Cboe BIDS Canada does not follow pro-rata logic, but instead, is done on a one-to-one basis based on priority of firmed-up orders, using the following criteria, in this order:

(a) Price;

(b) Member (per "broker preferencing");

(c) Size; and

(d) Time.

Commentary

When a Conditional is large enough to fully satisfy multiple contras, it may invite all of those contras (depending on market conditions and attributes selected for that Conditional and those contras). Trades will still occur on a one-to-one basis, even though multiple parties have been invited, and the outcome of those trades depends on the "firm-ups" being received. However, because matching is one-to-one, the first contra firm-up to be received will trade first.

Conditionals can execute at a price that is anywhere within the range of prices created by the current NBBO.

The following peg order types are supported:

- *Peg Mid*
- *Near-side Peg (Peg to Bid when buying, or to the Offer when selling)*
- *Far-side Peg (Peg to the Offer when buying, or to the Bid when selling)*
- *Peg Offset (This allows a peg order a level of discretion as set on an order-by-order basis. Peg discretion is measured in dollar value increments of $0.005, which is added to the result of peg calculations. When peg offsets are crossed, the trade will always execute at the price closest to midpoint.)*

Each Trader ID will have a default peg value assigned, which is chosen by the Subscriber or Sponsored User. Any value specified within the FIX message will override that default value.

(6) Sponsored Users have access to the following optional features:

(a) Overtime;

(b) "Clean Up"; and

(c) "Auto Firm-Up".

Commentary

For up-to-date details on how each Sponsored User feature works, please see the In Detail Specification *(which is an appendix to the Exchange's Trading Functionality Guide).*

(7) Members and Sponsored Users that send Conditionals to Cboe BIDS Canada will be subject to the Conditionals Compliance Mechanism, which functions as follows:

(a) Each Member or Sponsored User that receives 10 or more invitations to firm up a Conditional for a given security needs to avoid crossing below the 70% threshold of firm-ups for that security, failing which the Member or Sponsored User is suspended from receiving invitations for any new Conditionals that it enters for that security for the rest of that trading day.

(b) Fallen-down Conditionals that originate with a Sponsored User will not be attributed to the sponsoring Member for those Conditionals for purposes of calculating the sponsoring Member's fall-down ratel instead, they are exclusively attributed to the Sponsored User that originated those Conditionals.

(8) The Exchange reports daily suspensions of Members (including which symbols were affected by the suspension) to CIRO and to each affected Member in real time via email.

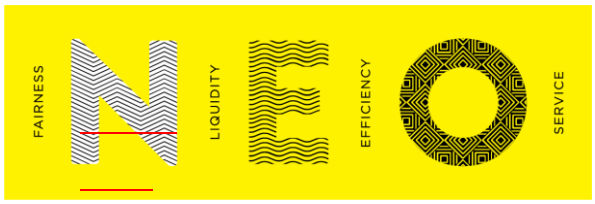
(9) On a quarterly basis, the Exchange reports to securities regulatory authorities certain Conditionals related data.

APPENDIX B

TEXT OF THE PUBLIC INTEREST RULE AMENDMENTS AND HOUSEKEEPING RULE AMENDMENTS

Appendix B – Public Interest Rule Amendments and Housekeeping Rule Amendments are reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Appendix.

This page intentionally left blank



~~Neo Exchange Inc.~~
~~Trading Policies~~

~~(the "Trading Policies")~~

Cboe CANADA TRADING POLICIES

Cboe CANADA INC. (the "EXCHANGE") TRADING POLICIES
(the "TRADING POLICIES")

TABLE OF CONTENTS

PART I. DEFINITIONS AND INTERPRETATIONS

1.01 Definitions

(1) Unless otherwise defined or interpreted or the subject matter or context otherwise requires, every term used in the Exchange Requirements that is defined or interpreted in

(a) Ontario securities law;

(b) UMIR; or

(c) CIRO Rules

has the same meaning in these Trading Policies.

(2) The terms in this Part have the meanings set out when used in the Exchange Requirements and apply to the trading of both Listed Securities and Other Traded Securities unless otherwise specified.

"**Approved Trader**" means: (1) an employee of a Member, or (2) an employee of a DEA Client that has been granted access to the Exchange Systems by a Sponsoring Member who, in each case, is authorized to enter orders onto a marketplace as a trader and who has been provided with a trading identifier to be used when accessing a marketplace.

"**Assigned Security**" means a Listed Security or Other Traded Security for which a Designated Market Maker or Odd Lot Trader has been appointed.

"**Board**" means the Board of Directors of the Exchange and any committee of the Board of Directors to which powers have been delegated.

"**Board Lot**" means a "standard trading unit" as defined in UMIR.

~~"**CIRO**" means the Canadian Investment Regulatory Organization and any successor thereof.~~

~~"**CIRO Rules**" means UMIR and CIRO's dealer member rules.~~

~~"**Closing Call**" means the end-of-day call auction, facilitating systematic execution of orders at the CCP in accordance with these Trading Policies.~~

"**Calculated Closing Price**" or "**CCP**" means, for a Closing Call Eligible Security, the CCP as determined in accordance with these Trading Policies.

"**Calculated Opening Price**" or "**COP**" means, for an Opening Call Eligible Security, the COP as determined in accordance with these Trading Policies.

"**Cboe BIDS Canada**" means the platform within MATCHNow that facilitates the matching of Conditionals and related trading activity.

"**CIRO**" means the Canadian Investment Regulatory Organization and any successor thereof.

"**CIRO Rules**" means UMIR and CIRO's Investment Dealer and Partially Consolidated Rules.

"**Clearing Corporation**" means CDS Clearing and Depository Services Inc. and any successor corporation or other entity recognized as a clearing agency.

"**Closing Call**" means the end-of-day call auction, facilitating systematic execution of orders at the CCP in accordance with these Trading Policies.

"**Closing Call Eligible Security**" means a Listed Security, or an OTS designated by the Exchange from time to time as eligible to participate in the Closing Call.

"**Closing Price**" means:

(1) with respect to a Closing Call Eligible Security,

(a) if the security traded during the Closing Call, the price at which the security traded, or

(b) if the security did not trade during the Closing Call,

(i) if is also a Weighted Closing Price Eligible Security, the Weighted Closing Price, and

(ii) for all other Closing Call Eligible Securities, the LSP that occurred at or prior to the end of the Continuous Trading Session in NEO-L;

(2) with respect to a Weighted Closing Price Eligible Security, the Weighted Closing Price; or

(3) with respect to all other Listed Securities, the LSP that occurred at or prior to the end of the Continuous Trading Session in NEO-L.

"**Conditionals**" means conditional messages and related instructions sent by a Member or a Sponsored User to the Cboe BIDS Canada facility of MATCHNow.

"**Conditionals Compliance Mechanism**" means the requirements applicable to Members and Sponsored Users to mitigate information leakage via Cboe BIDS Canada as further described in Part IX.

"**Continuous Trading Session**" means the regular trading session in each of the Trading Books and the Crossing Facility, as further described in Parts VI, VII, VIII and IX, respectively.

"**Crossing Facility**" means the Exchange's electronic facility for posting of intentional crosses in accordance with Part ~~IX~~X.

"**DEA Client**" means a third party that has been provided with electronic access to the Exchange Systems by a Sponsoring Member in accordance with NI 23-103 and UMIR.

"**Decision**" means any decision, direction, order, ruling, guideline or other determination of the Exchange, or of the Market Regulator, made in the administration of these Trading Policies.

"**Designated Market Maker**" or "**DMM**" means the Member appointed by the Exchange as the market maker for a particular Assigned Security.

"**Designated Market Maker Approved Trader**" means the Approved Trader of the Designated Market Maker (who may not be an employee of a DEA Client) identified by the Designated Market Maker to fulfill the Designated Market Maker's responsibilities under these Trading Policies.

"**Eligible Assigned Security**" means an Assigned Security for which a DMM has been appointed that is a Listed Security or an OTS designated by the Exchange from time to time as eligible for Market Maker Commitment. For greater certainty, it does not include an Assigned Security for which an Odd Lot Trader has been appointed.

"**Exchange**" means ~~Neo Exchange~~Cboe Canada Inc., the recognized exchange which provides a marketplace for Listed Securities and Other Traded Securities.

"**Exchange Approval**" means any approval given by the Exchange under the Exchange Requirements.

"**Exchange Requirements**" includes the following:

(1) these Trading Policies;

(2) the Listing Manual;

(3) obligations arising out of the Member Agreement or any Designated Market Maker agreement;

(4) any forms issued or filed pursuant to these Trading Policies or the Listing Manual and any obligations related to or created by such forms;

(5) UMIR; and

(6) applicable Canadian securities law, and any decision thereunder

~~(6)~~ as it or they may be amended, supplemented, and in effect from time to time.

"**Exchange Systems**" means the electronic systems operated by the Exchange for providing access to the services for the listing and trading of Listed Securities and trading of Other Traded Securities on the Exchange.

"**Extended Trading Eligible Security**" means a Listed Security, or an OTS designated by the Exchange from time to time as eligible to participate in the Extended Trading Session.

"**Extended Trading Session**" means the trading session after the Continuous Trading Session or Closing Call, as applicable.

"**Imbalance Message**" means a message sent prior to an Opening Call for an Opening Call Eligible Security, or the Closing Call for a Closing Call Eligible Security, containing the imbalance side and quantity based on the COP or CCP of the security, as calculated at that time.

"**Last Sale Price**" or "**LSP**" has the meaning set out in UMIR.

"**Last Traded Price**" or "**LTP**" means the price at which the last trade of a Board Lot or eligible cross was executed in any Trading Book or the Crossing Facility of the Exchange, other than a Special Terms trade.

"Latency Sensitive Trader" or "**LST**" means either:

(1) a proprietary trader of a Member, trading for its own account, using automated, co-located trading strategies; or

(2) a DEA Client using automated, co-located trading strategies and making its own routing decisions,

where "**using automated, co-located trading strategies**" means using a server installed in the same data centre as, or in close proximity to, any Canadian exchange or alternative trading system located in the Greater Toronto Area.

Commentary

A Designated Market Maker would be considered an LST per subsection (1) of the definition if the market making trading strategies it uses involve co-location.

A DEA Client is deemed to be making its own routing decisions if it is connected through only a risk management "skin" provided by a Member to the Exchange Systems through the DEA Client's own dedicated FIX sessions, or if it is using a Member's order routing technology but the DEA Client is able to control the marketplaces to which its orders are being routed. A Member's order routing technology includes marketplace routers, proprietary routers and any other third-party routers for which the Member is responsible to the Exchange on behalf of the DEA Client.

"**Liquidity Providing Order**" means a resting order booked in any of the Trading Books.

"**Liquidity Taking Order**" means an active Limit or Market FOK/IOC order entered in any of the Trading Books. (including a "Market Flow Order" on the MATCHNow Trading Book, sometimes referred to as an "Immediate or Cancel" or "IOC" order, as further described in the *In Detail Specification*, which is an appendix to the Exchange's Trading Functionality Guide).

"**Listed Security**" means a security listed on the Exchange.

"**Market Maker Volume Allocation**" or "**MMVA**" means the system of allocation of priority to DMM resting orders in NEO-L and NEO-N, whereby a resting DMM order for an Assigned Security will receive queue priority over other LST orders, unless the cumulative volume of executed orders that have been given priority has exceeded the Market Maker Volume Allocation Percentage for the security for that trading day (or such other period as may be set out by the Exchange and published by Notice to Members).

"**Market Maker Volume Allocation Percentage**" means the percentage threshold over which a DMM resting order will no longer receive priority under the MMVA, which shall be the percentage set out by the Exchange and published by Notice to Members.

Commentary

The calculation of cumulative daily traded volume only takes into account trades that occur during continuous trading in that particular security and Trading Book. Any DMM resting order that trades due to the matching priorities of a specific Trading Book are counted as part of the aggregated queue volume and not MMVA, as the DMM did not receive priority for the execution.

MMVA only applies to the visible portion of a DMM resting order.

Different securities may have different Market Maker Volume Allocation Percentages.

"**Market Regulator**" means CIRO or such other person recognized by the Ontario Securities Commission as a Regulation Services Provider for the purposes of Ontario securities law and which has been retained by the Exchange as an acceptable Regulation Services Provider.

"**MATCHNow**" means the Exchange's electronic trading book for orders and Conditionals entered on the Exchange for execution in accordance with Part IX.

"**MATCHNow Odd Lot Facility**" means the standalone odd lot facility that is part of the MATCHNow Trading Book.

"**MATCHNow Odd Lot Order**" means an Odd Lot Order (or an odd-lot portion of a Market Order) sent to the MATCHNow Odd Lot Facility.

"**Member**" means a person that has signed a Member Agreement and been approved by the Exchange to access the Exchange Systems, provided such access has not been terminated.

"**Member Agreement**" means the agreement entered into between the Exchange and a Member which sets out the terms and conditions of the Member's access to the Exchange Systems.

"**Member Related Entity**" means a Person that is:

(1) an affiliated entity of a Member; or

(2) a control person of a Member or of which the Member is a control person, and that carries on as a substantial part of its business in Canada that of a broker, dealer or advisor in securities and that is not itself a Member.

"**Member Related Person**" means a Person that is:

(1) a Member Related Entity;

(2) an employee, agent or contractor of a Member or a Member Related Entity;

(3) a partner, director or officer of a Member or Member Related Entity;

(4) an Approved Trader of a Member or of a DEA Client for which the Member is the Sponsoring Member; and

(5) any other Person designated by the Exchange.

"**Mixed Lot Orders**" means a Limit Order or Market order containing at least one Board Lot and one Odd Lot.

"**National Best Bid and Offer**" or "**NBBO**" means the best bid and best offer of at least one Board Lot displayed on all protected marketplaces, but does not include Basis Orders, Call Market Orders, Closing Price Orders, Market-on-Close Orders, Opening Orders, Special Terms Orders or Volume-Weighted Average Price Orders.

"**NEO-D**" means the Exchange's electronic trading book containing Board Lot orders entered on the Exchange for execution in accordance with Part VII.

"**NEO-L**" means the Exchange's electronic trading book containing Board Lot orders entered on the Exchange for execution in accordance with Part VI.

"**NEO-N**" means the Exchange's electronic trading book containing Board Lot orders entered on the Exchange for execution in accordance with Part VIII.

"**NEO Trader™**" means an account type or an investor that trades through an account type, other than LST.

Commentary

Members will be required to certify that NEO Trader™ accounts associated with specific Trader IDs comply with the definitions. In addition, the Exchange will be monitoring and using objective criteria such as what type of trading system is used, message to trade ratios and use of consistent markers to confirm that the certifications are in compliance with the requirements. The Exchange will have the right to require certifications and further information to determine if the originating trading systems are co-located.

A NEO Trader™ account associated with a specific Trader ID can be certified to be ~~Retail~~ "retail" only if all orders sent via that Trader ID originate from a Retail ~~Customer~~Client. In the event a Trader ID is used for both retail and institutional flow, that Trader ID will be considered purely institutional from a monitoring and billing perspective.

"**NI 23-103**" means National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces*, as amended.

"**Notice**" means an electronic communication or document given, delivered, sent or served by the Exchange.

"**Odd Lot Facility**" or "**OLF**" means the facility providing for auto-execution by DMMs and Odd Lot Traders of all Odd Lot Orders and odd lot portions of Mixed Lot Orders entered on the Exchange, other than those sent to the MATCHNow Odd Lot Facility.

"**Odd Lot Liquidity Provider**" means a Member that has been approved by the Exchange to send Odd Lot Liquidity Providing Orders to the MATCHNow Odd Lot Facility.

"**Odd Lot Liquidity Providing Order**" or "**OLLP Order**" means a passive, confidential order that remains in the MATCHNow Odd Lot Facility as a day order. An OLLP Order is, respectively, rejected or canceled back if it is or drops below the Board Lot size minus 1 (e.g., 99, 499, 999 shares).

"**Odd Lot Orders**" means A Limit Order or Market Order containing less than one Board Lot.

"**Odd Lot Session**" means the hours during the Continuous Trading Session when the Odd Lot Facility operates. The Odd Lot Session is 9:30am – 4:00pm ET, unless otherwise specified by Notice to Members.

"**Odd Lot Trader**" means: (1) a Member that is not a Designated Market Maker; or (2) a DEA Client, which, in the case of both (1) and (2), has agreed to auto-execute trades in the Odd Lot Facility for one or more Assigned Securities for which no Designated Market Maker has been appointed.

"**Opening Call**" means the start-of-day call auction, facilitating the systematic execution of orders at the COP in accordance with these Trading Policies.

"**Opening Call Eligible Security**" means a Listed Security, or an OTS designated by the Exchange from time to time as eligible to participate in the Opening Call.

"**Opening Price**" means for a security that participates in an Opening Call, the price at which the security traded during the Opening Call and for a security that does not trade in an Opening Call, the previous day's Closing Price in NEO-L.

"**Other Traded Security**" or "**OTS**" means a security listed by an exchange other than the Exchange that is traded on the Exchange, and is not also a Listed Security.

Commentary

A security that is listed both on the Exchange and on another exchange in Canada will be considered to be a Listed Security for purposes of the Exchange Requirements unless otherwise specified.

"**Person**" includes without limitation an individual, corporation, incorporated syndicated or other incorporated organization, sole proprietorship, partnership or trust.

"**Retail ~~Customer~~" is~~Client~~" has the same meaning as the defined term "retail client" in ~~accordance with CIRO~~section 1201 of CIRO's Investment Dealer and Partially Consolidated Rules.

"**Settlement Day**" means any day on which trades may be settled through the facilities of the Clearing Corporation.

"**Size-Time**" means the following allocation methodology utilized in NEO-D and NEO-N when multiple potential matches have been identified at a given price:

(1) if an incoming order can be completely filled by a single resting order, that resting order will trade; or

(2) if more than one resting order is large enough to completely fill the incoming order, the lowest Size-Time Rank will determine which one of those orders will trade; or

(3) if no resting orders are large enough to completely fill the incoming order, the Size-Time Rank of all orders at that price level will determine in which order they will trade from lowest to highest.

In the event that two or more orders have the same Size-Time Rank, the original order entry timestamp will be used to determine priority.

"**Size-Time Rank**" means the weighted average of each order's ranking based on:

(a) remaining order volume; and

(b) priority time-stamp; and

(c) time of the last partial fill (of the order).

The weighting used for the Size-Time Rank calculation will be set out by the Exchange and published by Notice to Members.

Commentary

Each order is ranked from 1-N for each category where for (a) the largest volume gets the lowest rank and for (b) and (c) the most recent timestamp gets the highest rank. The three ranks are then weighted together to determine the overall Size-Time Rank. The order with the lowest ranking receives the highest priority.

If an order is amended in such a way that it would result in a priority loss, the priority timestamp is updated. In the event an order is amended in a way that does not change the priority of an order (e.g. amend volume down), the priority timestamp remains unaffected.

"**Special Terms trade**" means a trade resulting from a Basis Order, Call Market Order, Closing Price Order, Special Terms Order (unless one part is not a Special Terms Order), or a Volume-Weighted Average Price Order.

"**Sponsored User**" means a DEA Client that has been onboarded to send Conditionals to, and conduct related trading activity through, Cboe BIDS Canada.

"**Sponsoring Member**" means a Member that provides electronic access to the Exchange Systems to a DEA Client (including, as applicable, a Sponsored User) in accordance with NI 23-103 and UMIR.

"**Time-Weighted Average Price NBBO Midpoint**" or "**TWAP NBBO Midpoint**" means the midpoint of the time-weighted average NBB and the time-weighted average NBO over a period of time.

"**Trading Book(s)**" means NEO-L, NEO-D ~~and~~, NEO-N, MATCHNow, or any one of them.

"**Trading Contract**" means any agreement or contract:

(1) to buy or sell any Listed Security or OTS through the Exchange facilities; or

(ii) the applicant or any Member Related Person refuses to comply with the Exchange Requirements,

(iii) the applicant is not qualified by reason of integrity, solvency, training or experience, or

(iv) such approval is otherwise not in the public interest.

(3) An applicant that is approved subject to conditions or is rejected may appeal the Decision using the procedures set out in Part ~~XIV~~XV.

(4) Subject to the exercise of a right of appeal, a rejected applicant may not reapply for membership for a period of six months following the date of refusal.

DIVISION 2 — CONTINUING REQUIREMENTS

3.03 Authorized Representative

(1) Each Member must appoint a senior officer, director or partner as its authorized representative, who shall be named in the Member Agreement.

(2) The authorized representative shall:

(a) have authority to speak for the Member in dealings with the Exchange; and

(b) serve as primary contact person for the Exchange on inquiries regarding the conduct and supervision of the Member's Approved Traders and DEA Clients.

(3) A Member must give the Exchange notice of a change of its representative at least 10 business days prior to the change unless circumstances make this impossible, in which case notice must be given as soon as possible.

3.04 Payment of Fees, etc.

(1) Members must pay all fees and charges fixed by the Exchange and the Market Regulator, which are due and payable as the Exchange or the Market Regulator require from time to time.

(2) The Exchange may at any time, and from time to time, on not less than 30 days' Notice to Members, increase any or all fees or charges. The Exchange may decrease fees by providing Members with Notice of such a change within 30 days prior to the effective date of the change.

(3) The Exchange may suspend without further notice a Member that has not paid any fees or charges within 30 days of becoming payable, and such suspension shall remain in place until all outstanding fees and charges have been paid by the Member. If the Member has

3.14 Effect of Suspension or Termination

(1) Upon suspension or termination, the Exchange may at its discretion cancel all of the Member's or former Member's open orders or impose any other restrictions and/or conditions on the Member's rights until the Member has been reinstated in accordance with Section 3.12.

(2) A Member that has been suspended or terminated or that has been deprived of some of the rights of membership under the Exchange Requirements does not for that reason alone lose its rights in respect of any claims it may have against another Member unless such rights are expressly dealt with.

(3) A Member that has had its membership terminated may, no sooner than six months after the date of the termination of membership, reapply for membership with the Exchange by following the procedures set out in Section 3.2.

DIVISION 4 — ACCOUNT IDENTIFICATION REQUIREMENTS AND PROHIBITION ON USE

3.15 Account Identification Requirements and Prohibition on Use

(1) If a Member sends orders to the Exchange Systems with a Trader ID designated as being for one or more NEO Trader™ or Retail ~~Customer~~Client accounts in accordance with Exchange Requirements and the Exchange determines, in its sole discretion, that such designation is not accurate based on the definitions of NEO Trader™ and Retail ~~Customer~~Client, the Exchange may (without derogating from any other recourse available to the Exchange) treat any or all orders with that Trader ID or otherwise submitted by the Approved Trader or the Member to the Exchange Systems or to any Trading Book as failing to qualify. The Exchange may reclassify the Trader ID as LST until the Member can demonstrate otherwise or may prohibit the Approved Trader or the Member from submitting such orders or any other order.

Commentary

The Exchange requires Members to have policies and procedures in place to ensure that the Member will properly identify the Trader IDs that are eligible to use the special functionality.

The Exchange will monitor the proper use by Members of Trader IDs and the use of the Exchange's special functionality.

PART V. OVERVIEW OF TRADING BOOKS AND TRADING ON THE EXCHANGE

5.01 Trading Books

(1) The Exchange operates the following Trading Books:

(a) NEO-L;

(b) NEO-D; ~~and~~

(c) NEO-N; and

~~(c)~~(d) MATCHNow.

5.02 Trading Sessions

(1) The Exchange will publish by Notice to Members the days on which the Exchange will not be open for trading.

(2) The Exchange will determine from time to time, and will publish by Notice to Members, the trading sessions for each Trading Book, the securities eligible for trading in each trading session, and the opening and closing times for each trading session.

(3) The Exchange may at any time in the event of an emergency:

(a) suspend all trading in any trading session or sessions or trading in any security during any session or sessions, or

(b) close, reduce, extend, or otherwise alter the time of any trading session or sessions.

5.03 Trading Halts

(1) Trading may be halted in any Trading Book by the Exchange, the Market Regulator, or any applicable securities regulatory authority.

Commentary

Circumstances when a halt may occur include the following:

- *To permit the dissemination of material news.*
- *During a trading halt imposed by another marketplace to permit the dissemination of material news.*
- *In the event that extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the NBBO.*
- *In the event that other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.*

- *Due to persistent trading that exceeds the Exchange price band parameters, or where there is exceptional market disruption, for example, where market conditions are similar to those which occurred during the "flash crash" of May 6, 2010.*
- *Due to the triggering of a single-stock or market-wide circuit breaker.*

(2) Two types of trading halts may be initiated based on certain external events.

(a) During a "full" halt, order entry, amendment and matching are not permitted, and existing orders can be cancelled.

(b) During a "no matching" halt, new orders can be entered and existing orders can be amended or cancelled, but no matching is permitted.

(3) After a trading halt is lifted, the security enters a pre-open phase allowing for order entry, amendment, and cancellation. For NEO-L, the pre-open phase will be followed by an auction in accordance with Sections 6.03 – 6.06 (for all Listed Securities and OTSs) and then the resumption of the Continuous Trading Session. For NEO-D and the NEO-N, only resting orders may be entered during the pre-open phase until the trading in NEO-D and NEO-N resumes.

(4) For greater certainty, in the event that the decision as to whether to impose a halt has been outsourced to the Market Regulator, such decision will be made by the Market Regulator and not by the Exchange. In all other cases, the Exchange may make the decision to impose a trading halt and will make all reasonable efforts to coordinate with the Market Regulator.

Commentary

Notification messages pertaining to trading halts are sent out on the Exchange public feed.

5.04 Exceeding Price Band Parameters (Price Band Limits)

(1) The Exchange has implemented price bands to minimize erroneous trades from occurring on the Exchange in accordance with ~~the requirements set out in~~ CIRO rules and guidance, as memorialized in IIROC Rules Notice ~~and Guidance Note~~ 15-0186 *Guidance on Marketplace Thresholds*~~.~~ (Aug. 15, 2015) (available at https://www.iiroc.ca/news-and-publications/notices-and-guidance/guidance-marketplace-thresholds).

(2) The Exchange applies these price bands during NEO-L, NEO-N, NEO-D, MATCHNow, and Crossing Facility Continuous Trading Sessions for the full duration of these sessions.

(3) The Exchange will publish, through a Notice to Members and by posting on its website, any change to the price band parameters, if different than the CIRO thresholds, as amended (other than those made for a temporary period to adjust to a particular event) before implementation.

(4) The Exchange, or the DMM for its Eligible Assigned Securities, may delay the opening of an Opening Call Eligible Security in NEO-L if, during the Opening Call, the COP differs from the previous day's Closing Price by an amount greater than the price band parameters,

if set. The price band parameters for the Opening Call may differ from those outlined by CIRO and may differ from instrument to instrument.

(5) The Exchange may delay the closing of a Closing Call Eligible Security in NEO-L if, during the Closing Call, the CCP for the security exceeds the price band parameters, if set. The price band parameters for the Closing Call may differ from those outlined by CIRO and may differ from instrument to instrument.

(6) The Exchange, or the DMM for its Eligible Assigned Securities, may delay the opening of a security following a trading halt if, during the auction, the price at which the auction would be completed exceeds the price band parameters, if set. The price band parameters for an Opening Call Eligible Security following a delay may differ from those outlined by CIRO and may differ from instrument to instrument.

(7) The Opening Call, Closing Call, and post-halt auction price band parameter values, if set and different than those outlined by CIRO, will be defined in the Exchange's Trading Functionality Guide.

5.05 General Capacity Thresholds to Achieve Performance

(1) The Exchange may determine thresholds based on system capacity criteria.

(2) If a Member or DEA Client, directly or indirectly, exceeds the threshold, the Exchange may take action to mitigate the impact.

5.06 Cancellation, Amendment, and Corrections of Trades by the Exchange

(1) The Exchange retains the discretion to cancel, amend, or correct executed trades on the Exchange that have not yet been submitted by the Exchange to the Clearing Corporation where:

(a) instructed to do so by the Market Regulator;

(b) the cancellation, amendment, or correction is requested by a party to the trade, consent is provided by both parties to the trade, and notification is provided to the Market Regulator;

(c) the cancellation, amendment, or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace systems or equipment, or caused by an individual acting on behalf of the marketplace, or otherwise for the purpose of mitigating errors made by the Exchange in order execution, and consent has been obtained from the Market Regulator.

(2) Cancellation or correction of trades involving orders with regulatory markers (insider or significant shareholder) will be subject to the guidelines set out by the Market Regulator or any ~~other~~ applicable ~~regulator~~securities regulatory authority.

(3) A Member wanting to cancel, amend, or correct an executed trade can seek the consent of the contra-party to the trade, can request the Exchange to seek consent from the contra-

party, or can call the Market Regulator, who can then instruct the Exchange to cancel, amend, or correct the trade.

(4) *Requests for trade cancellations or amendments on T+1 and T+2*. Members must send requests for trade cancellations or amendments on T+1 or T+2, for trades executed on T, directly to the Clearing Corporation, with a copy to the Exchange. The Exchange cannot process these requests but must be made aware of them.

(5) The Exchange assumes no responsibility or liability for trades that are cancelled, amended, or corrected.

Commentary

Decisions may require consultation with and instructions by Market Regulator, the Clearing Corporation, and/or other marketplaces and the counterparties of the trade.

It is the Member's obligation to promptly contact the Market Regulator if it wants to seek a decision from ~~it~~the Market Regulator regarding whether ~~it~~the latter will permit a cancellation or amendment in accordance with the time limits prescribed by ~~the Market Regulator~~its rules or guidance.

5.07 Order Types and Order Modifiers (available in all Trading Books)

(1) **Order Types**

Limit Order	~~Defined~~Has the same meaning as the defined term "limit order" in UMIR 1.1.
Market Order	~~Defined in UMIR.~~Has the same meaning as the defined term "market order" in UMIR 1.1. The unfilled part of the order is converted to a Limit Order at a price equal to the price of the last fill of the order or the Last Sale Price.

(2) **Order Modifiers - Time-in-force Conditions**

Fill or Kill (FOK)	A Limit Order or Market Order that is to be filled immediately in full, or cancelled.
Good till Close	A Limit Order that can only be entered in the Continuous Trading Session that is valid until it is fully filled or cancelled, and expires upon the completion of the Closing Call or such other time as may be determined by the Exchange and published by Notice.
Good for Day	A Limit Order that is valid until it is fully filled or cancelled, and expires at the end of the Extended Trading Session for Extended Trading Eligible Securities; for all other securities, the order expires at the end of the Continuous Trading Session.

Good till Time	A Limit Order that is valid until it is fully filled or cancelled, and expires at the specified expiry date and time. All orders entered in NEO-D and NEO-N that specify an expiry date other than the date of entry will be rejected.
Immediate or Cancel (IOC)	A Limit Order or Market Order that is to be filled immediately in full or in part, with the unfilled quantity cancelled.

(3) **Order Modifiers - Functional Attributes**

Attributed / Anonymous	A Limit Order entered into the Exchange Systems is by default attributed, unless marked anonymous by the user. Orders with special settlement terms must be attributed.

Commentary

When an order is entered in an Exchange ~~order book~~Trading Book, the identity of the Member will be disclosed to the trading community for attributed orders and will not be disclosed for anonymous orders.

When an attributed order is entered in NEO-N, the identity of the Member will not be disclosed on a pre-trade basis due to the aggregation of order volume by price level which occurs in the NEO-N display. When an attributed order is executed in NEO-N, the identity of the Member will be disclosed on all post-trade reporting.

Directed Action Order (DAO)	A Limit Order or Market Order as defined in National Instrument 23-101 *Trading Rules*.

Commentary

In NEO-N all pegged orders are visible orders as the volume of any price improving order is displayed at the NEO-N BBO.

Mid-Point Pegged Order	A non-visible order, except in NEO-N as set out below, the price of which is automatically adjusted by the Exchange Systems in response to changes in the NBBO to peg to the mid-point of the NBBO. A Mid-Point Pegged Order in NEO-N is a visible order, with the volume displayed at the NEO-N BBO. The Exchange will publish by Notice to Members the securities for which Mid-Point Pegged Orders are not supported.
Passive Only (PO) Cancel	A Limit Order that will be cancelled at time of entry if any portion of the order is immediately tradable. PO Cancel orders are also cancelled if the order becomes active due to a price change (i.e., a price amendment).

(3) Unless otherwise specified, trades on a when issued basis are subject to all applicable the Exchange Requirements relating to trading in a Listed Security or OTS, notwithstanding that the security has not yet been issued.

(4) All trades on a when issued basis shall be cancelled if the securities subject to such trades will not be listed.

5.09 Advantage Goes with Securities Sold

(1) Except as provided in section 5.15(2), in all trades of Listed Securities or OTSs, all entitlements to receive dividends or any other distribution made or right given to holders of that security shall pass with the security and shall belong to the purchaser, unless otherwise provided by the Exchange for Listed Securities or the listing market of the OTS, as applicable, or the parties to the trade by mutual agreement.

(2) In all sales of listed bonds and debentures, all accrued interest shall belong to the seller unless otherwise provided by the Exchange for Listed Securities or the listing market of the bonds or debentures for OTSs, or parties to the trade by mutual agreement.

(3) Claims for dividends, rights, or any other benefits to be distributed to holders of record of listed securities on a certain date shall be made in accordance with the procedures established by the Clearing Corporation.

(4) If subscription rights attaching to securities are not claimed by the persons entitled to those rights at least twenty-four hours before the expiration of the time within which trading in respect of such rights may take place on the Exchange, a Member holding such rights may, in its discretion, sell or exercise all or any part of such rights, and shall account for such sale or exercise to the person or persons entitled to such rights, but in no case shall a Member be liable for any loss arising through failure to sell or exercise any unclaimed rights.

Limit on Open (LOO)	An eligible Limit Order that is only available for execution at the Opening Call. Any unfilled orders will be cancelled upon completion of the Opening Call.
Market on Close (MOC)	An eligible Market Order that is only available for execution in the Closing Call. Any unfilled orders will be cancelled upon completion of the Closing Call.
Market on Open (MOO)	An eligible Market Order that is only available for execution at the Opening Call. Any unfilled orders will be cancelled upon completion of the Opening Call.
Mixed Lot	A Limit Order or Market Order containing at least one Board Lot and an Odd Lot.
Odd Lot	A Limit Order or Market Order containing less than one Board Lot.
On-Stop	A Limit Order or Market Order which resides inactive off the book until it is "triggered" at which time it can interact with other orders. An On-Stop order is triggered when the LSP trades down to (if it is a sell order) or up to (if it is a buy order) or through the stop price specified on the On-Stop order. Once triggered, the On-Stop order will trade in NEO-L up to its limit and any unfilled volume will be posted at its limit price (or if it is a Market Order converted to a Limit Order at the LSP). ***[Filed Aug. 16, 2023; currently pending regulatory approval.]***
Special Terms	A specific order type as defined in UMIR.

6.03 Order Entry and Display Prior to the Opening Call (Opening Call Eligible Securities)

(1) During the pre-open session until the Opening Call, orders can be entered, amended or cancelled in NEO-L.

(2) Orders residing in NEO-L that are eligible to participate in the Opening Call will be displayed at their limit price or, for market orders, they will be displayed at the COP and an Imbalance Message is disseminated upon each change to either the COP or the imbalance.

(3) An unfilled Limit Order entered in NEO-L during the pre-open session will be available for trading in NEO-L Continuous Trading session.

(4) An unfilled Market Order entered in NEO-L during the pre-open session is booked as a Limit Order for trading in NEO-L Continuous Trading Session at the Opening Price.

6.04 Calculation of the COP

PART IX. TRADING IN MATCHNOW

9.01 Trading Sessions

(1) The current trading sessions for MATCHNow are prescribed by Notice, as amended from time to time, and displayed on the Exchange's website.

9.02 Additional Orders and Modifiers Available in MATCHNow

Conditionals	A conditional order or message which, if firmed up, becomes an order that may execute during the Continuous Trading Session in MATCHNow against other firmed-up Conditionals or opted-in Market Flow Orders or Liquidity Providing Orders.
Market Flow Order	A Liquidity Taking Order sent to the MATCHNow Trading Book, also known as an Immediate-or-Cancel ("IOC") order. If a match with a Liquidity Providing Order exists, it trades immediately to the extent possible, and any remaining shares are returned.
Minimum Price Improvement Order	A pegged order with a price offset which is automatically adjusted by the Exchange Systems to one tick increment more aggressive than the NBBO, or one-half of a tick increment if the NBBO spread is only one tick increment.
MATCHNow Mixed Lot	A Limit Order or Market Order sent to the MATCHNow Trading Book containing at least one Board Lot and a MATCHNow Odd Lot.
MATCHNow Odd Lot	A Limit Order or Market Order containing less than one Board Lot sent to the MATCHNow Trading Book.
Odd Lot Liquidity Providing Order (or "OLLP Order")	A passive, confidential order that remains in the MATCHNow Odd Lot Facility as a day order. An OLLP Order is, respectively, rejected or canceled back if it is or drops below the Board Lot size minus 1 (e.g., 99, 499, 999 shares).

Commentary

For additional defined terms and other functionality information unique to the MATCHNow Trade Book, please see the In Detail Specification*, which is an appendix to the Exchange's Trading Functionality Guide.*

9.03 Posting Liquidity Providing Orders in MATCHNow

(1) Liquidity Providing Orders posted in MATCHNow may originate from any type of account.

9.04 Continuous Trading Session in MATCHNow

(1) In MATCHNow, orders from all accounts may interact with each other, unless otherwise specified in the *In Detail Specification* (which is an appendix to the Exchange's Trading Functionality Guide).

(2) Trades will execute at or within the NBBO in a manner consistent with UMIR dark rules.

(3) A Liquidity Providing Order resting in MATCHNow at a particular price will be executed in priority to all orders at inferior prices.

9.05 Liquidity Providing Orders Cancelled

(1) All Liquidity Providing Orders remaining in MATCHNow at the end of the Continuous Trading Session will be cancelled back to the originator.

9.06 Transparency

(1) *No Pre-Trade Transparency*. Orders booked in MATCHNow are not displayed or available to the information processor for dissemination on the public data feed.

(2) *Post-Trade Transparency*. Trades executed in MATCHNow are displayed and made available to the information processor for dissemination on the public data feed.

9.07 MATCHNow Odd Lot Facility

(1) MATCHNow Odd Lot Orders (and the odd-lot portion of a Mixed Lot Order sent to MATCHNow) will be eligible for entry and execution in the MATCHNow Odd Lot Facility during the Odd Lot Session.

(2) MATCHNow Odd Lot Orders (and the odd-lot portion of a Mixed Lot Order sent to MATCHNow) may be entered for trading during the Odd Lot Session of MATCHNow.

(3) Incoming MATCHNow Odd Lot Market Orders:

(a) will be executed, if liquidity is available, by an Odd Lot Liquidity Provider at the time of order entry, at the NBBO.

(4) Odd Lot Liquidity Providing Orders (or "OLLP Orders"):

(a) The Exchange does not impose any Marketplace Trading Obligations (as defined in UMIR 1.1) on Odd Lot Liquidity Providers that send OLLP Orders to the MATCHNow Odd Lot Facility.

(b) Odd Lot Liquidity Providers (and, as applicable, their DEA Clients) can submit liquidity into the MATCHNow Odd Lot Facility in as many or as few symbols as they wish.

(c) Each Trader ID is limited to booking one order per side of each symbol at any moment in time.

(d) There is no limit on the number of Trader IDs available to each Odd Lot Liquidity Provider, provided that each Trader ID represents an individual DEA Client, a

distinct proprietary trading desk or algorithmic trader of the Member, and/or an individual Approved Trader.

(5) The factors identified in the Commentary for section 6.18 of these Trading Policies ("Unfair Trading in Odd Lots") apply to MATCHNow Odd Lot Orders, subject to appropriate adjustments reasonably and rationally connected to the unique attributes of the MATCHNow Odd Lot Facility (e.g., no Market Trading Obligations, as defined in UMIR 1.1), and in light of applicable CIRO rules (e.g., UMIR 2.2 and 2.3 and CIRO Investment Dealer and Partially Consolidated Rule 1402(1)) and/or guidance from the Market Regulator.

9.08 Cboe BIDS Canada (Conditionals)

(1) Conditionals may be originated by a Member or a Sponsored User.

Commentary

There are three types of Conditional interactions:
- *Subscriber-to-Subscriber (electronic-to-electronic).*
- *Subscriber-to-Sponsored User/Sponsored User-to-Subscriber (electronic-to-human).*
- *Sponsored User-to-Sponsored User (human-to-human).*

For Subscriber-to-Subscriber (i.e., electronic-to-electronic) interactions, the process is as follows:
- *Invitations are synchronous (i.e., simultaneous).*
- *The time limit for firming up is one second.*

For Subscriber-to-Sponsored User (and vice-versa) interactions, the process is as follows:
- *A Sponsored User's trading must be conducted by a human trader.*
- *Invitations are asynchronous: the system is designed to send the invitation to firm up to the Sponsored User first—i.e., before the invitation to firm up is sent to the Subscriber (which is always an electronic user).*
- *The Sponsored User (human trader) has up to 30 seconds to firm up the invitation. This is necessary to give human traders the practical ability to make a deliberate, conscious decision to firm up and/or adjust their Conditional (or firmed-up Conditional).*

For Sponsored User-to-Sponsored User interactions (i.e., interaction is human-to-human), the process is as follows:
- *Invitations are synchronous (i.e., simultaneous).*
- *The time limit for firming up is 30 seconds for both sides.*

(2) Sponsored Users are not permitted to originate Conditionals until such time as all relevant risk controls and other appropriate onboarding-related tasks have been completed in accordance with the relevant Exchange Requirements.

Commentary

Eligible buy-side institutional investors (DEA Clients) that have taken the appropriate steps to be granted the privilege, by a Member, to send Conditionals to MATCHNow (Cboe BIDS Canada), use the

Participating Organization number of the Member that they have designated as their sponsoring Member for such purposes. This functionality is referred to the "Sponsored Access Model" for Conditionals.

A front-end interface, known as "BIDS Trader," is made available to Sponsored Users, allowing each Sponsored User to enter and, where contra liquidity is found, firm up Conditionals through a direct FIX connection to MATCHNow.

The BIDS interface for Members (known as the "Admin Client") provides the following features for Subscribers to set for their Sponsored Users:

- *fat-finger checks;*
- *single order limits;*
- *daily open orders plus traded value limits for buys;*
- *daily open orders plus traded value limits for sells; and*
- *gross daily orders plus traded value limits for buys and sells.*

The responsibility for setting and supervising all risk controls remains with the Member, and the Member has the flexibility to configure risk controls in a unique manner for each of its Sponsored Users, as it sees fit. The Exchange will verify that, before granting "Sponsored User" access to any DEA Client, the latter has at least one sponsoring Member that:

- *has set static limits for that DEA Client; and*
- *has the ability to shut off the DEA Client at any time.*

(3) Each Conditional must meet a minimum size of greater than 50 Board Lots and greater than $30,000 notional value, or be of any quantity with greater than $100,000 notional value.

(4) A Conditional can match with another Conditional, an eligible opted-in Liquidity Taking Order, or an eligible opted-in Liquidity Providing Order.

Commentary

Members have the ability to activate an "opt-in" feature that allows large firm orders sent to MATCHNow—i.e., both Liquidity Taking Orders and Liquidity Providing Orders —to interact with Conditionals. To be eligible for the "opt-in" feature, a Liquidity Taking Order or a Liquidity Providing Order is required to meet the following minimum size threshold:

- *greater than 50 Board Lots and greater than $30,000 in notional value; or*
- *greater than $100,000 in notional value.*

Members can elect to opt in on either (1) an order-by-order basis or (2) as a default attribute at the port level.

Where the "opt-in" feature is activated for a particular qualifying firm order, and the MATCHNow system detects a potential match with one or more contra-side Conditionals, the system will automatically generate an invitation to "firm up" and send it to the relevant contra Conditional(s). If one or more Conditionals get firmed up within the allotted time period (one second or 30 seconds, depending on the nature of the participant), the system will then immediately execute the match between the firmed-up Conditional(s) and the relevant qualifying firm order.

(5) Match priority in Cboe BIDS Canada does not follow pro-rata logic, but instead, is done on a one-to-one basis based on priority of firmed-up orders, using the following criteria, in this order:

(a) Price;

(b) Member (per "broker preferencing");

(c) Size; and

(d) Time.

Commentary

When a Conditional is large enough to fully satisfy multiple contras, it may invite all of those contras (depending on market conditions and attributes selected for that Conditional and those contras). Trades will still occur on a one-to-one basis, even though multiple parties have been invited, and the outcome of those trades depends on the "firm-ups" being received. However, because matching is one-to-one, the first contra firm-up to be received will trade first.

Conditionals can execute at a price that is anywhere within the range of prices created by the current NBBO.

The following peg order types are supported:

- *Peg Mid*
- *Near-side Peg (Peg to Bid when buying, or to the Offer when selling)*
- *Far-side Peg (Peg to the Offer when buying, or to the Bid when selling)*
- *Peg Offset (This allows a peg order a level of discretion as set on an order-by-order basis. Peg discretion is measured in dollar value increments of $0.005, which is added to the result of peg calculations. When peg offsets are crossed, the trade will always execute at the price closest to midpoint.)*

Each Trader ID will have a default peg value assigned, which is chosen by the Subscriber or Sponsored User. Any value specified within the FIX message will override that default value.

(6) Sponsored Users have access to the following optional features:

(a) Overtime;

(b) "Clean Up"; and

(c) "Auto Firm-Up".

Commentary

For up-to-date details on how each Sponsored User feature works, please see the In Detail Specification *(which is an appendix to the Exchange's Trading Functionality Guide).*

(7) Members and Sponsored Users that send Conditionals to Cboe BIDS Canada will be subject to the Conditionals Compliance Mechanism, which functions as follows:

(a) Each Member or Sponsored User that receives 10 or more invitations to firm up a Conditional for a given security needs to avoid crossing below the 70% threshold of firm-ups for that security, failing which the Member or Sponsored User is suspended from receiving invitations for any new Conditionals that it enters for that security for the rest of that trading day.

(b) Fallen-down Conditionals that originate with a Sponsored User will not be attributed to the sponsoring Member for those Conditionals for purposes of calculating the sponsoring Member's fall-down ratel instead, they are exclusively attributed to the Sponsored User that originated those Conditionals.

(8) The Exchange reports daily suspensions of Members (including which symbols were affected by the suspension) to CIRO and to each affected Member in real time via email.

(9) On a quarterly basis, the Exchange reports to securities regulatory authorities certain Conditionals related data.

~~10.03~~11.03 Responsibilities of Designated Market Makers for their Assigned Securities

(1) A Designated Market Maker must trade for its own account in a sufficient degree to assist in the maintenance of a fair an orderly market and achieve reasonable price continuity and liquidity for each Assigned Security.

(2) The responsibilities of a Designated Market Maker for an Assigned Security in NEO-L include:

(a) meeting NEO-L obligations as required by the applicable Designated Market Maker Agreement;

(b) facilitating the opening, delayed opening, and resumption of trading following a trading halt in NEO-L as specified in these Trading Policies; and

(c) executing all Odd Lot orders for its applicable Assigned Securities~~.~~ (with the exception of MATCHNow Odd Lot Orders, with respect to which no Market Trading Obligations, as defined in UMIR 1.1, apply).

(3) The responsibilities of a Designated Market Maker for an Assigned Security in NEO-N include meeting the NEO-N obligations as required by the applicable Designated Market Maker Agreement in NEO-N.

(4) Each DMM is subject to and must follow the Exchange's Designated Market Maker Code of Conduct, which is shared with each DMM upon joining and published on the Exchange's website, as amended from time to time.

(5) The Exchange will publish the list of DMMs and their Assigned Securities, and the DMM obligations on its website.

~~10.04~~11.04 Termination of Responsibilities due to Events

(1) A Designated Market Maker's obligations with respect to a right, warrant or similar security terminate a maximum of 10 business days prior to the expiry date of the security.

(2) A Designated Market Maker's obligations with respect to a debt security or preferred security that is maturing or has been called for redemption or retraction terminate 10 business days prior to the maturity date or redemption or retraction date of the security.

(3) The Exchange may suspend or terminate a Designated Market Maker's responsibilities where a corporate action or other unusual circumstance makes it impractical for the Designated Market Maker to carry out its responsibilities.

Commentary

Ordinary market volatility will not be considered to be an "unusual circumstance" for the purposes of this section.

~~PART XI.~~PART XII. ORDER PROTECTION RULE (OPR) COMPLIANCE

~~11.01~~12.01 Order Protection Rule Compliance

(1) In order for the Exchange to comply with its Order Protection Rule (OPR) obligations under National Instrument 23-101 *Trading Rules*, orders submitted to NEO-L or NEO-N must be designated as either:

(a) a Directed Action Order;

(b) Protect and Cancel; or

(c) Protect and Reprice.

Commentary

When determining Protect and Cancel and Protect and Reprice functionality, the Exchange may consider:

- *whether a regulatory or non-regulatory trading halt is in effect for the security;*
- *whether an away marketplace is not in a continuous trading session; or*
- *whether an away marketplace is not disseminating order information, is not distributing data in relation to its order book in a timely manner or the Exchange considers, in its discretion, that such data is not reliable (this covers the case when a system failure or degradation of service occurs at an away marketplace during continuous trading at that marketplace.*

Protect and Reprice is not available for FOK or IOC orders in any Trading Book.

~~PART XII.~~PART XIII. CLEARING AND SETTLEMENT

~~12.01~~13.01 Clearing and Settlement

(1) All trades on the Exchange Systems will be reported, confirmed, and settled through the Clearing Corporation pursuant to the Clearing Corporation's rules and procedures, unless otherwise authorized or directed by the Exchange.

(2) A Member must clear and settle all of their ~~the~~ Exchange trades by:

(a) self-clearing as a participant of the Clearing Corporation; or

(b) maintaining a clearing and settlement arrangement with a carrying broker, custodian or other institution that is a participant of the Clearing Corporation.

(3) Except in circumstances where the transaction is settled outside Canada or where the Member and the settlement agent are not participants in the same securities depository, the client or settlement agent shall use the facilities or services of a securities depository for the affirmation and settlement of all depository eligible transactions, including both book entry settlements and certificate~~-~~based settlements.

(4) A Member shall provide a client, by electronic, facsimile or physical means, a confirmation as soon as possible on the next business day following execution, with respect to the execution of any order, in whole or in part, for the purchase or delivery of securities where payment for or delivery of the securities is to be made to or by a settlement agent of the client, and shall indicate that the trade occurred on the Exchange.

(5) Members shall obtain agreement from their clients that the client will provide instructions with respect to the receipt or delivery of the securities to the settlement agent promptly upon receipt by the client of the confirmation referred to in Section 12.1(4) and that the client will ensure that its settlement agent affirms the transaction in accordance with National Instrument 24-101 *Institutional Trade Matching and Settlement*.

~~12.02~~13.02 Settlement of the Exchange Trades of OTSs

(1) Unless otherwise provided by the parties to the trade by mutual agreement, trades of OTSs on the Exchange must settle on the date and terms fixed for settlement by the exchange on which the security is listed.

~~12.03~~13.03 Settlement of the Exchange Trades of Listed Securities

(1) Unless otherwise provided by the Exchange or the parties to the trade by mutual agreement, trades of Listed Securities on the Exchange must settle on the second settlement day following the trade.

(2) Notwithstanding Section 12.03(1), unless otherwise provided by the Exchange or the parties to the trade by mutual agreement:

(a) trades in Listed Securities made on a when issued basis:

(i) prior to the second trading day before the anticipated date of issue of the security must settle on the anticipated date of issue of such security, and

(ii) on or after the second trading day before the anticipated date of issue of the security must settle on the second settlement day after the trade date,

provided if the security has not been issued on the date for settlement such trades shall settle on the date that the security is actually issued and provided that if the security will not be issued all trades made on a when issued basis will be cancelled;

(b) trades in Listed Securities that are rights, warrants and instalment receipts:

(i) on the second trading day before the expiry or payment date must settle on the settlement day before the expiry or payment date,

(ii) on the first trading day before the expiry or payment date, must be made as cash trades for next day settlement,

(iii) on expiry or payment date must be made as cash trades for immediate settlement and trading will cease at 12:00 noon (unless the expiry or payment time is set prior to the close of business, in which case trading will cease at the close of business on the trading day preceding the expiry or payment), and

(iv) selling Members must have the securities that are being sold in their possession or credited to the selling account's position prior to such sale;

(c) cash trades in Listed Securities for next day delivery must be settled through the facilities of the Clearing Corporation on the first settlement cycle following the date of the trade or, if applicable, over-the-counter, by noon of the first settlement day following the trade; and

(d) cash trades in Listed Securities for same day settlement must be settled by over-the-counter delivery no later than 2:00 p.m. on the trade day.

(3) Notwithstanding Section 12.03(1), a trade on the Exchange may specify delayed delivery, which gives the seller the option to deliver at any time within the period specified in the contract, and, if no time is specified, delivery will be at the option of the seller within thirty days from the date of the trade.

~~12.04~~13.04 When Security Disqualified, Suspended, or Subject to No Fair Market

(1) The Exchange may postpone the time for delivery on the Exchange trades if:

(a) the security is delisted;

(b) trading is suspended in the security; or

(c) the Exchange is of the opinion that there is not a fair market in the security.

(2) If the Exchange is of the opinion that a fair market in the security is not likely to exist, the Exchange may provide that trades on the Exchange be settled by payment of a fair settlement price and if the parties to a Trading Contract cannot agree on the amount, the Exchange may at its discretion fix the fair settlement price after providing each party with an opportunity to be heard.

~~12.05~~13.05 Failed Trades in Rights, Warrants, and Instalment Receipts

(1) Should fail positions in exchange traded products which are exercisable, exchangeable or convertible into other securities (the "**subject securities**") exist on the expiry or payment date, purchasing Members have the option of demanding delivery of the securities into which the subject securities are exercisable, exchangeable or convertible, any additional subscription privilege, and any subscription fee payable to a Member, that may be available, such demand shall be made before 4:00 p.m. on the expiry date.

(2) Where a demand has been made in accordance with Section 12.05(1), payment by purchasing Members for:

(a) the subject securities shall be in accordance with normal settlement procedures, but delivery of the subject securities, as the case may be, is not required; and

(b) the securities into which the subject securities are exercisable, exchangeable or convertible and payment for any additional subscription privilege shall be made upon delivery of the securities.

(3) Where a demand has not been made in accordance with Section 12.05(1), settlement shall be in accordance with normal settlement procedures, but delivery of the subject securities, as the case may be, is not required.

~~12.06~~13.06 Defaulters

(1) If a Member against which an Exchange trade is closed out under the Clearing Corporation's rules and procedures fails to make payment of the money difference between the contract price and the buy-in price within the time specified, the Member concerned shall become a defaulter, and Notice of such default shall be provided by the Exchange to each Member.

(2) A Member failing to make delivery to the Clearing Corporation of securities and/or a certified cheque within the time limited by the rules governing the Clearing Corporation may be adjudged a defaulter.

~~12.07~~13.07 Delivering Member Responsible for Good Delivery Form

(1) The delivering Member is responsible for the genuineness and complete regularity of the security, and a certificate that is not in proper negotiable form shall be replaced forthwith

~~PART XIII.~~PART XIV. APPLICATION OF UMIR

~~13.01~~14.01 Application

(1) The provisions of UMIR as amended from time to time apply to trading on the Exchange Systems and form part of the Exchange Requirements.

(2) Any ~~investigations and~~investigation or enforcement ~~actions~~action concerning a violation of a provision of UMIR will be conducted by the Market Regulator following the procedures set out in ~~UMIR~~Rules 8100 and 8200 of the CIRO Investment Dealer and Partially Consolidated Rules.

~~PART XIV.~~PART XV. APPEALS

~~14.01~~15.01 Appeals of Decision

(1) A Member or any other person adversely affected by a Decision, other than a Decision of the Market Regulator, may appeal such Decision to the Board.

Commentary

Appeals shall be conducted according to the procedures established by the Exchange's Board of Directors.

(2) A Member or other person who has appealed a decision pursuant to subsection (1) may appeal the decision of the Board by following the arbitration procedures set out in the Member Agreement and/or by appeal to the applicable securities regulatory authority.

(3) A Member or any other person adversely affected by a Decision of the Market Regulator ~~may~~that seeks a review or appeal of such Decision must first request a review of the Decision pursuant to the provisions of UMIR~~.~~ 11.3 and, if applicable, the provisions of section 8430 of the CIRO Investment Dealer and Partially Consolidated Rules, and thereafter, if necessary, by applying to the applicable securities regulatory authority for a hearing and review or appeal (which request must be in accordance with the provisions of section 8431 of the CIRO Investment Dealer and Partially Consolidated Rules).

~~15.05~~16.05 Withdrawal of Approval and Changes in Exchange Requirements

(1) Any Exchange Approval and any Exchange Requirement may at any time be changed, suspended, withdrawn, or revoked by the Exchange, with 30 days' Notice unless otherwise provided in these Trading Policies, agreements or as required by circumstance subject to the rule approval process of the securities regulatory authorities.

~~(2)~~ Each Member and each Approved Trader will comply with such change, suspension, withdrawal or revocation and any Decisions made by the Exchange.

(2)

AEQUITAS

EXCHANGE

CONNECT

NEO EXCHANGE LISTING MANUAL

~~NEO EXCHANGE~~

Cboe CANADA LISTING MANUAL

Cboe CANADA INC. (the "~~NEO~~ EXCHANGE") LISTING MANUAL
(the "LISTING MANUAL")

TABLE OF CONTENTS

PART I. DEFINITIONS, INTERPRETATION AND GENERAL DISCRETION

1.01 Definitions

(1) Unless otherwise defined or interpreted or the subject matter or context otherwise requires, every term used in the Exchange Requirements that is defined or interpreted in:

(a) Ontario securities legislation;

(b) Universal Market Integrity Rules ("UMIR");

(c) ~~IIROC~~CIRO Rules; or

(d) Trading Policies,

has the same meaning in this Listing Manual.

(2) The following terms have the meanings set out when used in this Listing Manual:

"**Accepted Foreign Exchange**" means an exchange that is not located within Canada and for which an issuer listed on such exchange has demonstrated that such exchange and the jurisdiction's securities law requirements are substantially similar to that of the Exchange and Ontario securities legislation.

"**AIF**" means Annual Information Form (*English only*).

"**Approved Bank**" means a bank listed in Schedule I or III of the *Bank Act* (Canada) or another financial institution acceptable to the Exchange.

"**Average Daily Trading Volume**" means, with respect to a Normal Course Issuer Bid, the trading volume for a listed security on all marketplaces for the six months preceding the date of Filing of a Form 20A (excluding any purchases made under a Normal Course Issuer Bid, all marketplace purchases by the issuer of the listed security, a Person acting jointly or in concert with the issuer, and all purchases made under section 7.19(1)(b)) divided by the number of trading days during that period. If the securities have traded for less than six months, the trading volume on all marketplaces since the first day on which the security traded, which must be at least four weeks prior to the date of Filing of Form 20A.

"**Award**" means an award issued under a Security Based Compensation Arrangement, and includes incentive stock options.

"**Board Lot**" means a "standard trading unit" as defined in UMIR.

"**CIRO**" means the Canadian Investment Regulatory Organization and any successor entity.

"**CIRO Rules**" means UMIR and CIRO's Investment Dealer and Partially Consolidated Rules.

"**Clearing Corporation**" means CDS Clearing and Depository Services Inc. and any successor corporation or entity recognized as a clearing agency.

assets are in an Emerging Market jurisdiction. For greater certainty, an EMI that has securities listed on the Exchange is also a Listed Issuer.

***Commentary**:*

Other considerations in determining whether an issuer is an EMI include residence of "mind and management" and jurisdiction of incorporation.

"**Equity Securities**" means securities of an issuer that carry a residual right to participate in the earnings of the issuer and in the issuer's assets upon dissolution or liquidation.

"**Escrowed Funds**" means funds held in a SPAC escrow account, and must include at least 90% of the gross proceeds raised in the SPAC IPO or subsequent rights offering by a SPAC and at least 50% of the underwriters' commission relating to the SPAC IPO.

"**Exchange**" means ~~Neo Exchange~~Cboe Canada Inc.

"**Exchange Requirements**" includes the following:

(1) the Trading Policies;

(2) this Listing Manual;

(3) obligations arising out of the Listing Agreement or Member Agreement;

(4) any forms issued pursuant to the Trading Policies or the Listing Manual, including the listing forms, and any obligations related to or created by such forms;

(5) UMIR; and

(6) applicable securities laws, and any decision thereunder as it may be amended, supplemented and in effect from time to time and the respective rules and regulations under such laws together with applicable published instruments, notices and orders of applicable securities regulatory authorities.

"**Exchange Traded Fund**" or "**ETF**" means a "mutual fund" within the meaning of the *Securities Act* (Ontario), the units of which are listed or quoted securities and are in continuous distribution.

"**Exchange Traded Product**" or "**ETP**" means a CEF, ETF or Structured Product, including any other exchange traded Investment Fund.

"**File**" and "**Filing**" means to submit any required document to the Exchange electronically through a virtual data room or otherwise make available in the format indicated by the Exchange, including email, mail, courier or hand delivery.

"**Foreign Issuer**" means an issuer which, at the time of applying for the listing of a security, is listed and in good standing on an Accepted Foreign Exchange and is not incorporated or organized under the laws of Canada or a Canadian jurisdiction unless:

(1) voting securities carrying more than 50% of the votes for the election of directors of the issuer are held by Persons whose last address as shown on the books of the issuer is in Canada; and

(2) any one or more of the following apply:

(a) the majority of the senior officers or directors of the issuer are citizens or residents of Canada;

(b) more than 50% of the assets of the issuer are located in Canada; or

(c) the business of the issuer is administered principally in Canada.

Once a Foreign Issuer has listed its securities on the Exchange, the issuer will become a Listed Issuer.

"**Founding Securities**" means securities of a SPAC held by its Founding Security Holders, excluding any securities purchased by Founding Security Holders under the IPO prospectus, concurrently with the IPO prospectus on the same terms, on the secondary market, or under a rights offering by the SPAC.

"**Founding Security Holders**" means insiders and equity security holders of a SPAC prior to the completion of the IPO who continue to be insiders and equity security holders or both immediately after the IPO.

~~"**IIROC**" means the Investment Industry Regulatory Organization of Canada and any successor entity.~~

~~"**IIROC Rules**" means UMIR and IIROC's dealer member rules.~~

"**Independent Director**" means a director who is independent in accordance with section 1.4 of National Instrument 52-110 *Audit Committees* or its successor provision.

"**Insider**" means:

(1) for a Listed Issuer that is not an Investment Fund, an officer, director or insider (within the meaning of the *Securities Act* (Ontario));

(2) for a Listed Issuer that is an Investment Fund, an officer or director (within the meaning of the *Securities Act* (Ontario)) of the Investment Fund or the investment fund manager of the Listed Issuer;

(3) a promoter of a Listed Issuer that is not an Investment Fund;

(4) a Person identified as an Insider, individually or by virtue of their position, by an issuer;

(5) if the Insider is not an individual, each director, officer and Control Person of that Insider; and

(6) such other Person as may be designated from time to time by the Exchange.

"**Investment Fund**" means an "investment fund" as defined under the *Securities Act* (Ontario).

"**IPO**" means initial public offering.

"**Liquidation Distribution**" means, in respect of a SPAC, the distribution of the Escrowed Funds to each existing shareholder (other than the Founding Security Holders in respect of their Founding Securities and their Specified SPAC Securities) for each share held, on a pro rata basis net of any applicable taxes and direct expenses related to the distribution, if the Qualifying Transaction is not completed within the Permitted Time for Completion of a Qualifying Transaction.

"**Listed Issuer**" means an issuer with one or more classes of securities listed in accordance with and subject to the requirements set out in the Listing Manual.

"**Listed Securities**" means any securities of a Listed Issuer that are listed on the Exchange.

"**Listing Document**" means a prospectus, an AIF, an information circular or any other document acceptable to the Exchange, including U.S. or foreign equivalents, determined on a case-by-case basis.

"**Market Regulator**" means ~~IIROC~~CIRO or such other person recognized by the Ontario Securities Commission as a Regulation Services Provider for the purposes of Ontario securities law and which has been retained by the Exchange as an acceptable Regulation Services Provider.

"**Material Information**" means any information relating to the business and affairs of an issuer that results in or would reasonably be expected to result in a significant change to the market price or value of any of the issuer's Listed Securities, and includes a material change or a material fact, in each case within the meaning of the *Securities Act* (Ontario).

"**Maximum Discount to Market Price**" means the closing market price on the day preceding the date on which the Listed Issuer issues a press release announcing a transaction or Files for price reservation, less a discount of 20%.

"**Member**" means a Person that has executed a member agreement and been approved by the Exchange to access the Exchange systems, provided such access has not been terminated.

"**Non-Voting Securities**" means Restricted Securities that do not carry a right to vote except in certain limited circumstances, such as to elect a limited number of directors or to vote where mandated by applicable corporate or securities law.

"**Normal Course Issuer Bid**" or "**NCIB**" means an issuer bid for a class of Listed Securities where the purchases over a 12-month period by the Listed Issuer or Persons acting jointly or in concert with the Listed Issuer and commencing on the date of Filing of the documents required by Exchange Requirements, do not exceed the greater of:

(1) 10% of the Public Float; or

(2) 5% of the securities of the class outstanding,

as of the date of Filing of the documents required by Exchange Requirements, excluding purchases under a formal issuer bid.

~~2.12~~2.11 Listing Transactions that Do Not Involve an Agent, Underwriter or Canadian Securities Regulatory Authority

(1) In light of the increased risks associated with an application to list securities of an issuer: (i) for which no ~~IIROC~~CIRO member or other suitable third party has concurrently conducted due diligence, or (ii) that does not involve a prospectus reviewed by a Canadian securities regulatory authority, the application to list securities on the Exchange will be subject to additional requirements and/or increased scrutiny by the Exchange.

Commentary:

When assessing whether to impose additional requirements, the Exchange may consider the following factors:

1. *whether the issuer is an Emerging Market Issuer;*
2. *the size, nature and location of the issuer's business or assets;*
3. *whether the issuer is subject to analogous regulation in its home jurisdiction; and*
4. *the length of time since due diligence has last been conducted by a third party (ex: by an underwriter) or since the issuer has filed a prospectus.*

(2) The Exchange may require:

(a) additional submissions to be Filed by the issuer or other experts, including title and other legal opinions;

(b) due diligence or other reports to be prepared by a third party (who may be required to be ~~an IIROC~~a CIRO member); and/or

(c) that the issuer file a non-offering prospectus with a Canadian securities regulatory authority.

(3) Issuers described in this section that are applying to list their securities on the Exchange must arrange a pre-filing meeting with the Exchange to discuss their application and any additional information or other requirements that will be applicable.

~~2.13~~2.12 Escrow

(1) An issuer other than an ETP, applying for listing in conjunction with an initial public offering must have an escrow agreement with its principals that complies fully with the requirements of National Policy 46-201 *Escrow for Initial Public Offerings* ("**NP 46-201**") respecting established issuers. The Exchange will require the issuer to provide a draft of such escrow agreement(s) to the Exchange for review prior to its execution.

Commentary:

An escrow agreement is generally not considered necessary for any issuer that has a market capitalization of at least $100 million (i.e., an "exempt issuer" under paragraph 3.2(b) of NP 46-201).

"~~Neo Exchange~~Cboe Canada Inc. has conditionally approved the listing of these securities. Listing is subject to the issuer fulfilling all of the Exchange's listing requirements on or before **[*date stipulated by the Exchange*]**, including the minimum distribution requirements."

~~2.16~~2.14 Documentation Required for Final Approval

(1) All issuers must submit the following documentation, as applicable, for final listing approval and posting of securities for trading on the Exchange:

(a) a completed Listing Application (Form 1) together with any additions or amendments to the supporting documentation previously provided, as required by Schedule A to the Listing Application;

(b) an executed copy of the final Listing Document and a blackline to the draft or preliminary Listing Document submitted with the initial listing application;

(c) a copy of a notice from the Clearing Corporation confirming the CUSIP number assigned to the proposed Listed Security;

(d) if the proposed Listed Securities are to be listed upon conclusion of a public offering, a copy of the receipt(s) for the final prospectus Filed as the Listing Document;

(e) a letter from the transfer agent stating that it has been duly appointed as transfer agent and registrar for the issuer;

(f) an opinion of counsel addressing the following matters, as applicable:

(i) that the issuer validly exists and is in good standing,

(ii) that the issuer is (or will be) a reporting issuer or equivalent under the securities legislation of **[state applicable jurisdictions]** and is not in default under such securities legislation,

(iii) that the issuer or any other entity on its behalf (e.g. manager, trustee), as applicable, has the power and capacity to own its properties and assets, to carry on its business as it is currently being conducted, including entering into any contractual arrangements, and to perform its obligations thereunder, and

(iv) that all proposed Listed Securities that are issued and outstanding or that may be issued upon conversion, exercise or exchange of other issued and outstanding securities are or will be duly issued and are or will be outstanding as fully paid and non-assessable securities; and

(v) such other matters as the Exchange may require.

(4) If a Listed Issuer chooses to publish news releases or other documents required to be Filed by the Exchange or by securities regulatory authorities on its website, it must publish all of them. It cannot publish only favourable information. Similarly, news releases and other filings must be clearly distinguished from marketing material that may also be on the website so that a viewer will not confuse the two.

~~3.06~~5.06 Content of News Releases

(1) Announcements of Material Information should be factual and balanced. Unfavourable news must be disclosed just as promptly and completely as favourable news.

(2) News releases must contain sufficient detail to enable investors to assess the importance of the information to allow them to make informed investment decisions.

***Commentary**:*

~~NEO~~The Exchange is not responsible for the contents of a Listed Issuer's press release.

~~(4)~~(3) Listed Issuers should communicate clearly and accurately the nature of the information, without including unnecessary details, exaggerated reports or editorial commentary.

~~(5)~~(4) News releases must not be misleading.

***Commentary**:*

For example, a Listed Issuer must not announce an intention to enter into a transaction if it lacks the ability to complete the transaction or if no corporate decision has been made to proceed with the transaction.

~~(6)~~(5) Investors and the media may wish to obtain further information concerning the announcement. All news releases must include the name of an officer or director of the Listed Issuer who is responsible for the announcement, together with the Listed Issuer's telephone number. The Listed Issuer is encouraged to also include the name and telephone number of an additional contact person.

~~3.08~~5.07 Trading Halts for the Dissemination of Information

(1) Trading may be halted by the Market Regulator during trading hours to allow Material Information to be disseminated and allow market participants to decide if they want to change their buy or sell orders. The Decision to halt trading is the Market Regulator's, and it will not routinely halt trading for all press releases, even at the request of the Listed Issuer. It is not appropriate for a Listed Issuer to request a trading halt if it is not prepared to make an announcement forthwith.

(2) The Market Regulator may also halt trading to obtain a statement from a Listed Issuer clarifying a rumour or unusual trading that is having an effect on the market for the issuer's securities.

~~3.4.05~~7.05 Warrants and Other Convertible, Exercisable and Exchangeable Securities

(1) Warrants (to purchase securities of an issuer's own issue) may not be issued for nil consideration except as "sweeteners" in conjunction with an issuance of Listed Securities (or securities that are convertible, exercisable or exchangeable into a class or series of Listed Securities), in which case:

(a) ~~(i)~~ securities issuable on exercise of the warrants must not be issuable at less than the market price on the trading day prior to the day on which the price was reserved, and;

(b) ~~(ii)~~ the number of securities issuable upon exercise of the warrants cannot exceed the number of Listed Securities initially issued (or, in the case of the issuance of securities that are convertible, exercisable or exchangeable into a class or series of Listed Securities, the number of Listed Securities that are issuable).

Commentary:

The exercise price of a convertible, exercisable or exchangeable security must not be lower than closing market price on the day preceding the date on which the Listed Issuer issues a press release announcing a transaction or Files a Form 9A – Price Reservation.

~~(3)~~(2) Notwithstanding the foregoing, securities issuable upon exercise of warrants issued as compensation to brokers or finders in connection with a private placement or public offering (commonly known as broker warrants or compensation options) may be priced at the offering price for the private placement or public offering.

~~(4)~~(3) Convertible, exercisable or exchangeable securities must be subject to standard anti-dilution provisions.

~~(5)~~(4) Non-material changes to the conversion, exercise or exchange characteristics of the security are permitted, subject to the prior approval of a majority of Independent Directors of the Listed Issuer. Any material changes must be approved by security holders other than security holders who are advantaged by the proposed amendment. A Listed Issuer must File a notice (Form 9B) at least five trading days prior to implementing such proposed amendments.

Commentary:

Materiality is a matter of judgment in the particular circumstance; a Listed Issuer's board of directors must determine materiality. A "material" amendment to the terms of an option, warrant and convertible security includes (but is not limited to), the following:

- *a material extension of the term of the convertible security (for example: an extension of a term of a grant by 10% or less may be immaterial but becomes material if the amended term extends the grant*

B.11.2.3 Neo Exchange Inc. – Trading Policies Amendment – Notice of Approval

NEO EXCHANGE INC.

TRADING POLICIES AMENDMENT

NOTICE OF APPROVAL

Approval of Trading Policies Amendment

In accordance with the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto*, Neo Exchange Inc. (the "**Exchange**") has adopted, and the Ontario Securities Commission has approved, a public interest rule amendment to the Exchange Trading Policies (the "**Public Interest Rule Amendment**").

On August 31, 2023, the Exchange published for comment the Public Interest Rule Amendment relating to the introduction of a new order type, the On-Stop order (also referred to as a "Stop Loss" order). For additional detail, please refer to the Request for Comments published on August 31, 2023. No comments were received.

A copy of the Exchange Trading Policies can be found on the Exchange website.

The Exchange is planning to implement the Public Interest Rule Amendment on **November 27**, **2023**.

B.11.4 Trade Repositories

B.11.4.1 KOR Reporting Inc. – Application for Designation as a Trade Repository – OSC Staff Notice and Request for Comment

OSC STAFF NOTICE AND REQUEST FOR COMMENT

KOR REPORTING INC.

APPLICATION FOR DESIGNATION AS A TRADE REPOSITORY

A. Introduction

KOR Reporting Inc. (**KOR**) has applied to the Commission for an order pursuant to subsection 21.2.2(1) of the *Securities Act* (Ontario) to be designated as a trade repository (the **Application**).

KOR is incorporated under the laws of the State of Delaware in the U.S. and is a wholly owned subsidiary of KOR US Holdings Inc. KOR is provisionally registered with the Commodity Futures Trading Commission (**CFTC**), its primary regulator, as a Swap Data Repository (**SDR**) for interest rate, credit, equity, foreign exchange and other commodity derivatives under the U.S. *Commodity Exchange Act*. KOR intends to provide trade repository services in Ontario for commodity, credit, equity, interest rate, and foreign exchange asset classes.

B. Background

At the 2009 G20 Pittsburgh Summit, Canada joined other jurisdictions in committing to substantial reforms to practices in over-the-counter (**OTC**) derivative markets. One of the key G20 commitments to OTC derivatives regulatory reform was increased market transparency through the reporting of OTC derivative transactions to trade repositories. On November 14, 2013, in accordance with Canada's G20 commitments, the Ontario Securities Commission published OSC Rule 91-506 *Derivatives: Product Determination* (**OSC Rule 91-506**) and OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**). OSC Rule 91-506 and OSC Rule 91-507 became effective on December 31, 2013 as subsequently amended by the Commission.[1]

The purpose of OSC Rule 91-507 is to improve transparency in the OTC derivatives market and to ensure that designated trade repositories operate in a manner that promotes the public interest. OTC derivatives data is essential for effective regulatory oversight of the derivatives market, including the ability to identify and address systemic risk and the risk of market abuse. OTC derivatives data reported to designated trade repositories supports policy-making by providing regulators with information on the nature and characteristics of the Canadian derivatives market.

Under OSC Rule 91-507, OTC derivatives transactions involving Ontario counterparties are required to be reported to a trade repository designated by the Commission. The OSC has designated the following companies as trade repositories operating in Ontario:

- Chicago Mercantile Exchange Inc.;
- DTCC Data Repository (U.S.) LLC; and
- ICE Trade Vault, LLC.

C. Proposed regulatory approach and Draft Order

The Application describes how KOR meets the relevant criteria for designation as a trade repository set out in OSC Rule 91-507. In reviewing the Application, staff also considered the regulatory and oversight regime of the CFTC with respect to SDRs in determining an appropriate scope for the Commission's oversight going forward. The proposed designation order (**Draft Order**) is based on the regulatory regime in their home jurisdiction. The Draft Order contains various terms and conditions, including relating to:

1. Regulation in home jurisdiction
2. Ownership of parent
3. Services offered
4. Access and participation

[1] See https://www.osc.ca/en/securities-law/instruments-rules-policies/9/91-507 for further information

5. Data collection and reporting
6. Change of information
7. Rules
8. Systems
9. Fees
10. Commercialization of data
11. Transition requirements
12. Reporting requirements
13. Information sharing and regulatory cooperation

D. Comment process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on all aspects of the Application and Draft Order. A copy of KOR's Application can be found on the Commission website at: https://www.osc.ca/en/industry/market-regulation/trade-repositories

You are asked to provide your comments in writing, via e-mail and delivered on or before November 20th, 2023 addressed to the attention of the:

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

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published. All comments received will be posted on the website of the OSC at http:\\www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions may be referred to:

Aaron Ferguson
Manager, Market Regulation
Tel: 416-593-3676
Email: aferguson@osc.gov.on.ca

Emily Sutlic
Senior Legal Counsel, Market Regulation
Tel: 416-593-2362
Email: esutlic@osc.gov.on.ca

Jarrod Smith
Senior Accountant, Market Regulation
Tel: 416-263-3778
Email: jsmith@osc.gov.on.ca

Matthew Andreacchi
Accountant, Market Regulation
Tel: 416-204-8977
Email: mandreacchi@osc.gov.on.ca

Greg Toczylowski
Manager, Derivatives
Tel: 416-419-1133
Email: gtoczylowski@osc.gov.on.ca

Shaun Olson
Senior Derivatives Analyst, Derivatives
Tel: 416-457-8338
Email: solson@osc.gov.on.ca

Tim Reibetanz
Senior Legal Counsel, Derivatives
Tel: 416-263-7722
Email: TReibetanz@osc.gov.on.ca

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

AND

IN THE MATTER OF
KOR REPORTING INC.

ORDER
(Section 21.2.2 of the Act)

WHEREAS KOR Reporting Inc. (**KOR**) has submitted an application (the **Application**) with the Ontario Securities Commission (the **Commission**) requesting an order pursuant to section 21.2.2(1) of the Act designating KOR as a trade repository;

AND WHEREAS KOR has represented to the Commission that:

a. KOR is incorporated under Delaware law and is a wholly owned subsidiary of KOR US Holdings Inc. KOR is provisionally registered with the Commodity Futures Trading Commission (**CFTC**), its primary regulator, as a swap data repository (**SDR**) for interest rate, credit, equity, foreign exchange and other commodity derivatives under the U.S. *Commodity Exchange Act*;

b. KOR will comply with all applicable requirements for designated trade repositories under Ontario securities laws, including applicable requirements in OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**) and pursuant to its application to be a designated trade repository; and

c. KOR seeks to be designated as a trade repository in order to offer trade repository services in Ontario with respect to the following asset classes: interest rates, credit, equity, foreign exchange, and commodities (**Trade Repository Services**);

AND WHEREAS KOR is currently subject to the oversight of the CFTC as a SDR;

AND WHEREAS the CFTC, the Commission, the Alberta Securities Commission, the British Columbia Securities Commission, the Autorité des marchés financiers, the Manitoba Securities Commission, Financial and Consumer Services Commission (New Brunswick), Financial and Consumer Affairs Authority of Saskatchewan, Nova Scotia Securities Commission, Superintendent of Securities (Yukon), Superintendent of Securities (Northwest Territories), Superintendent of Securities (Nunavut), Superintendent of Securities (Prince Edward Island) and Superintendent of Securities (Newfoundland and Labrador) have entered into a Memorandum of Understanding regarding cooperation and the exchange of information related to the supervision of cross-border covered entities;

AND WHEREAS KOR will be subject to the applicable requirements in OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, as amended from time to time (**OSC Rule 91-507**);

AND WHEREAS the Director has granted an exemption in part from the requirement under subsection 17(5) of OSC Rule 91-507, as set out in Schedule "B" of this order.

AND WHEREAS based on the Application and the representations KOR has made to the Commission, the Commission has determined that it is in the public interest to designate KOR as a trade repository pursuant to section 21.2.2(2) of the Act, subject to the terms and conditions that are set out in Schedule "A" of this order;

AND WHEREAS KOR has agreed to the respective terms and conditions that are set out in Schedule "A" of this order;

AND WHEREAS KOR has demonstrated that it is compliant with the applicable requirements in OSC Rule 91-507 and the respective terms and conditions that are set out in Schedule "A" of this order;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and KOR's activities on an ongoing basis to determine whether it is appropriate that KOR continues to be designated subject to the terms and conditions in this order and whether it is appropriate to amend this order and the terms and conditions thereunder pursuant to section 144 of the Act;

IT IS ORDERED by the Commission that KOR be designated as a trade repository pursuant to section 21.2.2 of the Act;

PROVIDED THAT KOR complies with the applicable requirements in OSC Rule 91-507 and the terms and conditions attached hereto as Schedule "A" of this order.

DATED – [effective the date signed by the Commission]

SCHEDULE "A"

TERMS and CONDITIONS

DEFINITIONS

For the purposes of this Schedule:

"Ontario-based participant" means a KOR client that (a) is a person or company organized under the laws of Ontario or that has its head office or principal place of business in Ontario, (b) is registered under Ontario securities law as a derivatives dealer or in an alternative category as a consequence of trading in derivatives, or (c) is an affiliate of a person or company described in (a) and such person or company is responsible for the liabilities of that affiliated party, and (d) has executed all applicable KOR agreements and addendums.

"Ontario securities law" has the meaning ascribed to it in subsection 1(1) of the Act;

“participant” means a KOR client that has executed all applicable KOR agreements and addendums.

"Rule" means a proposed new, amendment to, or deletion of, any provision or other requirement in KOR's Canadian TR Rulebook, policies, and procedures governing the rights and obligations between KOR and Ontario-based participants.

"Rule Subject to Approval" has the meaning ascribed to it in the Rule and Approval Protocol at Appendix "B" to this Schedule.

Unless the context otherwise requires, other terms used in this Schedule "A" and its Appendices have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this designation order).

REGULATION IN HOME JURISDICTION

1. KOR must maintain its status as an SDR in the United States and will continue to be subject to the regulatory oversight of the CFTC.

2. KOR must continue to comply with its ongoing regulatory requirements as an SDR in the United States.

3. KOR must provide prompt written notice to the Commission of any material change or proposed material change to its status as an SDR in the United States or the regulatory oversight of the CFTC.

OWNERSHIP OF PARENT

4. KOR must provide to the Commission 90 days prior written notice and a detailed description and assessment of the impact of a change in control of KOR US Holdings Inc. and KOR.

SERVICES OFFERED

5. KOR must not act as a trade repository designated in Ontario to which reporting counterparties report trades in an asset class other than credit, equity, interest rate, foreign exchange, and commodities to meet the reporting requirements under OSC Rule 91-507 without prior written approval of the Commission.

ACCESS AND PARTICIPATION

6. KOR must, on a semi-annual basis, 30 days after the end of each period, provide the Commission with a list that specifies each self-identified Ontario-based participant that has been granted access to KOR's Trade Repository Services.

7. KOR must promptly notify the Commission when an applicant has been denied access to KOR’s Trade Repository Services and who would otherwise be an Ontario-based participant.

DATA REPORTING

(a) Collection of Data

8. KOR must provide the Commission with notice of any material changes to the specifications of data KOR sends to the Commission, either in how the Commission reviews or in the format the Commission receives data under OSC Rule 91-507 at least 45 days before implementing the changes. For material changes to the specifications of the methods used to collect data from participants, or to the definition, structure and format of the data, which shall cause participants to make changes, KOR must provide the Commission with notice at least 7 days before implementing the changes.

9. KOR must amend, create, remove, define or otherwise modify any data elements (including format) required to be reported by participants who are reporting, or who are reporting on behalf of reporting counterparties, under OSC Rule

91-507, in a manner and within a time frame required by the Commission from time to time after consultation with KOR and taking into consideration any practical implication of such modification on KOR.

10. KOR must use best efforts to adapt to relevant internationally accepted communication procedures and standards for the collection and reporting of data for each required data element under OSC Rule 91-507 as requested by the Commission, in a manner and within a time frame acceptable to the Commission.

11. For life-cycle event data that is required to be reported under OSC Rule 91-507, KOR must sequence and link life-cycle events to the creation data relating to the original transaction.

12. For any data elements that are specific to a particular asset class or product required to be reported under OSC Rule 91-507 for each transaction, KOR must provide Ontario-based participants with the option to either not populate the field, not submit the field, or populate a value indicating that a field is not applicable to a transaction.

13. KOR must not accept transactions that are required to be reported under OSC Rule 91-507 if any mandatory data elements under OSC Rule 91-507 have been left blank.

(b) Public Dissemination of Data

14. KOR must ensure that data that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507 is in a format, and is disseminated in a manner, that is acceptable to the Commission. Without limiting the generality of the foregoing, KOR must ensure that such data is readily available and easily accessible to the public through its website.

15. KOR must ensure that aggregate data that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507 satisfies the criteria set out in Appendix "A" to this Schedule, as amended from time to time. KOR must ensure that all other data required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507 is not made publicly available until the Commission has approved of the method and format of the dissemination.

16. KOR must (a) anonymize, or (b) make any other modifications based on thresholds or other criteria to, data that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507, in a manner prescribed by the Commission.

17. KOR must exclude inter-affiliate transactions from data that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507.

18. KOR must amend, create, remove, define or otherwise modify data (including format) required to be publicly disseminated pursuant to section 39 of OSC Rule 91-507 in a manner and within a timeframe required by the Commission from time to time after consultation with KOR and taking into consideration any practical implication of such modification to KOR.

19. Upon the Commission's request, KOR must delay, and subsequently resume, the public dissemination of data that is required to be disseminated pursuant to section 39 of OSC Rule 91-507 in a manner and within a time frame acceptable to the Commission.

(c) Provision of Data to the Commission

20. For greater clarity with respect to section 37 of OSC Rule 91-507, KOR must at a minimum, on a daily basis, provide the Commission with creation data that reflects life-cycle events up to and including the most current life-cycle event and valuation data through secured portal access with respect to data reported to it under OSC Rule 91-507; as well as work with the Commission to provide data reported to it under OSC Rule 91-507 that is in KOR's possession as is required by the Commission to fulfill its mandate, including but not limited to creation, life-cycle event, and valuation data, through either secured portal or SFTP access or both, in a manner and within a timeframe acceptable to the Commission.

21. KOR must work with the Commission to provide such reports as may be required by the Commission, including but not limited to life-cycle event and transaction level reports relating to data reported to it under OSC Rule 91-507, in a manner and within a timeframe acceptable to the Commission.

22. KOR must ensure that a version number, including a date stamp, clearly identifies changes to the processes used to extract and load data that is required to be reported to the Commission pursuant to OSC Rule 91-507 using industry best practices.

CHANGE OF INFORMATION

23. In the event that KOR amends Form 91-507F1 under subsection 3(1) of OSC Rule 91-507 and the proposed change must also be submitted with the CFTC, KOR may satisfy its requirement under subsection 3(1) of OSC Rule 91-507 by providing the information submitted with the CFTC concurrently to the Commission. KOR must also provide the Commission with the annual update to its Form SDR submitted with the CFTC concurrently. Where a significant change

to a matter set out in Form 91-507F1 is not otherwise subject to submitting with the CFTC or the significant change is Canadian-specific in that it relates solely to the trade repository activities of KOR in Canada, KOR must comply with the requirement as set out in subsection 3(1) of OSC Rule 91-507.

RULES

24. KOR must apply only the KOR Canadian TR Rulebook to its Trade Repository Services.

25. KOR must provide to the Commission, no later than 10 business days prior to the intended effective date, a Rule Subject to Approval in accordance with Appendix "B" to this Schedule.

26. KOR must provide to the Commission on a quarterly basis, within 30 days after the end of each quarter, a copy of its Rules showing all cumulative changes to the Rules made during the quarter. If no changes were made, no Rules shall be submitted.

27. In the event that KOR is required to submit a Rule with the CFTC for approval, KOR must provide to the Commission, concurrently with the submission to the CFTC and no later than 10 business days prior to the effective date, a Rule that is not a Rule Subject to Approval but that is applicable to Ontario-based participants.

SYSTEMS

28. KOR must provide at least 30 days prior notice to the Commission before finalizing the scope of the review required under subsection 21(6) of OSC Rule 91-507, and after consultation with the Commission, KOR must make any reasonable amendments to the scope as requested by the Commission.

FEES

29. KOR must at times as requested by the Commission, conduct a review of its fees for KOR's Trade Repository Services. KOR must provide a written report on the outcome of such review to the Commission within 30 days after the completion of the review.

COMMERCIALIZATION OF DATA

30. KOR must not unreasonably restrict the access to and use of data reported to it under OSC Rule 91-507 that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507.

31. KOR must not restrict the access to and use of data reported to it under OSC Rule 91-507 that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507 without prior written approval of the Commission.

32. KOR must provide the Commission with 30 days prior written notice of any intended changes to the terms of access or use as they pertain to data reported to it under OSC Rule 91-507 that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507, which will include a detailed description of any such changes.

33. KOR must not, as a term or condition of becoming a participant or as a term or condition of reporting data reported to it under OSC Rule 91-507 by a participant, require the consent of the participant to the release of any or all reported data for commercial or business purposes.

34. For greater clarity with respect to paragraph 22(2)(a) of OSC Rule 91-507, KOR must not release data reported to it under OSC Rule 91-507 that is required to be disseminated to the public pursuant to section 39 of OSC Rule 91-507 for commercial or business purposes until after its public dissemination.

35. KOR must be responsible for securing any and all necessary consents from any third parties whose proprietary information is contained in the data reported to it under OSC Rule 91-507 before using it for commercial or business purposes.

36. In addition to the requirements set out in subsection 22(2) of OSC Rule 91-507, KOR must not release data that is required to be reported pursuant to OSC Rule 91-507 for commercial or business purposes in relation to a product or service line without the Commission's prior written approval of the type and nature of the commercial or business product or service line, in the following manner:

    a. KOR must provide the Commission with written notification of the type and nature of the commercial or business product or service line offered by KOR. at least 10 business days prior to the intended launch date of the product or service line;

    b. If Commission staff within 10 business days of receipt of the notification do not object to such product or service line, then the product or service line shall be deemed to be approved by the Commission;

c. If Commission staff within 10 business days of receipt of the notification object to such product or service line, then the Commission will review and make a decision regarding approval of such product or service line within 30 days of KOR providing notification to the Commission pursuant to paragraph (a) above.

TRANSITION REQUIREMENTS

37. For a period of 2 years from the date of this order, KOR must provide a report, 30 days after the end of each quarter, summarizing (a) the number of applications in Ontario for access outstanding at the end of each quarter, and (b) any material issues encountered during each quarter relating to the onboarding of new participants or reporting from Ontario-based participants as well as KOR's plans to address them.

38. Following its designation in Ontario, and on an ongoing basis, KOR must (a) ensure that appropriate access, including direct access, data feeds, browser and internet-based interfaces, reports or any other relevant form of access, is provided to the Commission, (b) monitor the development by any service provider it engages for all systems (including applications) supporting its trade repository functions, and (c) ensure that its systems are secure and that any security vulnerabilities are monitored and promptly corrected once identified.

39. Following its designation in Ontario, KOR must ensure that any necessary maintenance and enhancement of its Trade Repository Services and systems is being appropriately prioritized and staffed, and that any issues are appropriately escalated to senior management.

REPORTING REQUIREMENTS

40. KOR must promptly notify the Commission of any event, circumstance, or situation that could materially prevent KOR's ability to continue to comply with the terms and conditions of the order.

41. KOR must, as soon as reasonably possible, notify the Commission of any intended use of its emergency powers to modify, limit, suspend or interrupt KOR's Trade Repository Services.

42. KOR must promptly provide to the Commission information regarding any material known investigations or legal proceedings instituted against it, to the extent that it is not prohibited from doing so under applicable law.

43. KOR must promptly provide to the Commission the details of any appointment of a receiver or the making of any voluntary arrangement with its creditors.

INFORMATION SHARING AND REGULATORY COOPERATION

44. KOR must provide to the Commission any information related to its business as a designated trade repository as may be requested from time to time, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

45. KOR must provide regulators other than the Commission with access to data that is required to be reported pursuant to Ontario securities law in compliance with the relevant laws and regulations governing such access.

APPENDIX "A"

CANADIAN PUBLIC AGGREGATE DATA REPORTING TEMPLATE

KOR is required to publicly disseminate the range and type of aggregate metrics set out in this Appendix "A" in order to satisfy its obligations under section 39 of OSC Rule 91-507.

Part I. Current Notional and Number of Positions Outstanding

1. For each reporting period, KOR must publish on the Report Date
   a. the gross notional amount of all open positions, and
   b. the total number of positions outstanding.
2. At a minimum, KOR must publish the data described in section 1 for the following reporting periods:
   a. current week,
   b. previous week, and
   c. four weeks prior to the current week.
3. KOR must publish the data required by section 1 according to the following breakdowns:
   a. Asset Class: Commodity, Interest Rate, Credit, Foreign Exchange and Equity;
   b. Asset Classes in (a) by Tenor: 0-3 month, 3-6 month, 6-12 months, 12-24 months, 24-60 months, and greater than 60 months; and
   c. Asset Classes in (a) by cleared/uncleared.
4. KOR must publish the data required by section 1 according to the following Product Categories for each Asset Class:

Commodities	**Interest Rate**	**Credit**	**Foreign Exchange**	**Equity**
Metals	IR Swap	Single Name-Sovereign	Non-deliverable forwards	Single Name Swap
Power	FRA	Single Name-Non-Sovereign	Non-deliverable options	Portfolio Swap
Natural Gas	Cross Currency	Index (including Index tranche)	Forward	Single Index Swap
Oil	Option (Including cap/floor)	Total Return Swap	Vanilla Option	Basket Swap
Coal	Exotic	Swaptions	Exotic	Contract For Difference

Index	Other	Exotic	Other	Option
Agriculture	_____	Other	_____	Forward
Environment	_____	_____	_____	Exotic
Freight	_____	_____	_____	Other
Exotic	_____	_____	_____	_____
Other	_____	_____	_____	_____

5. Despite section 4, KOR must publish the data required by section 1 for a particular Product Category specified in section 4 under the category of "Other" where there is less than 30 open positions in that Product Category for a given period.

6. Despite sections 3 and 4, KOR is not required to report the gross notional amount of all open positions for the "Commodity" Asset Class.

7. KOR must commence publication of the data required under this Part I Section 2 starting after the first week it accepts data in its production environment.

Part II. Turnover Notional and Number of Transactions

1. For each reporting period, KOR must publish on the Report Date

    a. the gross notional turnover (i.e. the gross notional amount of all new transactions entered into for that period), and

    b. the total number of transactions.

2. At a minimum, KOR must publish the data described in section 1 for the following reporting periods:

    a. current week,

    b. previous week, and

    c. the trailing 4-week period.

3. KOR must publish the data required by section 1 according to the following breakdowns:

    a. Asset Class: Commodity, Interest Rate, Credit, Foreign Exchange and Equity;

    b. Asset Classes in (a) by Tenor: 0-3 month, 3-6 month, 6-12 months, 12-24 months, 24-60 months, and greater than 60 months; and

    c. Asset Classes in (a) by cleared/uncleared

4. KOR must publish the data required by section 1 according to the following Product Categories for each Asset Class:

Commodities	**Interest Rate**	**Credit**	**Foreign Exchange**	**Equity**
Metals	IR Swap	Single Name-Sovereign	Non-deliverable forwards	Single Name Swap
Power	FRA	Single Name-Non-Sovereign	Non-deliverable options	Portfolio Swap
Natural Gas	Cross Currency	Index (including Index tranche)	Forward	Single Index Swap
Oil	Option (Including cap/floor)	Total Return Swap	Vanilla Option	Basket Swap
Coal	Exotic	Swaptions	Exotic	Contract For Difference
Index	Other	Exotic	Other	Option
Agriculture	_____	Other	_____	Forward
Environment	_____	_____	_____	Exotic
Freight	_____	_____	_____	Other
Exotic	_____	_____	_____	_____
Other	_____	_____	_____	_____

5. Despite section 4, KOR must publish the data required by section 1 for a particular Product Category specified in section 4 under the category of "Other" where there are fewer than five new transactions a week in that Product Category during the previous four-week period.

6. Despite sections 3 and 4, KOR is not required to report the turnover notional amount for the "Commodity" Asset Class.

7. KOR must commence publication of the data required under this Part II starting after the first week it has become an Ontario-designated TR.

Explanatory Notes

Currency	The denomination currency of the reports is **Canadian dollars**. TRs are free to choose the conversion rate, but need to include the source in the reports. If the denomination currency of a transaction is non-Canadian dollar, the Canadian dollar equivalent notional amount should be calculated with report run date conversion rate.
Number of transactions	Represents the number of new unique transactions that are reported to a TR during the one-week period.
	Each transaction is recorded once, and netting arrangements and offsets (including compression) are ignored.
Pre-existing transactions	Pre-existing transactions should be included in calculating total outstanding notional and number of outstanding positions, while it should be excluded in calculating turnover notional and number of new positions.
Position Outstanding	It refers to a snapshot view of open transactions as of the end of the reporting period.
Report Date	TRs are expected to publish aggregation data by the following Wednesday after the report week
Tenor	For Current Notional and/or Positions Outstanding, use remaining contract maturity which is determined by the difference between the **weekly end date of the reporting period** and the expiry date for the position.
	For Turnover Notional and/or Number of Transactions, use original maturity which is determined by the difference between the end date and the start date.
	The tenor should be rounded into month. The upper bound of a bucket is included in the bucket (i.e. the 0-3M bucket includes 0, 1, 2 and 3M. and the 3-6 bucket does not include 3M.).
Week	A week is defined as having an execution timestamp between Saturday 12:00:00 AM UTC -- Friday 11:59:59PM UTC. Transactions with an execution timestamp in the above period but reported in the following two days at the end of the week should be included in the weekly report. Transactions with an execution timestamp in the above period but reported after the following two days at the end of the week should not be included in the weekly report.
Criteria of assessing usability of public data	Data is downloadable using tools readily available to the public.
	Data available for download is in a format that can be manipulated and analyzed using tools readily available to the public.

	Data made available to the public according to this Order can be viewed and downloaded without any conditions.
Counterparty identity	A designated trade repository must not disclose the identity of either counterparty to the transaction.

APPENDIX "B"

RULE REVIEW and APPROVAL PROTOCOL

1. PURPOSE

The Commission issued a designation order with terms and conditions governing the designation of KOR pursuant to subsection 21.2.2 of the *Securities Act* (Ontario). To comply with OSC Rule 91-507 and the terms and conditions of the designation order, KOR must file with the Commission documents outlining any Rule Subject to Approval. This protocol sets out the process for the filing, review and approval by the Commission of a Rule Subject to Approval.

2. DEFINITIONS

For the purposes of this Appendix:

- "Canada-Based Participant" means a KOR client that (a) is a person or company organized under the laws of an Applicable Canadian Province or that has its head office or principal place of business in an Applicable Canadian Province, (b) is registered under the securities legislation of an Applicable Canadian Province as a derivatives dealer or in an alternative category as a consequence of trading in derivatives, or (c) is an affiliate of a person or company described in (a) and such person or company is responsible for the liabilities of that affiliated party, and (d) has executed all applicable KOR agreements and addendums.

- "Applicable Canadian Province" means Manitoba, Ontario, Quebec, Alberta, British Columbia, New Brunswick, Nova Scotia, Saskatchewan, Yukon, Nunavut, Northwest Territories, Newfoundland and Labrador, Prince Edward Island or any other province or territory in Canada in which KOR is designated or recognized as a trade repository;

- "Rule Subject to Approval" means a Rule that applies exclusively to Canada-Based Participants, excluding any amendments that are intended to effect:

    (i) changes to the routine internal processes, practice or administration of KOR;

    (ii) changes to correct spelling, punctuation, typographical or grammatical mistakes, or inaccurate cross-referencing; or

    (iii) stylistic or formatting changes, including changes to headings or paragraph numbers.

Unless the context otherwise requires, other terms used in this Appendix "B" have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this designation order).

3. PROCEDURES FOR REVIEW AND APPROVAL OF RULES

(a) Documents

For a Rule Subject to Approval, KOR will provide to the Commission, where applicable, the following documents in electronic format, or by other means as agreed to by Commission staff and KOR, from time to time:

(i) a cover letter that describes the Rule Subject to Approval and its nature and purpose; and

(ii) the existing Rule Subject to Approval and a blacklined version of the Rule Subject to Approval indicating its proposed changes.

(b) Confirmation of Receipt

Commission staff will promptly send to KOR confirmation of receipt of documents submitted by KOR under subsection (a).

(c) Deemed Approval of Rules Subject to Approval

If Commission staff do not object to a Rule Subject to Approval within 10 business days of receipt, the Rule shall be deemed approved. Otherwise, the Rule Subject to Approval will be reviewed and approved by the Commission in accordance with the procedures set out in paragraphs (d) to (g) of section 3 of this protocol.

(d) Publication of a Rule by the Commission

If Commission staff objects to a Rule Subject to Approval within 10 business days of receipt and it has an impact on current and possible future participants or the capital markets in general, Commission staff may require that a notice of change to a Rule

Subject to Approval and, where applicable, a blacklined version of the Rule Subject to Approval, be published in the OSC Bulletin or the OSC website for a comment period of 30 days. The notice and accompanying Rule Subject to Approval will be published as soon as reasonably practicable.

(e) Review by Commission Staff

Commission staff will use their best efforts to conduct their review of the Rule Subject to Approval and provide comments to KOR within 30 days of KOR filing materials with the Commission. However, there will be no restriction on the amount of time necessary to complete the review of the Rule Subject to Approval in such instances.

(f) KOR's Canada's Responses to Commission Staff's Comments

KOR will respond to any comments received to Commission staff in writing.

(g) Approval of Rules by the Commission

Commission staff will use their best efforts to prepare the Rule Subject to Approval for approval by the Commission by the later of:

(i) 45 days from receipt of the filing of the Rule Subject to Approval by KOR, including the filing of all relevant documents in subsection (a) above; or

(ii) 30 days after receipt of written responses from KOR to Commission staff comments or requests for additional information, and a summary of participant comments and KOR's response to those comments (and upon the request of Commission staff, copies of the original comments), or confirmation from KOR that there were no comments received.

(h) Effective Date of a Rule

A Rule Subject to Approval will be effective as of the date 10 business days after receipt of such Rule by the Commission absent object thereto, or on a date determined by KOR, if such date is later.

4. IMMEDIATE IMPLEMENTATION OF A RULE

(a) Criteria for Immediate Implementation

KOR may make a Rule Subject to Approval effective immediately where KOR determines that there is an urgent need to implement the Rule Subject to Approval because of a substantial and imminent risk of significant harm to KOR, participants, other market participants, or the capital markets.

(b) Prior Notification

Where KOR determines that immediate implementation is appropriate, KOR will advise Commission staff in writing as soon as possible. Such written notice will include an analysis to support the need for immediate implementation.

(c) Disagreement on Need for Immediate Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement will be as follows:

(i) Commission staff will notify KOR of the disagreement in writing, or request more time to consider the immediate implementation within 3 business days of being advised by KOR under subsection (b); and

(ii) Commission staff and KOR will discuss and resolve any concerns raised by Commission staff in order to proceed with the immediate implementation.

(d) Review of Rule Implemented Immediately

A Rule Subject to Approval that has been implemented immediately will be reviewed and approved by the Commission in accordance with the procedures set out in section 3, with the necessary modifications. If the Commission subsequently disapproves the Rule Subject to Approval, KOR will immediately repeal the Rule Subject to Approval and inform its participants of the disapproval.

5. MISCELLANEOUS

(a) Waiving Provisions of the Protocol

Commission staff may exercise its discretion to waive any part of this protocol upon request from KOR, or at any time it deems it appropriate. A waiver granted upon request by KOR must be granted in writing by Commission staff.

(b) Amendments

This protocol and any provision hereof may, at any time, be amended by mutual agreement of the Commission and KOR.

SCHEDULE "B"

DIRECTOR'S EXEMPTION

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

AND

IN THE MATTER OF
KOR REPORTING INC.

DECISION
(Section 42 of OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting (OSC Rule 91-507))

WHEREAS KOR Reporting Inc. (**KOR**) has applied to the Commission for designation as a trade repository under section 21.2.2 of the Act, and will be subject to OSC Rule 91-507 and the terms and conditions of its designation order;

AND WHEREAS the Director may, pursuant to section 42 of OSC Rule 91-507, exempt KOR, in whole or in part, from a requirement in OSC Rule 91-507;

AND WHEREAS subsection 17(5) of OSC Rule 91-507 would require KOR to file its proposed new or amended rules, policies and procedures for approval;

AND WHEREAS KOR has applied for an exemption from the requirement under subsection 17(5) of OSC Rule 91-507;

AND WHEREAS KOR is provisionally registered as a Swap Data Repository with the Commodity Futures Trading Commission (**CFTC**) in the United States and is subject to regulatory requirements that include submission to and/or prior approval of proposed new or amended rules, policies and procedures;

AND WHEREAS application of subsection 17(5) of OSC Rule 91-507 to KOR may result in regulatory duplication, to the extent that proposed new or amended rules, policies and procedures are subject to submission to and/or prior approval by the CFTC;

AND WHEREAS the Director is satisfied that an exemption in part from subsection 17(5) of OSC Rule 91-507 for proposed new or amended rules, policies and procedures that are not applied exclusively to Canada-Based Participants would not be prejudicial to the public interest;

AND WHEREAS "Canada-Based Participant" has the meaning ascribed to it in the Commission's order designating KOR as a trade repository pursuant to section 21.2.2 of the Act;

IT IS THE DECISION of the Director that pursuant to section 42 of Rule 91-507, KOR is exempt from subsection 17(5) of OSC Rule 91-507 for proposed new or amended rules, policies and procedures that are not applied exclusively to Canada-Based Participants;

PROVIDED THAT:

(a) KOR remains registered as a Swap Data Repository and subject to the regulatory oversight of the CFTC; and

(b) KOR's proposed new or amended rules, policies and procedures are subject to submission to and/or prior approval by the CFTC.

DATED [X date] and **EFFECTIVE** on the effective date of the designation order.

Index