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FOR IMMEDIATE RELEASE
October 30, 2019

3iQ CORP. and
THE BITCOIN FUND,
File No. 2019-7

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

A copy of the Reasons and Decision and Order dated October 29, 2019 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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1.4.2 MOAG Copper Gold Resources Inc. et al.

FOR IMMEDIATE RELEASE
November 4, 2019

MOAG COPPER GOLD RESOURCES INC.,
GARY BROWN and
BRADLEY JONES,
File No. 2018-41

TORONTO – Take notice the hearing in the above named matter scheduled to be heard on November 5, 2019 at 10:00 a.m. will not proceed as scheduled.

The hearing will continue on November 6, 2019 at 9:00 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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Chapter 2

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Headnote

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Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, s. 19.1.
National Instrument 81-102 – Investment Funds, Parts 9, 10 and 14 and s. 19.1.

February 8, 2019

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
EVOLVE FUNDS GROUP INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the funds listed in Schedule A (collectively, the **Existing Funds**), and such other mutual funds as are managed or may be managed by the Filer now or in the future and that are structured in the same manner as the Existing Funds (the **Future Funds**, and together with the Existing Funds, the **Funds** and each individually, a **Fund**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) to permit the Filer and each Fund to

(a) file a prospectus for the Mutual Fund Securities (as defined below) of each Fund in accordance with the provisions of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**) (the **Simplified Prospectus Form Requirements**) instead of preparing and filing a simplified prospectus and annual information form for the Mutual Fund Securities in accordance with the provisions of National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101) and the forms prescribed by Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and Form 81-101F2 *Contents of Annual Information Form* (**Form 81-101F2**); and

(b) permit the Filer and each Fund to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with the provisions of Parts 9, 10 and 14 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the Sales and Redemption Requirements),

(collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of

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

Interpretation

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

Affiliate Dealer means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

Authorized Dealer means a registered dealer that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

Basket of Securities means, in relation to a Fund, a group of securities or assets representing the constituents of the Fund.

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

ETF Facts means a prescribed summary disclosure document required pursuant to National Instrument 41-101 *General Prospectus Requirements*, in respect of one or more classes of ETF Securities being distributed under a prospectus.

ETF Securities means securities of an ETF class of a Fund that are listed or will be listed on the TSX or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

NI 41-101 means National Instrument 41-101 *General Prospectus Requirements*.

Form 81-101F1 means Form 81-101F1 *Contents of Simplified Prospectus*.

Form 81-101F2 means Form 81-101F2 *Contents of Annual Information Form*.

Fund Facts means a prescribed summary disclosure document required pursuant to NI 81-101, in respect of one or more classes of Mutual Fund Securities being distributed under a prospectus.

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

Mutual Fund Securities means securities of a non-exchange-traded class of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Prescribed Number of ETF Securities means, in relation to a Fund, the number of ETF Securities of the Fund determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Securityholders means beneficial and registered holders of ETF Securities or Mutual Fund Securities, as applicable.

TSX means the Toronto Stock Exchange.

Representations

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

The Filer

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

2. The Filer is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador and as a portfolio manager and commodity trading manager in Ontario.

3. The Filer is or will be the investment fund manager and portfolio manager of the Funds. The Filer has applied, or will apply, to list the ETF Securities on the TSX or another Marketplace.

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

The Funds

5. Each Fund is, or will be, a mutual fund structured as a trust that is governed by the laws of the Province of Ontario. The Future Funds will be either trusts or corporations or classes thereof governed by the laws of a Jurisdiction. Each Fund is, or will be, a reporting issuer in the Jurisdiction(s) in which its securities are distributed.

6. Each Fund offers, or will offer, ETF Securities, and may in the future also offer Mutual Fund Securities.

7. Subject to any exemptions that have been or may be granted by the applicable securities regulatory

authorities, each Fund will be an open-ended mutual fund subject to NI 81-102.

8. The ETF Securities are or will be listed on the TSX or another Marketplace. The Filer will not file a final prospectus for any of the Funds in respect of the ETF Securities until the TSX or other applicable Marketplace has conditionally approved the listing of the ETF Securities.

9. Mutual Fund Securities will not be listed on the TSX or another Marketplace.

10. The Filer has filed or will file a long form prospectus prepared and filed in accordance with NI 41-101 and Form 41-101F2 on behalf of the Funds in respect of the ETF Securities, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

11. ETF Securities and Mutual Fund Securities, if any, are or will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus.

12. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the TSX or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX or another Marketplace.

13. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers are also generally engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.

14. Each Fund has appointed or will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.

15. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, ETF Securities generally are not able to be purchased directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.

16. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the TSX or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the TSX or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

17. Mutual Fund Securities may be subscribed for or redeemed directly from a Fund through qualified financial advisors or brokers.

Simplified Prospectus Form Requirements

18. Without the Exemption Sought, when the Filer decides to offer Mutual Fund Securities of a Fund that has ETF Securities, it would be required to prepare and file a prospectus pursuant to NI 81-101 in respect of those Mutual Fund Securities. This would be in addition to the prospectus that would need to be filed and prepared pursuant to NI 41-101 in respect of the ETF Securities of the Fund.

19. The Filer believes it is more efficient and expedient to include all of the classes of each Fund, including ETF Securities and Mutual Fund Securities of a Fund, in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true and plain disclosure of all material facts relating to the securities of the Funds by permitting disclosure relating to all classes of securities to be included in one prospectus. The Filer has already filed a long form prospectus in respect of the Existing Funds, and proposes to continue to file long form prospectuses in respect of Future Funds.

20. The Filer will ensure that any additional disclosure included in the prospectus relating to the Mutual Fund Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes. Accordingly, in order to provide clarity to investors, the Filer will amend the names of the Existing Funds that intend to offer Mutual Fund Securities by replacing the word

"ETF" with "Fund". In addition, the existing ETF Securities of the Funds will be redesignated as "ETF Class Units" and Mutual Fund Securities, if any, will be designated as "Mutual Fund Class Units", as applicable.

21. The Funds will file Fund Facts in the form prescribed by Form 81-101F3 *Contents of Fund Facts Document* in respect of any Mutual Fund Securities, and will continue to file ETF Facts in the form prescribed by Form 41-101F4 in respect of any ETF Securities.

22. The Funds will comply with the provisions of NI 41-101 when filing any amendment or prospectus.

23. The Mutual Fund Securities of each Fund will continue to be subject to the prospectus and Fund Facts delivery obligations set out in NI 81-101.

Sales and Redemption Requirements

24. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Exemption Sought from the Sales and Redemption Requirements, the Filer and the Funds would not be able to technically comply with those parts of the Instrument.

25. The Exemption Sought from the Sales and Redemption Requirements will permit the Filer and the Funds to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with Parts 9, 10 and 14 of NI 81-102. The Exemption Sought from the Sales and Redemption Requirements will enable each of the ETF Securities and Mutual Fund Securities to comply with Parts 9, 10 and 14 of NI 81-102 as appropriate for the type of security being offered.

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.

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

   (a) the Fund offers both Mutual Fund Securities and ETF Securities;

   (b) the Filer files a long form prospectus in respect of the Mutual Fund Securities in accordance with the requirements of NI 41-101 and Form 41-101F2, other than the requirements pertaining to the filing of an ETF Facts document;

   (c) the Filer includes disclosure required pursuant to Form 81-101F1 and Form 81-101F2 (that is not contemplated by NI 41-101F2) in respect of the Mutual Fund Securities in each Fund's prospectus, as applicable; and

   (d) the Filer includes disclosure regarding this decision under the heading "Exemptions and Approvals" in each Fund's prospectus.

2. The decision of the principal regulator is that the Exemption Sought from the Sales and Redemption Requirements is granted, provided that:

   (e) with respect to its Mutual Fund Securities, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and

   (f) with respect to its ETF Securities, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

"Stephen Paglia"
Manager, Investment Funds & Structured Products Branch
Ontario Securities Commission

SCHEDULE A

FUNDS

Evolve Active US Core Equity ETF

Evolve Active Short Duration Bond ETF

Evolve Active Canadian Preferred Share ETF

Evolve Marijuana ETF

Evolve Blockchain ETF

Evolve Active Core Fixed Income ETF

Evolve Active Global Fixed Income ETF

Evolve Cyber Security Index ETF

Evolve North American Gender Diversity Index ETF

Evolve Automobile Innovation Index ETF

Evolve US Banks Enhanced Yield ETF

Evolve Global Healthcare Enhanced Yield ETF

Evolve Innovation Index ETF

Sphere FTSE Canada Sustainable Yield Index ETF

Sphere FTSE Europe Sustainable Yield Index ETF

Sphere FTSE Emerging Markets Sustainable Yield Index ETF

2.1.2 FT Portfolios Canada Co. and First Trust Short Duration High Yield Bond ETF (CAD-Hedged)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of investment fund merger – approval required because merger does not meet the criteria for pre-approved reorganizations and transfers – a reasonable person may not consider the Funds to have substantially similar fundamental investment objectives – merger will not be a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – meeting materials did not include statement required by paragraph 5.6(1)(f)(iii) of NI 81-102 – merger to otherwise comply with pre-approval criteria, including securityholder vote and IRC approval – securityholders provided with timely and adequate disclosure regarding the mergers – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 5.6(1), and 19.1.

October 29, 2019

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
FT PORTFOLIOS CANADA CO.
(the Filer)

AND

FIRST TRUST SHORT DURATION
HIGH YIELD BOND ETF (CAD-HEDGED)
(the Terminating Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Fund and First Trust Senior Loan ETF (CAD-Hedged) (the **Continuing Fund**, and together with the Terminating Fund, the **Funds**) for a decision of the principal regulator under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the proposed

merger of the Funds (the **Merger**) pursuant to subsection 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) in connection with (the **Approval Sought**).

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

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation existing under the laws of Nova Scotia with its principal offices located in Toronto, Ontario.

2. The Filer is the manager and trustee of the Funds.

3. The Filer is registered as an investment fund manager in Ontario.

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

The Funds

5. Each of the Funds is an exchange-traded mutual fund and is governed by the provisions of NI 81-102.

6. Each of the Funds is an open-ended mutual fund trust established under the laws of Ontario pursuant to an amended and restated declaration of trust dated May 1, 2013, as amended.

7. Securities of the Terminating Fund are qualified for sale in each of the Canadian Jurisdictions pursuant to a long form prospectus and ETF facts, each dated April 26, 2019, as amended.

8. Securities of the Continuing Fund are qualified for sale in each of the Canadian Jurisdictions pursuant to a long form prospectus and ETF facts, each dated April 26, 2019, as amended.

9. The Funds are reporting issuers as defined under the applicable securities legislation of each of the Canadian Jurisdictions and are not in default of any of the requirements of the securities legislation of any of the Canadian Jurisdictions.

10. The Terminating Fund offers common units and advisor class units (the **Terminating Fund Units**), which currently trade on the Toronto Stock Exchange (the **TSX**) under the ticker symbols FSD and FSD.A.

11. The Continuing Fund offers common units and advisor class units (the **Continuing Fund Units**), which currently trade on the TSX under the ticker symbols FSL and FSL.A.

12. Other than under circumstances in which the securities regulatory authority or securities regulator of the Canadian Jurisdictions has expressly exempted a Fund therefrom, each of the Funds is governed and follows the standard investment restrictions and practices established by NI 81-102.

Reason for Approval Sought

13. The Filer proposes to merge the Terminating Fund into the Continuing Fund on or about November 4, 2019 (the **Effective Date**).

14. The Approval Sought is required because the Merger does not meet all of the criteria for pre-approved reorganizations and transfers set out in subsection 5.6(1) of NI 81-102. In particular:

(a) a reasonable person may not consider the Funds to have substantially similar fundamental investment objectives;

(b) the Merger will not be a "qualifying exchange" within the meaning of section 132.2 of the *Income Tax Act* (Canada) (the **ITA**) or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA; and

(c) due to inadvertence, the Meeting Materials (as defined below) did not include the statement required by paragraph 5.6(1)(f)(iii) of NI 81-102 in respect of the Continuing Fund.

15. Except as described above, the Merger will otherwise comply with all other criteria for pre-approved reorganizations and transfers as set out in section 5.6 of NI 81-102.

16. Although the investment objectives of the Terminating Fund may not be substantially similar to the Continuing Fund, in the Filer's view:

    (a) the investment objectives and investment strategies of the Funds are similar in that both are designed to provide a high level of current income with capital appreciation as a secondary objective; and

    (b) the Terminating Fund has a similar investment mandate as the Continuing Fund and would generally attract the same type of investor with a similar risk-return profile.

17. Although the Merger is being conducted on a taxable basis, in the Filer's view, it is in the best interest of the unitholders of the Funds to complete the Merger on a taxable basis so that the capital losses in the Continuing Fund will continue to be available to the Continuing Fund.

The Merger

18. A press release with respect to the Merger was issued and filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**) on September 16, 2019.

19. A material change report with respect to the Merger was filed on SEDAR for the Terminating Fund on September 18, 2019.

20. An amendment dated September 18, 2019 to the long form prospectus of the Terminating Fund dated April 26, 2019 announcing the Merger was filed on SEDAR.

21. Pursuant to National Instrument 81-107 *Independent Review Committee for Investment Funds*, the independent review committee of the Terminating Fund (the **IRC**) reviewed the Merger as a potential "conflict of interest matter", and provided its positive recommendation for the Merger, after determining that the Merger would achieve a fair and reasonable result for the Terminating Fund.

22. Pursuant to paragraph 5.1(1)(f) of NI 81-102, unitholders of the Terminating Fund approved the Merger at a special meeting of unitholders held on October 25, 2019 (the **Meeting**), as required by NI 81-102.

23. A notice of meeting, management information circular dated September 20, 2019 (the **Circular**) and form of proxy in connection with the Meeting (the **Meeting Materials**) were mailed to the unitholders of the Terminating Fund on October 4, 2019 and filed on SEDAR in accordance with applicable securities laws.

24. The Circular describes all of the relevant facts concerning the Merger, including a description of the proposed Merger, information about the Funds, including the differences between the respective investment objectives of the Funds, and income tax considerations for unitholders of the Terminating Fund, as well as the IRC's recommendation of the Merger, so that unitholders of the Terminating Fund may make an informed decision before voting on whether to approve the Merger.

25. The Circular also describes the various ways in which unitholders can obtain, at no cost, the current prospectus, most recently filed ETF Facts, most recently filed annual financial statements and most recently filed annual management report of fund performance of the Terminating Fund. The Filer will also provide the current prospectus, most recently filed ETF Facts, most recently filed annual financial statements, most recently filed interim financial reports, most recently filed annual management report of fund performance and most recently filed interim management report of fund performance of the Continuing Fund upon request.

26. Investors of the Terminating Fund had an opportunity to consider this information prior to voting on the Merger at the Meeting.

27. The Merger will not be a "material change" for the Continuing Fund and accordingly, the Filer has no intention to convene a meeting of unitholders for the Continuing Fund to approve the Merger.

28. The Filer will pay for the costs and expenses associated with the Merger, including the cost of holding the meeting and of soliciting proxies, including the costs of mailing the Circular and accompanying materials. Neither of the Funds will bear any of the costs and expenses associated with the Merger.

29. No fees, sales charges or expenses will be payable in connection with the acquisition by the Continuing Fund of the investment portfolio of the Terminating Fund.

30. No fees or sales charges will be payable by unitholders of the Funds in connection with the Merger.

31. The investment portfolio and other assets of the Terminating Fund to be acquired by the Continuing Fund in order to effect the Merger are currently, or will be on the Effective Date, acceptable to the portfolio manager of the Continuing Fund and are, or will be, consistent with the investment objectives of the Continuing Fund.

32. The cash and any other assets of the Terminating Fund acquired by the Continuing Fund in

connection with the Merger will be acquired in compliance with NI 81-102.

33. The Merger will be structured substantially as follows:

(a) The value of the Terminating Fund's portfolio and other assets will be determined as of the close of trading on the business day immediately preceding the Effective Date.

(b) Immediately following the close of business on the Effective Date, the Terminating Fund will transfer all or substantially all of its net assets to the Continuing Fund in consideration for the issuance by the Continuing Fund to the Terminating Fund of a number of the Continuing Fund's common units and advisor class units determined based on an exchange ratio calculated based on the relative net asset values of the Continuing Fund Units and Terminating Fund Units (the **Exchange Ratio**).

(c) Immediately following the transfer of assets of the Terminating Fund to the Continuing Fund and the issuance of Continuing Fund Units to the Terminating Fund, all of the Terminating Fund Units will be automatically redeemed.

(d) Each unitholder of common units of the Terminating Fund will receive such number of common units of the Continuing Fund, and each unitholder of advisor class units of the Terminating Funds will receive such number of advisor class units of the Continuing Fund, as determined by the Exchange Ratio.

(e) The Terminating Fund Units will, subject to the approval of the TSX, be de-listed from the TSX in advance of the Effective Date.

(f) As soon as reasonably possible following the Merger, the Terminating Fund will be wound up and the Continuing Fund will continue as an ETF existing under the laws of Ontario.

34. The result of the Merger will be that unitholders of the Terminating Fund will cease to be unitholders of the Terminating Fund and will become unitholders of the Continuing Fund. The Continuing Fund will continue as a publicly offered open-end mutual fund.

35. Units of the Terminating Fund will continue to be offered, exchanged and redeemed on a daily basis up to the business day immediately prior to the Effective Date, primarily through the designated broker and dealers of the Terminating Fund.

36. In addition, unitholders of the Terminating Fund will be able to trade their Terminating Fund Units on the TSX in the ordinary course at least until the close of business on the business day before the Effective Date.

Benefits of the Merger

37. The Filer believes that the Merger is beneficial to unitholders of the Terminating Fund for the following reasons:

(a) The Continuing Fund provides unitholders with greater exposure to investments in senior floating rate loans, which includes loans of issuers with strong credit metrics such as strong cash flows and effective management teams, while still maintaining some exposure to below investment grade high yield debt. The Continuing Fund's emphasis on senior secured loans should provide a measure of additional protection for unitholders of the Terminating Fund as compared to investments in debt securities that are not secured.

(b) Since the Terminating Fund has a similar investment mandate as the Continuing Fund and would generally attract the same type of investor with a similar risk-return profile, the Merger will contribute towards reducing duplication and redundancy across the Filer's fund line-up.

(c) The Continuing Fund is expected to attract more assets as marketing efforts will be concentrated on fewer funds, rather than two Funds with similar investment mandates. The ability to attract assets to the Continuing Fund will benefit investors by ensuring that the Continuing Fund remains viable, long-term, attractive investment vehicle for existing and potential investors.

(d) The Continuing Fund has a larger asset base than the Terminating Fund. The Merger will provide unitholders of the Terminating Fund with a much larger market capitalization and the secondary market for Continuing Fund Units is expected to be more liquid.

(e) The Continuing Fund has existing capital losses that will carry forward and continue to be available to the Continuing

Fund, which may benefit all unitholders of the Continuing Fund.

Decision

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

The decision of the principal regulator is that the Approval Sought is granted.

"Darren McKall"
Investment Funds and Structured Products Branch

2.1.3 TD Investment Services Inc.

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 in connection with a bulk deregistration of registered individuals in accordance with section 3.4 of Companion Policy 33-109CP to NI 33-109.

October 30, 2019

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

TD INVESTMENT SERVICES INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application**) for a decision (the **Exemption Sought**) under section 7.1 of National Instrument 33-109 — *Registration Information* (**NI 33-109**) exempting the Filer from the requirement in section 4.2 of NI 33-109 to submit a completed Form 33-109F1, as defined below, on an individual basis in accordance with National Instrument 31-102 *National Registration Database* (**NI 31-102**) upon the bulk termination of registered individuals with authority to act on behalf of the Filer.

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

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for this Application; and

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

Interpretation

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

Representations

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

Background

1. The Filer is a corporation organized under the laws of Ontario. The Filer's principal place of business is in Toronto, Ontario.

2. The Filer is a subsidiary of the Toronto-Dominion Bank which, collectively with its subsidiaries, is referred to as TD Bank Group (**TD**). The Canadian retail banking division of TD primarily operates under the brand "TD Canada Trust" (**TDCT**). TD has more than 1100 TDCT branch locations across Canada.

3. The Filer is registered as a dealer in the category of mutual fund dealer in all of the Jurisdictions and is a member of the Mutual Fund Dealers Association of Canada (**MFDA**).

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

5. The Filer has approximately 7800 registered individuals (the **Registered Individuals**) in one or more of the provinces and territories in Canada.

6. All individuals who trade in securities in the Jurisdictions on behalf of the Filer have been registered as Registered Individuals in accordance with the registration requirement under section 25(1) of the Act and the requirements of NI 31-102, by submitting a Form 33-109F4 completed with all the information required for a Registered Individual.

Exemption Under NI 33-109

7. In late 2018, TDCT announced a 24-month transformational plan (**Future Ready**). A key component of Future Ready is the creation of a new model for employee roles within TDCT branches.

8. As part of Future Ready, certain TDCT branch roles will see their accountabilities change. This includes employees in the role of Personal Banking Associate (**PBA**). Due to the changes in accountabilities, most PBAs will no longer be involved in the sale of mutual funds and therefore will no longer require mutual fund registration through TDIS.

9. Effective as of on or about October 31, 2019, 723 PBAs will be deregistered from TDIS (the **bulk deregistration**).

10. The Filer seeks relief from the requirement to submit a Form 33-109F1 — *Notice of Termination of Registered Individuals and Permitted Individuals* (**Form 33-109F1**) for each of its Registered Individuals in connection with the bulk deregistration.

11. No clients and/or client accounts will be negatively impacted by Future Ready and the corresponding bulk deregistration of PBAs. The Filer anticipates that services will be maintained in the normal course of business without any disruption.

12. The Filer provided advanced notice to the MFDA regarding the bulk deregistration of employees.

13. The Filer provided a spreadsheet populated with the applicable information required by Form 33-109F1 for each Registered Individual to be deregistered to the OSC on September 30, 2019.

14. Given the number of Registered Individuals of the Filer, the preparation and filing of Form 33-109F1s on behalf of each Registered Individual would achieve no regulatory purpose, while imposing an unwarranted administrative and compliance burden on the Filer.

Decision

The principal regulator is satisfied that the decision would not be prejudicial to the public interest to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that the Filer makes acceptable arrangements with CGI Inc., as the National Registration Database vendor, for the payment of the costs associated with filing the termination of Registered Individuals on a bulk basis, and makes such payment in advance.

"Elizabeth King"
Deputy Director,
Compliance & Registrant Regulation Branch
Ontario Securities Commission

2.1.4 Triple Flag Precious Metals Corp.

Headnote

National Instrument 43-101 Standards of Disclosure for Mineral Projects (NI 43-101) – relief from requirement to file technical reports granted to issuer having royalty interests or stream interests – Filer to become a reporting issuer pursuant to a proposed initial public offering – relevant technical disclosure for royalty interests or stream interests previously disclosed by operators or owners of the mineral projects.

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, ss. 4.1(1) and 9.1(1).

October 22, 2019

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
TRIPLE FLAG PRECIOUS METALS CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer be exempted from the requirement in subsection 4.1(1) of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**) to file a technical report, upon the Filer becoming a reporting issuer, for each mineral property material to the Filer, in the circumstances described below (the **Exemption Sought**).

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filer for a decision (**Confidentiality Sought**) that the application and this decision document (the **Confidential Material**) be kept confidential and not be made public until the earlier of: (i) the date on which the Filer advises the principal regulator that there is no need for the Confidential Material to remain confidential; (ii) the date on which the Filer receives a receipt in respect of the Preliminary Prospectus (as defined below); and (iii) the date that is 90 days from the date of this decision.

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

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

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

Interpretation

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

Representations

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

1. the Filer is a corporation existing under the laws of Canada, with a head office in Toronto, Ontario;

2. the Filer is not a reporting issuer under the Legislation or applicable securities legislation in any Non-Principal Jurisdiction;

3. the Filer is not in default of the requirements of applicable securities legislation in the Jurisdiction or any Non-Principal Jurisdiction;

4. the Filer, at the time of the filing of the Final Prospectus (as defined below), will hold through a wholly-owned subsidiary, Triple Flag Mining Finance Bermuda Ltd. (**TF Bermuda**), among other assets, stream interests in Nexa Resources S.A.'s (**Nexa**) Cerro Lindo mine, Continental Gold Inc.'s (**Continental**) Buriticá project and Royal Bafokeng Platinum Limited's (**Royal Bafokeng**) PGM mine (which stream transaction remains subject to certain closing conditions);

5. the Filer, at the time of the filing of the Final Prospectus, will hold through an indirect wholly-owned subsidiary, TF Australia Holdings Ltd. (**Australia Holdings**), among other assets, a royalty interest in Kirkland Lake Gold Ltd.'s (**Kirkland Lake**) Fosterville mine;

6. under subsection 4.2(1) of NI 43-101, an issuer is required to file a technical report that relates to a

mineral project on a property material to the issuer upon the issuer filing certain documents, including a preliminary prospectus;

7. the definition of mineral project under section 1.1 of NI 43-101 includes a royalty interest or similar interest;

8. under subsection 4.1(1) of NI 43-101, an issuer is required to file a technical report for a mineral property material to the issuer upon becoming a reporting issuer in a jurisdiction of Canada;

9. the Filer will become a reporting issuer under the Legislation and the applicable securities legislation in the Non-Principal Jurisdictions following the filing of, and obtaining a receipt for, a final prospectus (the **Final Prospectus**) in connection with a proposed initial public offering (**IPO**). The Filer proposes to file a preliminary prospectus for the IPO on or about October 24, 2019 (the **Preliminary Prospectus**);

10. the Filer anticipates that the stream interests in the Cerro Lindo and Buriticá properties and the royalty interest in the Fosterville property will make those properties material to the Filer;

11. the Filer anticipates that, following the completion of the stream transaction, the stream interest in the Royal Bafokeng PGM properties will also be material to the Filer;

12. the Filer will make scientific and technical disclosure regarding the Cerro Lindo, Royal Bafokeng PGM, Buriticá and Fosterville properties in the Preliminary Prospectus and the Final Prospectus;

13. the Filer is not the owner or operator of the Cerro Lindo property, the Royal Bafokeng PGM properties, the Buriticá property or the Fosterville property;

14. according to the public disclosure record of Nexa, the Cerro Lindo property is owned and operated directly or indirectly by Nexa, which is a reporting issuer in all of the provinces and territories of Canada;

15. a technical report for the Cerro Lindo property entitled Cerro Lindo Polymetallic Mine, Chavin District, Chincha Province, Peru, NI 43-101 Technical Report on Operations (the **Cerro Lindo Report**) was filed by Nexa on September 21, 2017. The Cerro Lindo Report is available on SEDAR under Nexa's profile at www.sedar.com. According to the public disclosure record of Nexa, the Cerro Lindo Report was prepared in accordance with NI 43-101;

16. according to the public disclosure record of Royal Bafokeng, (i) the Royal Bafokeng PGM properties are owned and operated directly or indirectly by Royal Bafokeng, whose securities trade on the Johannesburg Stock Exchange (the **JSX**) (a specified exchange under NI 43-101), and (ii) Royal Bafokeng would be a "producing issuer" for purposes of NI 43-101 based on its gross revenue derived from mining operations for the year ended December 31, 2018, as reflected in its audited financial statements for that period. Royal Bafokeng is not a reporting issuer in any jurisdiction of Canada;

17. Royal Bafokeng discloses mineral resources and mineral reserves in accordance with the guidelines and principles of the SAMREC Code and in accordance with the requirements of the JSX and applicable corporate laws. A mineral resources and mineral reserves statement in respect of the Royal Bafokeng PGM properties entitled Mineral Resources and Mineral Reserves Statement 2018 and dated April 29, 2019 is available on Royal Bafokeng's website at bafokengplatinum.co.za;

18. according to the public disclosure record of Continental, the Buriticá property is owned and operated directly or indirectly by Continental, which is a reporting issuer in each of the provinces of Canada other than Quebec;

19. a technical report for the Buriticá property entitled NI 43-101 Buriticá Mineral Resource 2019-01, Antioquia, Colombia (the **Buriticá Report**) was filed by Continental on March 18, 2019. The Buriticá Report is available on SEDAR under Continental's profile at www.sedar.com. According to the public disclosure record of Continental, the Buriticá Report was prepared in accordance with NI 43-101;

20. according to the public disclosure record of Kirkland Lake, the Fosterville property is owned and operated directly or indirectly by Kirkland Lake, which is a reporting issuer in each of the provinces of Canada other than Quebec;

21. a technical report for the Fosterville property entitled Updated NI 43-101 Technical Report, Fosterville Gold Mine in the State of Victoria, Australia (the **Fosterville Report**) was filed by Kirkland Lake on April 1, 2019. The Fosterville Report is available on SEDAR under Kirkland Lake's profile at www.sedar.com. According to the public disclosure record of Kirkland Lake, the Fosterville Report was prepared in accordance with NI 43-101;

22. the Filer will identify in any document that it files under subsection 4.2(1) of NI 43-101 the source of the scientific and technical information it discloses on the Cerro Lindo, Royal Bafokeng PGM, Buriticá and Fosterville properties; and

23. to the best of the Filer's knowledge, information and belief, the current or predecessor owners or operators of the Cerro Lindo, Royal Bafokeng PGM, Buriticá and Fosterville properties have disclosed the scientific and technical information that is material to the Filer.

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.

Furthermore, the decision of the principal regulator is that the Confidentiality Sought is granted.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.1.5 TD Asset Management Inc. et al.

Headnote

Multilateral Instrument 11-102 Passport System – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 33-109 Registration Information (NI 33-109) – relief from certain filing requirements of NI 33-109 in connection with a bulk transfer of business locations and registered and non-registered individuals pursuant to an amalgamation in accordance with section 3.4 of Companion Policy 33-109CP to NI 33-109.

November 1, 2019

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

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

AND

IN THE MATTER OF
TD ASSET MANAGEMENT INC. (TDAM),
GREYSTONE CAPITAL MANAGEMENT INC. (GCMI)
AND
GREYSTONE MANAGED INVESTMENTS INC.
(collectively, the Filers)

DECISION

Background

The securities regulatory authority or regulator in Ontario has received an application from the Filers for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) for relief from sections 2.2, 2.3, 2.5, 3.2 and 4.2 of National Instrument 33-109 *Registration Information* (**NI 33-109**) pursuant to section 7.1 of NI 33-109 to allow the bulk transfer (the **Bulk Transfer**), of all of the registered and non-registered individuals and all of the locations of each of the Filers to a new amalgamated entity TD Asset Management Inc. (**New TDAM**) on or about November 1, 2019, in accordance with section 3.4 of the Companion Policy to NI 33-109 (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument

11-102 Passport System (MI 11-102) is intended to be relied upon in each jurisdiction of Canada outside of Ontario (together with Ontario, the Jurisdictions).

Interpretation

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

Representations

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

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

2. The head office of TDAM is located in Toronto, Ontario. TDAM is a subsidiary of The Toronto-Dominion Bank.

3. TDAM is currently registered in all provinces and territories of Canada as an exempt market dealer and portfolio manager, in Ontario, Newfoundland and Labrador and Québec as an investment fund manager, in Ontario as a commodity trading manager and in Québec as a derivatives portfolio manager.

4. As of the date hereof, TDAM has approximately 96 registered dealing representatives, advising representatives and associate advising representatives in one or more of the Jurisdictions and 7 business locations in one or more of the Jurisdictions.

5. GCMI was originally incorporated pursuant to the *Canada Business Corporations Act*. However, in connection with and prior to the Amalgamation (as defined below), GCMI has been continued into Ontario under the *Business Corporations Act* (Ontario).

6. The head office of GCMI is located in Regina, Saskatchewan and its principal regulator is the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**).

7. GCMI is currently registered in Saskatchewan as a portfolio manager.

8. As of the date hereof, GCMI has one registered advising representative in one or more of the Jurisdictions and two business locations in one or more of the Jurisdictions.

9. GMI was originally incorporated pursuant to the *Canada Business Corporations Act*. However, in connection with and prior to the Amalgamation, GMI has been continued into Ontario under the *Business Corporations Act* (Ontario).

10. The head office of GMI is located in Regina, Saskatchewan and its principal regulator is the FCAA.

11. GMI is currently registered in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan as an exempt market dealer and portfolio manager and in Ontario, Newfoundland and Labrador, Québec and Saskatchewan as an investment fund manager.

12. As of the date hereof, GMI has approximately 54 registered dealing representatives, advising representatives and associate advising representatives in one or more of the Jurisdictions and four business locations in one or more of the Jurisdictions.

13. GMI and GCMI only have permitted clients as defined in National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations*. GMI and GCMI do not have any retail clients.

14. The Filers, to the best of their knowledge, are not in default of any requirements of the securities legislation in the Jurisdictions.

15. None of the Filers is a member of any self-regulatory organization.

16. It is proposed that the Filers will effect an amalgamation (the **Amalgamation**) under the provisions of the *Business Corporations Act* (Ontario), which will involve GCMI and GMI amalgamating into TDAM, with TD Asset Management Inc. (**New TDAM**) being the name of the amalgamated company.

17. The Amalgamation is scheduled to occur on November 1, 2019.

18. Upon the Amalgamation, the shares of GCMI and GMI will be cancelled and New TDAM will accede to the assets and liabilities of GCMI and GMI.

19. Upon Amalgamation, New TDAM will carry on the same business operations in substantially the same manner with essentially the same personnel as the Filers.

20. As a result of the Amalgamation, all of the current registrable activities of the Filers will become the responsibility of New TDAM. New TDAM will assume all of the existing registrations and approvals for all of the registered individuals and all of the locations of the Filers.

21. The registered representatives transferred to New TDAM will carry on the same registerable activities

at New TDAM as they conducted at TDAM, GCMI or GMI, as applicable.

22. There will be no disruption to New TDAM's ability to advise and trade on behalf of TDAM's clients as well as GCMI and GMI clients upon the Amalgamation. GMI and GCMI clients have been notified of the Amalgamation.

23. TDAM is currently registered and New TDAM will be registered in the same categories as the Filers so no new additional categories of registration will be sought.

24. As a result of the Amalgamation, all individuals currently registered with the Filers as well as branch and sub-branch locations will remain the same but will have to be transferred to New TDAM. The head office of New TDAM will be located in Toronto, Ontario.

25. Given the significant number of locations and registered and non-registered individuals that are associated on the National Registration Database with the Filers, it would be extremely difficult and unduly time-consuming to transfer each individual registration to New TDAM in accordance with the requirements set out in 33-109 in a manner so as not to interrupt the Filers' business activities as a registrant if the Exemption Sought is not granted. Moreover, it is important that the transfer of the affected business locations and individuals occur on the same date (i.e. the date of the Amalgamation), in order to ensure that there is no lapse in registration.

26. In addition, the Exemption Sought will provide for an efficient and timely transfer of information and reduce the risk of inadvertent errors caused by a large number of separate transactions and entries on the National Registration Database, thus reducing administrative costs.

27. The Filers do not expect that any conflicts of interest will arise as a result of the Amalgamation. TDAM, GMI and GCMI currently all have procedures in place to address conflicts of interest. These procedures will be standardized as appropriate post Amalgamation for New TDAM.

28. The Bulk Transfer will not be contrary to the public interest and will have no negative consequence on the ability of the Filers to comply with all applicable regulatory requirements or the ability to satisfy obligations to their clients.

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 the Exemption Sought is granted provided that the Filers make acceptable arrangements with CDS Inc. for the payment of the costs associated with the Bulk Transfer, and make such payment in advance of the Bulk Transfer.

"Elizabeth King"
Ontario Securities Commission

2.1.6 Caldwell Investment Management Ltd. and Clearpoint Global Dividend Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of investment fund merger – approval required because merger does not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 Investment Funds – the terminating fund and continuing fund do not have substantially similar fundamental investment objectives – terminating fund unitholders not mailed fund facts of continuing fund – management information circular mailed to terminating fund unitholders did not include reference to fund facts of continuing fund being available at no cost – mergers otherwise comply with pre-approval criteria, including qualifying exchange under the Income Tax Act (Canada), unitholder vote, IRC approval – unitholders provided with timely and otherwise adequate disclosure regarding the merger.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b) and 19.1.

October 25, 2019

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
CALDWELL INVESTMENT MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
CLEARPOINT GLOBAL DIVIDEND FUND

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of Clearpoint Global Dividend Fund (the **Terminating Fund**) and Caldwell U.S. Dividend Advantage Fund (the **Continuing Fund** and together with the Terminating Fund, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for approval of the proposed merger (the **Merger**) of the Terminating Fund into the Continuing Fund, pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), (the **Approval Sought**).

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

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

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

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions* 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 and the Funds

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

2. The Filer is registered in the following categories in the jurisdictions as indicated below:

   (a) Ontario: Portfolio Manager (**PM**) and Investment Fund Manager (**IFM**);

   (b) Alberta: PM and IFM;

   (c) British Columbia: PM and IFM;

   (d) Quebec: PM and IFM;

   (e) Newfoundland and Labrador: IFM;

   (f) Manitoba: PM and IFM; and

   (g) Saskatchewan: PM and IFM.

3. The Filer is the investment fund manager and portfolio manager of the Funds.

4. Each of the Funds is an open-end mutual fund trust established under the laws of Ontario by a declaration of trust pursuant to which the Filer is the trustee.

5. The Terminating Fund is a reporting issuer under the applicable securities legislation in the Jurisdictions. The Continuing Fund is a reporting issuer under the applicable securities legislation in the Jurisdictions and the territories of Canada. Each of the Funds is subject to NI 81-102.

6. Securities of the Terminating Fund are currently qualified for distribution in the Jurisdictions pursuant to the simplified prospectus, annual information form and fund facts documents dated February 28, 2019, as amended on June 24, 2019, July 18, 2019, August 28, 2019 and September 27, 2019 (the **Terminating Fund Offering Documents**).

7. Securities of the Continuing Fund are currently qualified for distribution in the Jurisdictions and the territories of Canada pursuant to the simplified prospectus, annual information form and fund facts documents dated July 19, 2019 (the **Continuing Fund Offering Documents** and together with the Terminating Fund Offering Documents, the **Offering Documents**).

8. The net asset value for each series of the Funds is calculated on a daily basis in accordance with the Funds' valuation policy and as described in the Offering Documents.

9. Neither the Filer nor the Funds are in default of securities legislation in the Jurisdictions.

Reason for Approval Sought

10. Regulatory approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102. In particular:

    (a) the investment objectives of the Continuing Fund are not, or may not be considered to be, "substantially similar" to the investment objectives of the Terminating Fund;

    (b) due to inadvertence, the Meeting Materials (as defined below) did not include the most recently filed fund facts of the Continuing Fund, as required by 5.6(1)(f)(ii) of NI 81-102; and

    (c) due to inadvertence, the Meeting Materials did not include the statement required by paragraph 5.6(1)(f)(iii)(A)(III) of NI 81-102 in respect of the Continuing Fund.

11. The investment objectives of the Terminating Fund and the Continuing Fund are as follows:

Terminating Fund	Continuing Fund
Seeks to provide Unitholders with long-term capital growth by investing primarily in equity securities of companies around the world.	Seeks to provide its unitholders with (a) monthly distributions and (b) the potential for capital appreciation and enhanced long-term risk adjusted returns by investing primarily in dividend-paying equity securities of U.S. domiciled issuers or issuers that derive a significant portion of their revenue or earnings from the U.S.

12. Except as described in this decision, the Merger complies with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

The Proposed Merger

13. In its capacity as manager of the Funds, the Filer proposes to merge the Terminating Fund into the Continuing Fund.

14. In accordance with National Instrument 81-106 Investment Fund Continuous Disclosure, a press release describing the proposed Merger has been issued and the press release, material change report, each dated September 26, 2019, amendment to the simplified prospectus of the Terminating Fund, amendment to the annual information form of the Terminating Fund and the amended and restated fund facts documents of the Terminating Fund, all dated September 27, 2019, and which give notice of the proposed Merger, have been filed via the System for Electronic Document Analysis and Retrieval (**SEDAR**).

15. The unitholders of the Terminating Fund approved the Merger at a meeting of the unitholders of the Terminating Fund held on October 18, 2019.

16. Subject to receipt of the Approval Sought, the Merger is expected to occur on or about October 25, 2019, or as soon as practicable thereafter (the **Effective Date**).

17. The proposed Merger does not require approval of existing unitholders of the Continuing Fund as the Filer has determined that the proposed Merger does not constitute a material change to the Continuing Fund.

18. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), the Independent Review Committee (**IRC**) has been appointed for the Funds. The Filer presented the terms of the Merger to the IRC for a recommendation. The IRC reviewed the proposed Merger and provided a positive recommendation for the Merger, having determined that the Merger, if implemented, would achieve a fair and reasonable result for each of the Funds and their respective unitholders. A summary of the IRC's recommendation has been included in the notice of special meeting sent to unitholders of the Terminating Fund as required by subsection 5.1(2) of NI 81-107.

19. A notice of meeting, a management information circular dated September 24, 2019 (the **Circular**) and a proxy in connection with the Merger (the **Meeting Materials**) were mailed to the unitholders of the Terminating Fund in accordance with applicable securities laws, both of which have been filed on SEDAR. The Circular contains a description of the proposed Merger, information about the Terminating Fund and the Continuing Fund, the IRC's recommendation regarding the Merger, and the income tax considerations for unitholders of the Terminating Fund. The Circular discloses that unitholders of the Terminating Fund may obtain at no cost, the following documents of the Continuing Fund by contacting the Filer or by accessing the website of the Filer or SEDAR: the most recent comparative financial statements, the management report of fund performance for its most recently completed financial year, the current simplified prospectus, and current annual information form. The Filer will also provide the fund facts in respect of the Continuing Fund upon request.

20. In light of the disclosure in the Circular, unitholders of the Terminating Fund would have had all the information necessary to determine whether the proposed Merger is appropriate for them.

21. Costs and expenses associated with the Merger will be borne by the Filer and will not be charged to the Funds. The costs of the Merger include legal, printing, mailing and regulatory fees, as well as proxy solicitation and brokerage costs.

22. Subject to receiving the necessary approvals, effective as of the close of business on the date before the Effective Date, the Terminating Fund will cease distribution of securities and any new purchases of securities will not be allowed. The Terminating Fund will remain closed to purchase-type transactions, except pursuant to the Terminating Fund's monthly investment program, until it is merged with the Continuing Fund on the Effective Date. All monthly investment programs shall remain unaffected until the business day immediately before the Effective Date.

23. Unitholders in the Terminating Fund will continue to have the right to redeem their securities up to the close of business on the last business day before the effective date of the Merger.

24. Following the Merger, all optional services (such as monthly investment programs) will continue to be available to investors. Unitholders of the Terminating Fund will be automatically enrolled in comparable plans with respect to their corresponding securities of the Continuing Fund unless they advise otherwise.

25. Unitholders may change or cancel any monthly investment programs at any time and unitholders of the Terminating Fund who wish to establish one or more monthly investment programs in respect of their holdings in the Continuing Fund may do so following the Merger.

26. Unitholders of the Terminating Fund who elected to receive distributions in cash from the Terminating Fund before the Merger will receive distributions in cash from the Continuing Fund after the Merger.

27. No sales charges will be payable by unitholders of the Funds in connection with the Merger.

28. The Merger will be completed as a "qualifying exchange" or a tax-deferred transaction under the *Income Tax Act* (Canada) (the **Tax Act**).

29. The Terminating Fund and the Continuing Fund are, and are expected to continue to be at all material times, mutual fund trusts under the Tax Act and, accordingly, units of both Funds are "qualified investments" under the Tax Act for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax free savings accounts.

Proposed Merger Steps

30. Any investment held by the Terminating Fund that is not consistent with the investment objective of the Continuing Fund or acceptable to the portfolio manager of the Continuing Fund will be sold prior to the Effective Date. As a result, the Terminating Fund may temporarily hold cash and may not be fully invested in accordance with its investment objectives for a brief period of time prior to the Merger. The value of any investment sold prior to the Effective Date will depend on prevailing market conditions.

31. Under the Merger, the Terminating Fund will transfer all or substantially all of its net assets to the Continuing Fund in consideration for the issuance by the Continuing Fund to the Terminating Fund of a number of Series A units and Series F units of the Continuing Fund determined based on an exchange ratio established as of the close of trading on the business day immediately preceding the effective date of the Merger (the **Exchange Ratio**).

32. The Exchange Ratio will be calculated based on the relative net asset values of the Series A Units or Series F Units of the Terminating Fund and the Series A units or Series F units of the Continuing Fund.

33. Immediately following the transfer of assets of the Terminating Fund to the Continuing Fund and the issuance of the Series A units and Series F units of the Continuing Fund to the Terminating Fund, all of the Units of the Terminating Fund will be automatically redeemed. Each unitholder will receive such number of Series A units and/or Series F units, as applicable, of the Continuing Fund as is equal to the number of Series A Units and/or Series F Units, as applicable, held by such unitholder as of the close of trading on the business day immediately preceding the effective date of the Merger multiplied by the Exchange Ratio of such units.

34. Units of the Terminating Fund will continue to be offered and redeemed on a daily basis up to the business day immediately prior to the effective date of the Merger.

35. The cash and any other assets of the Terminating Fund acquired by the Continuing Fund in connection with the Merger will be acquired in compliance with NI 81-102.

36. As soon as reasonably possible following the Merger, the Terminating Fund will be wound up and the Continuing Fund will continue as a mutual fund existing under the laws of Ontario.

Benefits of the Merger

37. The Filer believes that the Merger is in the best interests of the Terminating Fund and the Continuing Fund and their unitholders and will be beneficial to unitholders of the Terminating Fund and the Continuing Fund for the following reasons:

(a) as part of a broader reorganization, the Manager has lowered the management fees charged on the Continuing Fund to 1.75% and 0.75% per annum of net asset value for the Series A and Series F units, respectively, which represents a reduction of 0.25% per annum relative to the 2.0% and 1.0% per annum of net asset value, respectively charged on the Series A and Series F units of the Terminating Fund;

(b) merging the Terminating Fund into the Continuing Fund will provide unitholders with the opportunity to invest in a single fund that will have a larger market capitalization, which is expected to reduce fund administration and regulatory costs on a per unit basis for unitholders;

(c) the Continuing Fund will be significantly larger than the Terminating Fund, offering the potential for increased portfolio diversification; and

(d) the Merger is expected to be implemented on a tax deferred basis to unitholders, and accordingly, the Merger as well as issuance of Series A units and Series F units of the Continuing Fund should not result in a taxable event to unitholders.

Decision

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

The decision of the principal regulator is that the Approval Sought is granted.

"Neeti Varma"
Manager
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.2 Orders

2.2.1 3iQ and The Bitcoin Fund – s. 8

FILE NO.: 2019-7

IN THE MATTER OF
3iQ CORP. and
THE BITCOIN FUND

Lawrence P. Haber, Commissioner and Chair of the Panel

October 29, 2019

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

WHEREAS on June 3, 6, 7 and July 24, 2019, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Application for hearing and review filed by 3iQ Corp. and The Bitcoin Fund (the "**Applicants**") on March 15, 2019 to review a decision of the Director of the Investment Funds & Structured Products branch of the Commission dated February 15, 2019 (the "**Director's decision**");

ON READING the materials filed and on hearing the submissions of the representatives for the Applicants and for Staff of the Commission;

IT IS ORDERED THAT:

1. the Director's decision is set aside; and

2. the Director shall issue a receipt for a final prospectus of The Bitcoin Fund, provided the Director is satisfied that there are no grounds under subsection 61 of the Act for the Director to refuse to issue a receipt for any such prospectus, other than the grounds set out in the Director's decision dated February 15, 2019 or in the Reasons and Decision issued on October 29, 2019 in this proceeding.

"Lawrence P. Haber"

2.2.2 Portfolio 22 Multi-Family REIT LP

Headnote

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

Applicable Legislative Provisions

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

October 29, 2019

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

AND

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

AND

IN THE MATTER OF
PORTFOLIO 22 MULTI-FAMILY REIT LP
(the Filer)

ORDER

¶ 1 Background

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

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

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

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

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

¶ 2 Interpretation

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

¶ 3 Representations

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

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

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

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

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

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

¶ 4 Order

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

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

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

2.2.3 Silk Road Energy Inc.

Headnote

Section 144 of the Securities Act (Ontario) – application for a partial revocation of a cease trade order – issuer cease traded due to failure to file audited annual financial statements – issuer has applied for a partial revocation of the cease trade order to permit the issuer to proceed with a private placement under prospectus exemptions – issuer will use proceeds from private placement to prepare and file continuous disclosure documents and pay related fees – partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 127 and 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

ALBERTA SECURITIES COMMISSION

PARTIAL REVOCATION ORDER
Under the securities legislation of Alberta and Ontario (the Legislation)

Citation: *Re Silk Road Energy Inc.*, 2019 ABASC 162

October 24, 2019

Silk Road Energy Inc.

Background

1. Silk Road Energy Inc. (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 Alberta (the **Principal Regulator**) and Ontario (each a **Decision Maker**) respectively on February 1, 2019.

2. The Issuer has applied to each of the Decision Makers for a partial revocation of the FFCTO.

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

Interpretation

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

Representations

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

   (a) the Issuer was incorporated on November 9, 2010 by Certificate of Incorporation issued pursuant to the *Business Corporations Act* (Alberta);

   (b) the Issuer's head office is located at 229, 52477 Highway 21 Sherwood Park, Alberta T8A 6K2;

   (c) the Issuer is a reporting issuer in the provinces of Alberta, British Columbia and Ontario. The Issuer is not a reporting issuer in any other jurisdiction;

   (d) the Issuer is listed on the TSX Venture Exchange under the stock symbol SLK;

   (e) the authorized share capital of the Issuer is comprised of an unlimited number of common shares without par value (**Common Shares**) and an unlimited number of preferred shares (**Preferred Shares**) of which, as of the date hereof, there are 12,012,788 Common Shares issued and outstanding and no Preferred Shares outstanding;

   (f) the FFCTO was issued by the Decision Makers due to the failure of the Issuer to file its annual audited financial statements, annual management's discussion and analysis and certification of annual filings for the year ended September 30, 2018 (the **CD Materials**);

(g) Subsequent to the failure to file the CD Materials, the Issuer has not filed any further financial statements or any continuous disclosure documents required by applicable securities legislation (the **Subsequent Filings**);

(h) other than the failure to file the CD Materials and Subsequent Filings, the Issuer is not in default of the securities legislation in any jurisdiction and the Issuer's SEDAR and SEDI filings are up-to-date;

(i) the Issuer seeks to vary the FFCTO to permit the Issuer to complete a private placement (the **Private Placement**) of units of the Issuer (**Units**), each Unit consisting of one Preferred Share and one Preferred Share purchase warrant, for gross proceeds of up to $185,000, to one or more subscribers, solely in order to cover all costs and fees (which includes audit fees, professional fees, late filing fees and any other applicable fees) that are related to the fulfillment by the Issuer of all of its disclosure obligations and in order to file all the financial statements and related certifications for all previously ended financial years and interim periods since the date of the FFCTO as required by applicable law and to provide it with sufficient working capital to continue its operations until it can apply for and receive a full revocation of the FFCTO;

(j) the Private Placement will be conducted on a prospectus exemption basis with investors in the United States, offshore jurisdictions and in Ontario who satisfy the accredited investor exemption contained in Section 2.3 of National Instrument 45-106 *Prospectus Exemptions*;

(k) the Issuer reasonably expects the proceeds from the Private Placement will be used in a manner consistent with the table below:

Legal Fees	$70,000
Audit Fees	$50,000
Late Filing and Participation Fees	$15,000
Accounting Fees	$30,000
Registrar and Transfer Agent Fees	$10,000
General and Unallocated Working Capital	$10,000
Total	$185,000

(l) as the Private Placement will involve trades in securities of the Issuer (including, for greater certainty, acts in furtherance of trades in securities of the Issuer), the Private Placement cannot be completed without a variation of the FFCTO;

(m) the Issuer reasonably expects that the proceeds raised from the Private Placement will be sufficient to bring its continuous disclosure up to date and to apply for a full revocation of the FFCTO and pay all outstanding related fees;

(n) within a reasonable time following the completion of the Private Placement, the Issuer intends to apply for a full revocation of the FFCTO.

(o) Upon issuance of this order the Issuer will issue a press release announcing the order and the intention to complete the Private Placement. Upon completion of the Private Placement, the Issuer will issue a press release and file a material change report. As other material events transpire, the Issuer will issue appropriate press releases and material change reports as applicable.

Order

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

6. The decision of the Decision Makers under the Legislation is that the FFCTO is partially revoked as it applies to the Issuer solely to permit the Private Placement, provided that prior to completion of the Private Placement, each investor will receive:

(a) a copy of the FFCTO;

(b) a copy of this partial revocation order; and

(c) written notice from the Issuer, to be acknowledged by each investor in writing, that all of the Issuer's securities, including the securities issued in connection with the Private Placement, will remain subject to the FFCTO until such orders are revoked and that the issuance of the partial revocation order does not guarantee the issuance of a full revocation in the future.

24 October 2019

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

2.2.4 Holloway Lodging Corporation

Headnote

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

Applicable Legislative Provisions

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

November 1, 2019

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

AND

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

AND

IN THE MATTER OF
HOLLOWAY LODGING CORPORATION
(the Filer)

ORDER

Background

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

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

a) the Nova Scotia Securities Commission is the principal regulator for this application,

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

“Paul E. Radford
Chair
Nova Scotia Securities Commission

“Shirley P. Lee”
Vice-chair
Nova Scotia Securities Commission

2.4 Rulings

2.4.1 ICAP Securities Limited – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options

Headnote

Application to the Commission pursuant to section 38 of the Commodity Futures Act (Ontario) (CFA) for a ruling that the Applicant be exempted from the dealer registration requirement in paragraph 22(1)(a) and the prohibition against trading on non-recognized exchanges in section 33 of the CFA. As an introducing broker, the Applicant will offer the ability to trade in commodity futures contracts and commodity futures options that trade on exchanges located outside of Canada and that are cleared through clearing corporations located outside of Canada, including block trades, to certain of its clients in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

Application to the Director for an exemption, pursuant to section 6.1 of OSC Rule 91-502 Trades in Recognized Options (OSC Rule 91-502) exempting the Applicant and its Representatives from the proficiency requirements in section 3.1 of OSC Rule 91-502 for trades in commodity futures options on exchanges located outside of Canada.

Applicable Legislative Provisions

Acts Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22, 33 and 38.
Securities Act, R.S.O. 1990, c. S.5, as am.

Instrument Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.18.

Rule Cited

Ontario Securities Commission Rule 91-502 Trades in Recognized Options, ss. 3.1 and 6.1.

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

AND

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

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION
RULE 91-502 TRADES IN RECOGNIZED OPTIONS
(Rule 91-502)

AND

IN THE MATTER OF
ICAP SECURITIES LIMITED

RULING & EXEMPTION
(Section 38 of the CFA and Section 6.1 of Rule 91-502)

UPON the application (the **Application**) of ICAP Securities Limited (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for:

(a) a ruling of the Commission, pursuant to section 38 of the CFA, that the Applicant is not subject to the dealer registration requirements in the CFA (as defined below) or the trading restrictions in the CFA (as defined below) in connection with trades in Exchange-Traded Futures (as defined below) on exchanges located outside of Canada (**Non-Canadian Exchanges**) where the Applicant is acting as principal or agent in such trades to, from or on behalf of Permitted Clients (as defined below);

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges, where the Applicant acts in respect of the trades in Exchange-Traded Futures on behalf of the Permitted Client pursuant to the above ruling; and

(c) a decision of the Director, pursuant to section 6.1 of Rule 91-502, exempting the Applicant and its salespersons, directors, officers and employees (the **Representatives**) from section 3.1 of Rule 91-502 in connection with trades in Exchange-Traded Futures (collectively, the **Requested Relief**);

AND WHEREAS for the purposes of this ruling and exemption (collectively, the **Decision**):

(i) **"CFTC"** means the U.S. Commodity Futures Trading Commission;

"dealer registration requirements in the CFA" means the provisions of section 22 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 22 of the CFA;

"EEA" means the European Economic Area;

"EEA Member States" means Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the U.K.;

"Exchange-Traded Futures" means a commodity futures contract or a commodity futures option that trades on one or more organized exchanges located outside of Canada and that is cleared through one or more clearing corporations located outside of Canada;

"FCA" means the Financial Conduct Authority in the U.K.;

"NFA" means the National Futures Association in the U.S.;

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

"Permitted Client" means a client in Ontario that is a "permitted client" as that term is defined in section 1.1 of NI 31-103;

"PRA" means the Prudential Regulation Authority in the U.K.;

"SEC" means the U.S. Securities and Exchange Commission;

"specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*;

"trading restrictions in the CFA" means the provisions of section 33 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 33 of the CFA;

"U.K." means the United Kingdom;

"U.S." means the United States of America; and

(ii) terms used in this Decision that are defined in the OSA, and not otherwise defined in this Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

AND UPON the Applicant having represented to the Commission and the Director as follows:

1. The Applicant is a company incorporated under the laws of England and Wales. Its head office is located in London in the U.K.

2. The Applicant acts as a broker for customers buying and selling equity and/or debt securities and as a broker for futures and options on futures contracts. Its clients include corporations, financial institutions and investment funds.

3. The Applicant is an indirect, wholly owned subsidiary of TP ICAP plc (**TP ICAP**). TP ICAP's shares are listed on the London Stock Exchange and it is a FTSE 250 company. TP ICAP is registered in England no. 05807599.

4. The Applicant relies on the international dealer exemption in section 8.18 of NI 31-103 (the **IDE**) in British Columbia, Nova Scotia, Ontario and Québec, and is not registered in any capacity under the CFA or the OSA.

5. The Applicant is authorized by the FCA to carry on a range of regulated activities within the U.K. and is subject to regulation by the FCA. The Applicant is currently licensed in the U.K. to deal with eligible counterparties and professional clients with respect to its permitted activities. The Applicant is currently authorized to carry on certain regulated activities in the U.K. in relation to certain specified investments, including the following: (a) arranging (bringing about) deals in futures; (b) arranging safeguarding and administration of assets in relation to futures; (c) dealing in futures as agent; (d) dealing in futures as principal; (e) making arrangements with a view to transactions in futures; and (f) safeguarding and administration of assets in relation to futures (without arranging). As is the case with all firms authorized in the U.K., the Applicant's current U.K. regulatory status remains subject to variation and the possible imposition of regulatory limitations or requirements and is described as at the date of the Application.

6. The Applicant has "passported" its U.K. registration into the EEA Member States. In relation to the Applicant's futures services, the Applicant utilizes its EEA passport to the extent that it may provide commodity futures services into other EEA Member States.

7. The Applicant is an exempt foreign broker under CFTC rules (17 CFR 30) and is able to conduct brokerage activities for U.S. customers on non-U.S. exchanges without having to register with the CFTC as a futures commission merchant (**FCM**). As a result, the Applicant is approved by the NFA as an exempt foreign firm under CFTC Regulation 30.10 under the U.S. *Commodity Exchange Act*.

8. The Applicant is a member of major international securities and commodity futures exchanges, including but not limited to ICE Europe, Euronext (Amsterdam and Paris), Eurex, Nasdaq OMX. The Applicant is not a member of any clearing houses but uses the services of a General Clearing Member (Citibank and ABN Amro).

9. The Applicant is not in default of securities or commodity futures legislation in any jurisdiction in Canada, subject to the matter to which this Decision relates. The Applicant is in compliance in all material respects with U.K. and U.S. securities and commodity futures laws, as applicable.

10. Pursuant to its authorizations and approvals, the Applicant may (*inter alia*) trade in securities and Exchange-Traded Futures in the U.K. and, in all EEA Member States, and conduct brokerage activities for U.S. customers on non-U.S. exchanges without having to register with the CFTC as a FCM. Rules of the FCA require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, client identification and account-opening requirements, suitability requirements, anti-money laundering checks, credit checks, delivery of confirmation statements, clearing deposits, dealing and handling customer order obligations including managing conflicts of interests and best execution rules. These rules require the Applicant to treat Permitted Clients materially the same as the Applicant's U.K., EEA and U.S. customers with respect to transactions made on exchanges in the U.K. and the EEA Member States. In order to protect customers in the event of insolvency or financial instability of the Applicant, the Applicant is required to ensure that customer securities and monies be separately accounted for and segregated from the securities and monies of the Applicant. The Applicant is subject to the FCA's Client Asset Rules, which impose a general duty to segregate client assets and require the Applicant to place client money exclusively with counterparties selected and approved in compliance with the criteria set out in the FCA's Client Asset Rules.

11. The Applicant proposes to offer Permitted Clients in Ontario the ability to trade in Exchange-Traded Futures through the Applicant.

12. The Applicant will solicit and accept orders for trades in Exchange-Traded Futures on behalf of Permitted Clients in Ontario in the same manner that it solicits and accepts orders for trades in Exchange-Traded Futures on behalf of its U.K. clients, EEA clients and U.S. clients. The Applicant will follow the same know-your-customer and segregation of assets procedures that it follows in respect of its U.K. clients, EEA clients and U.S. clients. Permitted Clients will be afforded the benefits of compliance by the Applicant with the statutory and other requirements of the FCA, recognised investment exchanges and applicable European law and regulations. Permitted Clients in Ontario will have the same contractual rights against the Applicant as U.K. clients of the Applicant.

13. The Applicant is required under U.K. securities laws to categorise its clients using three categories (who are afforded a descending level of regulatory protection): (1) retail clients; (2) professional clients; and (3) eligible counterparties. Permitted Clients would generally fall into the categories of 'professional clients' and 'eligible counterparties'. The levels of regulatory protection afforded to these categories of clients are substantially similar to those afforded to Permitted Clients.

14. The Applicant will not maintain an office, sales force or physical place of business in Ontario.

15. The Applicant will solicit and accept orders for trades in Exchange-Traded Futures in Ontario only from persons who qualify as Permitted Clients.

16. Permitted Clients of the Applicant will only be offered the ability to effect trades in Exchange-Traded Futures on Non-Canadian Exchanges.

17. The Exchange-Traded Futures to be traded by Permitted Clients will include, but will not be limited to, Exchange-Traded Futures for equity index and single name stocks, interest rate, foreign exchange, bond, energy, agricultural and other commodity products.

18. Permitted Clients of the Applicant will be able to execute Exchange-Traded Futures orders through the Applicant by contacting the Applicant's global execution desks. Permitted Clients may also be able to self-execute Exchange-Traded Futures orders electronically via an independent service vendor and/or other electronic trading order routing systems.

19. The Applicant may execute a Permitted Client's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders. The Applicant will remain responsible for all executions when the Applicant is listed as the executing broker of record on the relevant Non-Canadian Exchange.

20. As the Applicant will only perform the execution of a Permitted Client's contract order and "give-up" the transaction for clearance to the Permitted Client's carrying broker or clearing broker (each, a **Clearing Broker**), such broker will also be required to comply with any relevant regulatory requirements, including requirements under the CFA, as applicable. Each Clearing Broker will represent to the Applicant, in an industry-standard give-up agreement, that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Permitted Client's orders will be executed and/or cleared. The Applicant will not enter into a give-up agreement with any carrying broker or clearing broker located in (i) the U.S. unless such broker is registered with the CFTC and/or the SEC, as applicable, or (ii) the U.K. unless such broker is authorised by the PRA or the FCA, as required.

21. As is customary for all trades in Exchange-Traded Futures, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in Exchange-Traded Futures and Permitted Client orders that are submitted to the exchange in the name of the Clearing Broker or the Applicant or, on exchanges where the Applicant is not a member, in the name of another carrying broker. The Permitted Client of the Applicant is responsible to the Clearing Broker for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Clearing Broker is in turn responsible to the clearing corporation/division for payment.

22. Permitted Clients will pay commissions for trades to the Applicant for its role as execution-only broker and Permitted Clients shall be responsible to pay any commissions to their Clearing Broker directly, if applicable.

23. The trading restrictions in the CFA apply unless, among other things, an Exchange-Traded Future is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no Non-Canadian Exchanges have been recognized or registered under the CFA.

24. If the Applicant were registered under the CFA as a "futures commission merchant", it could rely upon certain exemptions from the trading restrictions in the CFA to effect trades in Exchange-Traded Futures to be entered into on certain Non-Canadian Exchanges.

25. Section 3.1 of Rule 91-502 provides that no person shall trade as agent in, or give advice in respect of, a recognized option, as defined in section 1.1 of Rule 91-502, unless he or she has successfully completed the Canadian Options Course (which has been replaced by the Derivatives Fundamentals Course and the Options Licensing Course).

26. All Representatives of the Applicant who trade futures and options in the U.K. need to have attained and maintain a level of skills, knowledge and expertise to discharge their responsibilities in accordance with the FCA's Training and Competency Handbook.

27. Representatives who trade futures and options will have passed examinations in U.K. Financial Regulation and Securities and/or Derivatives administered by the Chartered Institute for Securities & Investment (CISI) under its Capital Markets Programme.

28. Under the U.K. Senior Managers & Certification Regime, these Representatives who trade futures and options will be classified by the Applicant as certified individuals. Although these Representatives will not be subject to direct approval by the FCA, the Applicant must take reasonable care to ensure that a Representative does not perform a certification function without having first been certified as fit and proper to do so. This certification must be renewed on an annual basis.

AND UPON the Commission and Director being satisfied that it would not be prejudicial to the public interest to grant the exemptions requested;

IT IS RULED, pursuant to section 38 of the CFA, that the Applicant is not subject to the dealer registration requirements set out in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Applicant is acting as principal or agent in such trades to, from or on behalf of Permitted Clients provided that:

(a) each client effecting trades of Exchange-Traded Futures is a Permitted Client;

(b) any Clearing Broker has represented and covenanted to the Applicant, and the Applicant has taken reasonable steps to verify, that the broker is or will be appropriately registered or exempt from registration under the CFA;

(c) the Applicant only executes trades in Exchange-Traded Futures for Permitted Clients on Non-Canadian Exchanges;

(d) at the time trading activity is engaged, the Applicant:

  (i) has its head office or principal place of business in the U.K.;

  (ii) is authorised and regulated by the FCA;

  (iii) is approved by the NFA as an exempt foreign firm; and

  (iv) engages in the business of an authorized firm in Exchange-Traded Futures in the U.K.;

(e) the Applicant has provided to the Permitted Client the following disclosure in writing:

  (i) a statement that the Applicant is not registered in Ontario to trade in Exchange-Traded Futures as principal or agent;

  (ii) a statement that the Applicant's head office or principal place of business is located in London in the U.K.;

  (iii) a statement that all or substantially all of the Applicant's assets may be situated outside of Canada;

  (iv) a statement that there may be difficulty enforcing legal rights against the Applicant because of the above; and

  (v) the name and address of the Applicant's agent for service of process in Ontario;

(f) the Applicant has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A" hereto;

(g) the Applicant notifies the Commission of any regulatory action initiated after the date of this ruling in respect of the Applicant, or any predecessors or specified affiliates of the Applicant, by completing and filing with the Commission Appendix "B" hereto within ten days of the commencement of such action; provided that the Applicant may also satisfy this condition by filing with the Commission within ten days of the date of this Decision a notice making reference to and incorporating by reference the disclosure made relating to the Applicant pursuant to U.S. federal securities laws, and any updates to such disclosure that may be made from time to time, and by providing a copy, in a manner reasonably acceptable to the Director, of any Form BD "Regulatory Action Disclosure Reporting Page" relating to the Applicant;

(h) if the Applicant does not rely on the IDE, by December 31st of each year, the Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 Fees, as if the Applicant relied on the IDE;

(i) by December 1st of each year, the Applicant notifies the Commission of its continued reliance on the exemption from the dealer registration requirement granted pursuant to this Decision by filing Form 13-502F4 *Capital Markets Participation Fee Calculation*; and

(j) this Decision will terminate on the earliest of:

(i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Applicant acts in connection with trades in Exchange-Traded Futures on behalf of the Permitted Clients pursuant to the above ruling.

October 11, 2019

"Heather Zordel"
Commissioner
Ontario Securities Commission

"Lawrence P. Haber"
Commissioner
Ontario Securities Commission

IT IS THE DECISION of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to the Applicant and its Representatives in respect of trades in Exchange-Traded Futures, provided that:

(a) the Applicant and its Representatives maintain their respective authorizations and approvals with the FCA and the NFA which permit them to trade commodity futures options in the U.K. and remain subject to regulation by the FCA; and

(b) this Decision will terminate on the earliest of:

(i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

"Elizabeth King"
Director
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 3iQ Corp. and The Bitcoin Fund – s. 8

Citation: *3iQ Corp (Re)*, 2019 ONSEC 37
Date: October 29, 2019
File No. 2019-7

IN THE MATTER OF
3iQ CORP. and
THE BITCOIN FUND

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

Hearing:	June 3, 6, 7 and July 24, 2019	
Decision:	October 29, 2019	
Panel:	Lawrence P. Haber	Commissioner and Chair of the Panel
Appearances:	Christopher Naudie Lori Stein Evan Thomas Louis Tsilivis	For 3iQ Corp. and The Bitcoin Fund
	Michelle Vaillancourt Alvin Qian	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. OVERVIEW

[1] This is an application for a hearing and review under section 8 of the *Securities Act*.[1] The Applicants – The Bitcoin Fund and 3iQ Corp. – seek to set aside the decision of the Director of the Ontario Securities Commission's (the **Commission**) Investment Funds & Structured Products branch denying a receipt for The Bitcoin Fund's prospectus.

[2] This application engages foundational concepts of securities legislation: the prospectus requirement, the public interest jurisdiction of the Commission, and the purposes and principles of the Act. Specifically, this application is about the prospectus clearance and review process under the Act and the scope and limits of the Director's authority under the Act to refuse to issue a prospectus receipt.

[3] This application is not about the merits of the units to be offered by The Bitcoin Fund. It is not the role of securities regulators to approve or disapprove of the merits of securities being offered to the public. In fact, there is clear language to this effect on the face of the fund's prospectus and on the face page of every prospectus filed in Ontario and in Canada:

> No securities regulatory authority has expressed an opinion about these securities and it is an offence to claim otherwise.

[4] It is also outside the scope of the authority of securities regulators to immunize investors against risk or against loss. And, it is not the job of securities regulators to ban speculation or risk-taking.

[5] This application is not about the merits of bitcoin as an investment. As with other classes of assets or undertakings or businesses underlying an issuer, the investment potential of these underlying assets, undertakings and businesses are outside the scope of securities regulation.

[6] Bitcoin is a novel asset in an emerging and evolving market. It is a risky asset. Markets for novel asset classes and securities evolve over time. Emerging markets for securities and asset classes look and feel very different from mature markets. As markets evolve and mature, they change, either through the efforts of the market participants or through government intervention or regulation, or both.

[7] Some novel asset classes and securities products fail. They become tulip bulbs or dot.com's. Others succeed and become gold or the next great technology. Securities regulators are not mandated to try to pick winners and losers.

[8] The public interest jurisdiction under the Act is broad, but it is not infinite.

[9] Securities regulators are required to ensure broad public interest considerations are addressed and to balance the (sometimes) competing purposes and principles of the Act. Consumer protection policy considerations, which do not otherwise engage the public interest test under the Act, are outside the scope of jurisdiction of securities regulation and must be left to federal, provincial and territorial governments to address (or not address), as they see fit.

[10] The Director denied a receipt for The Bitcoin Fund's prospectus because of concerns about bitcoin, namely: concerns about bitcoin's liquidity and the integrity of the bitcoin markets, and concerns about The Bitcoin Fund's ability to value and safeguard its bitcoin and file audited financial statements.

[11] The concerns about bitcoin expressed by the Director, and by Staff in this proceeding, are warranted and should be taken seriously. But, for the reasons described herein, those concerns do not warrant denying a receipt for The Bitcoin Fund's prospectus. An Order will be issued setting aside the Director's decision and directing the Director to issue a receipt for a final prospectus of The Bitcoin Fund, provided the Director is satisfied that there are no grounds under s. 61 of the Act for the Director to refuse to issue a receipt for any such prospectus, other than the grounds set out in the Director's decision or these reasons.

II. BACKGROUND

A. The Application

[12] In the normal course, if an investment fund wants to distribute its securities to the public in Ontario, it begins by filing a preliminary prospectus with the Commission's Investment Funds & Structured Products branch (**IFSP**). Staff of the IFSP reviews, provides comments and may ask for changes to the preliminary prospectus. If the investment fund's

[1] *Securities Act*, RSO 1990, c S.5 (the **Act**), s 8.

preliminary prospectus meets the satisfaction of the IFSP, a final prospectus is submitted. If the IFSP Director (the **Director**) issues a receipt for a final prospectus, the prospectus can then be used to offer securities to the public. The investment fund becomes a reporting issuer in Ontario coincident with the issuance of the receipt for the final prospectus, and it is then subject to ongoing continuous disclosure and other public issuer obligations.

[13] There are two applicants in this proceeding: The Bitcoin Fund (the **Fund**) and 3iQ Corp. (**3iQ**) (collectively, the **Applicants**). The Fund will be a public, non-redeemable investment fund that will invest substantially all of its assets in bitcoin. It will be established as a trust under the laws of Ontario. 3iQ will be the Fund's investment fund manager and portfolio manager. 3iQ also manages a private investment fund that invests in crypto-assets.

[14] Beginning in late 2016, 3iQ had a series of meetings and exchanged correspondence with IFSP Staff to discuss the Fund and its proposed preliminary prospectus. IFSP Staff ultimately advised that they would not be prepared to recommend that the Director issue a receipt for the Fund's prospectus. 3iQ then publicly filed the Fund's preliminary non-offering prospectus. IFSP formally recommended against the Director issuing a receipt for that prospectus. 3iQ responded by requesting that the Director issue written reasons regarding the refusal to issue a receipt for the Fund's prospectus. 3iQ also waived its opportunity to be heard by the Director, on the basis that 3iQ would seek a hearing and review of the Director's decision. After receiving the Director's written decision, 3iQ and the Fund filed this application for a hearing and review.

[15] In this hearing and review application, the Applicants seek an order:

a. setting aside the Director's decision dated February 15, 2019, denying a receipt for the Fund's prospectus; and

b. directing the Director to issue a receipt for the Fund's final non-offering prospectus.

[16] The application was heard over four days, including two days of oral evidence. Most evidence was entered via affidavits. The Applicants relied on the affidavits and testimony of Shaun Cumby, who is an officer, director and shareholder of 3iQ. He has been 3iQ's Chief Investment Officer since 2018 and is responsible for its investment strategies. He was cross-examined on his affidavits by Staff at the hearing.

[17] Staff relied on the affidavits and testimony of Neeti Varma and Cosmin Cazan, both of whom were cross-examined by the Applicants. Ms. Varma is a Senior Accountant with IFSP and also a current Acting Manager within IFSP. Mr. Cazan is a Senior Investigator, Analytics and Market Specialist in the Market Abuse Team of the Commission's Enforcement Branch. He is on secondment from the Commission's Market Regulation Branch.

B. Bitcoin

[18] The Director denied a receipt for the Fund's prospectus because of concerns about Bitcoin.[2] Given that, I will first provide a brief general description of Bitcoin, its protocols and markets before turning to the specific issues for determination in this Application.

[19] Bitcoin is a digital crypto-asset that is not issued by any government, bank or central organization. It is based on the decentralized, open source protocol of the peer-to-peer Bitcoin computer network, which creates the decentralized public transaction ledger known as the "blockchain". All bitcoin transactions are recorded on the blockchain.

[20] The blockchain is a record of every bitcoin transaction and every bitcoin address associated with a quantity of bitcoin. The Bitcoin network, and its software applications, can interpret the blockchain to determine the bitcoin balance of any public bitcoin address listed in the blockchain. A bitcoin private key controls the transfer or "spending" of bitcoin from its associated public bitcoin address.

[21] People who use Bitcoin must establish a bitcoin wallet. A wallet provides the user with a public key that is used to derive an address for others to send them bitcoin, as well as a private key, which is used to unlock balances of the user's bitcoin to send to others. A bitcoin wallet may be software or a hardware device. In either case, the user is in control of the private keys that control the bitcoin. Alternatively, consumers may use a hosted bitcoin wallet where a provider protects the private keys, and the consumer accesses their accounts through a web browser or mobile application.

[22] Bitcoin private keys are stored in two different forms: "hot wallet" storage, whereby the private keys are stored on devices connected to the Internet, and "cold wallet" storage, where private keys are stored offline. Cold wallet storage is regarded as more secure because Internet-connected devices can be hacked, resulting in the theft of private keys

[2] As is common practice, these Reasons will refer to Bitcoin with a capital "B" when referring to the protocol or network, and bitcoin with a lowercase "b" when referring to the digital asset.

and the bitcoin that those private keys control.

[23] There are two ways to hold bitcoin: 1) directly purchase and hold bitcoin, or 2) invest in securities of companies or other entities that hold bitcoin. If purchasing bitcoin directly, investors generally use either Bitcoin teller machines or crypto-asset trading platforms (often referred to as crypto-currency exchanges). Crypto-asset trading platforms operate websites that facilitate the purchase and sale of bitcoin and other crypto-assets.

[24] Though some investment products can provide investors with exposure to bitcoin, most of these products are only available on a private placement basis. One example is the Grayscale Bitcoin Trust (**GBTC**), which is available in the exempt market for purchase by "accredited investors", as defined under applicable U.S. securities laws, and may be held in registered savings accounts. GBTC is also available to Canadians in the exempt market through a small number of financial institutions.

[25] Canadian investors can also indirectly obtain bitcoin and other crypto-assets by investing in reporting issuers that have crypto-assets as their primary asset and have obtained stock exchange listings by completing reverse take-overs on the Toronto Stock Exchange Venture Exchange (**TSXV**) or the Canadian Securities Exchange (**CSE**) (**RTO Crypto Issuers**). There are approximately ten RTO Crypto Issuers listed for trading on the TSXV. RTO Crypto Issuers are not investment funds and are not required to meet the securities law requirements for public investment funds.

III. PRELIMINARY ISSUES

[26] I will briefly address a few preliminary issues that were raised in this proceeding: 1) the burden and standard of proof, 2) the treatment of hearsay evidence, 3) the treatment of opinion evidence, and 4) a motion to file an authority that was issued after the close of the oral hearing.

[27] Staff concedes that it bears the burden of proof to show that a receipt should not be issued for the Fund's prospectus. Staff bears this onus under the civil standard of proof that is applied in all hearing and review applications: proof on a balance of probabilities.[3]

[28] The evidence adduced by both parties includes significant amounts of hearsay evidence. Hearsay evidence is admissible in Commission proceedings,[4] though the panel must determine the weight to be accorded to such evidence. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability.[5] I admitted all the tendered hearsay evidence, subject to my consideration of the weight to give it. I will address the issue of weight for specific hearsay evidence as it arises in my below analysis.

[29] The parties also adduced opinion evidence. Although opinion evidence is generally only admissible when provided by an expert witness, other opinion evidence may be admissible when founded on a lay witness's personal knowledge, observation, or experience.[6] The parties did not adduce any expert evidence. The parties did elicit some opinion evidence from their witnesses. The majority of the opinion evidence adduced was hearsay opinion evidence in the form of articles, research papers and other exhibits to the affidavits of the parties' witnesses. The opinion evidence was admitted subject to a determination of weight. I will address the issue of weight for specific opinion evidence as it arises in my below analysis.

[30] After the close of the oral hearing, on October 18, 2019, Staff brought a motion seeking that the Panel consider a decision of the Division of Trading and Markets of the U.S. Securities and Exchange Commission (the **SEC**) dated October 9, 2019. That decision concerned an application by an exchange for a proposed rule change to allow the listing and trading of shares of the Bitwise Bitcoin ETF Trust. The Applicants opposed the motion. Staff seeks to file the decision as a relevant authority that was not issued at the time of the hearing. I accept it on that basis, and not as evidence of the findings of fact made by the Division of Trading and Markets of the SEC on the evidentiary record that was before it. As I will discuss below, I distinguish this decision and several similar SEC decisions from the current case.

IV. ISSUES

[31] A hearing and review of a Director's decision is a fresh consideration of the matter. The Commission may confirm the Director's decision or substitute its own decision, making such other decision as the Commission considers proper.[7]

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[3] *FH v McDougall*, 2008 SCC 53, [2009] 3 SCR 41 at para 40.
[4] *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 15(1).
[5] *Sunwide Finance Inc (Re)*, 2009 ONSEC 20, (2009) 32 OSCB 4671 at para 22, citing *Starson v Sway*, 2003 SCC 32, [2003] 1 SCR 722 at para 115.
[6] *Banks (Re)*, (2003) 26 OSCB 3377 at para 17, citing A. Bryant, J. Sopinka & S. Lederman, *The Law of Evidence in Canada*, 2d ed. (Toronto: Butterworths, 1999) at 605-607.
[7] Act, s 8(3).

The Commission need not show deference to the Director's decision.[8]

[32] Staff submits that I should confirm the Director's decision to refuse a receipt for the Fund's prospectus for the reasons given by the Director, which are:

a. Bitcoin is an illiquid asset, as defined in National Instrument 81-102 *Investment Funds* (**NI 81-102**).[9] Therefore, by holding bitcoin, the Fund would not comply with the restriction against holding illiquid assets set out in section 2.4 of NI 81-102.

b. It appears that it is not in the public interest for a receipt to be issued for the Fund's prospectus given concerns about:

i. the Fund's ability to value its assets for investors given the significant market integrity concerns regarding the trading of bitcoin;

ii. the security and safekeeping of the Fund's bitcoin; and

iii. the Fund's ability to file audited financial statements, as required.

[33] The Applicants submit that I should order the Director to issue a receipt for the Fund's prospectus.

[34] The Applicants submit that Staff has not shown that bitcoin is an illiquid asset as defined in NI 81-102. On the contrary, the Applicants submit that trading platforms and over-the-counter (**OTC**) desks for trading bitcoin promote reliable price discovery so that the Fund can value its bitcoin and provide sufficient liquidity for the Fund to dispose of bitcoin, as required to satisfy redemption requests.

[35] The Applicants submit that Staff has not demonstrated that issuing a receipt for the Fund's prospectus would not be in the public interest. They submit that the concerns identified by Staff are speculative and not demonstrated by the evidence. The Applicants argue that Staff failed to prove their above concerns on a balance of probabilities.

[36] The Applicants submit that the Fund would comply with all aspects of NI 81-102 and should not be held to a different standard just because it will hold bitcoin. Refusing a receipt for the Fund's prospectus, they say, would deter future innovators, like the Fund, which seek to bring professional management to new asset classes like bitcoin, while mitigating the associated risks.

[37] The two main issues that arise from the parties' submissions are:

a. Is bitcoin an illiquid asset such that the Fund will not be compliant with the NI 81-102 restrictions on illiquid assets?

b. Is issuing a receipt for the Fund's prospectus not in the public interest?

V. IS BITCOIN AN ILLIQUID ASSET SUCH THAT THE FUND WILL NOT BE COMPLIANT WITH THE NI 81-102 RESTRICTIONS ON ILLIQUID ASSETS?

A. Law on Liquidity

[38] A receipt for a prospectus shall be refused where the prospectus does not comply with the Act or regulations. Specifically, s. 61(2)(a) of the Act provides that the Director shall not issue a receipt for a prospectus if it appears to the Director that the prospectus does not comply in any substantial respect with any of the requirements of the Act or the regulations.

[39] NI 81-102 is one of the regulations with which investment fund prospectuses must comply.[10] Under NI 81-102, there are restrictions on the amount of illiquid assets that a non-redeemable investment fund (such as the Fund) can hold or purchase. The rationale for these restrictions is that illiquid assets are generally more difficult to value, for the purposes of calculating an investment fund's net asset value, than liquid assets. As a result, where a non-redeemable investment fund has a large proportion of its assets invested in illiquid assets, it may raise concerns about the accuracy of the fund's net asset value and the amount of any fees calculated with reference to the net asset value.[11]

[8] *Triax Growth Fund Inc (Re)*, 2005 ONSEC 16, (2005) 28 OSCB 10139 at para 25.
[9] (2000), 23 OSCB (Supp 59).
[10] Subsection 1(1) of the Act defines "regulations" to include rules made under s 143 of the Act. NI 81-102 is a rule made under s 143 of the Act, and therefore a regulation for the purpose of s 61(2)(a).
[11] NI 81-102CP, s 3.3.1.

[40] Accordingly, the Fund would be prohibited from purchasing more than 20% of its net asset value in illiquid assets and holding more than 25% of its net asset value in illiquid assets for a period of 90 days or more.[12]

[41] The definition of "illiquid asset" is set out in NI 81-102 to include:[13]

> a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the investment fund…

[42] If bitcoin meets this definition of illiquid assets for the purposes of NI 81-102, then the Fund would not comply with NI 81-102, and s. 61(1)(2)(a) of the Act provides that a receipt for the Fund's prospectus shall be refused.

B. Analysis

[43] Staff submits that a receipt for the Fund's prospectus should not be issued because bitcoin is an illiquid asset as defined in NI 81-102. Therefore, the Fund, which would hold bitcoin, would not comply with the restriction against holding illiquid assets in section 2.4 of NI 81-102.

[44] I do not agree with Staff's submission and, for the following reasons, I find that Staff has not shown that bitcoin is an illiquid asset, as defined in NI 81-102.

[45] Staff submits that bitcoin is not currently traded on market facilities comparable to the Toronto Stock Exchange (**TSX**), where trading activities are subject to real-time monitoring. There is also no central source for trading data concerning bitcoin. Staff argues that the publicly available trading volume data for bitcoin may be inaccurate and the Fund may have difficulties acquiring or liquidating its assets. Staff also notes that the Fund's prospectus itself acknowledges potential liquidity issues, stating that the Fund may not always be able to acquire or liquidate its assets at a desired price, because bitcoin are still maturing assets.

[46] Staff adduced evidence about inaccurate trading data (along with allegations of fake and manipulated trading discussed in greater detail in the public interest analysis below) through the affidavits and attached exhibits, and testimony of Mr. Cazan and Ms. Varma. Much of their evidence was about crypto-assets, generally, rather than specifically addressing liquidity issues for bitcoin. I give no weight to their evidence insofar as it relates to non-bitcoin crypto-asset trading, and non-registered exchange trading.

[47] I find that there is sufficient evidence of real volume and real trading in bitcoin on registered exchanges in large dollar size, both in absolute terms and compared to other markets for commodities and equities, which constitutes a liquid market.

[48] The regulation does not define the term "market facility" that is found in the definition of "illiquid asset". Staff argues that "market facility" should be interpreted to imply some form of established and mature trading facility or network, in order to promote a robust valuation of an investment fund's assets.

[49] I disagree and find that Staff's interpretation of "market facility" is unduly narrow. I agree with the Applicants' submission that "market facility" is a market that provides sufficient liquidity for disposition of a fund asset and that promotes price discovery for calculating an asset's net asset value.

[50] I also find that there is sufficient evidence that such market facilities currently exist for bitcoin. The Applicants adduced evidence about trading volume, data from the various markets and published price and volume information. That evidence included evidence about bitcoin trading platforms (including evidence about average daily volume in USD), the bitcoin OTC market, the bitcoin futures market, and the size of the bitcoin market. The evidence shows that substantial volumes of bitcoin trade daily on market facilities, many of which are regulated. These market facilities provide a liquid market for promoting price discovery for valuing the Fund's assets and for disposing of bitcoin to satisfy redemption requests.

[51] Trading platforms for trading bitcoin promote reliable price discovery so that the Fund can value its bitcoin and provide sufficient liquidity. The top ten online trading platforms for bitcoin, which account for virtually all of the economic bitcoin trading, traded over USD $550 million in bitcoin on a daily basis, as of April 2019. By early June 2019, daily trading volume for bitcoin on these ten platforms had increased to over USD $900 million. The bitcoin market has narrow spreads on and between trading platforms.

[12] NI 81-102, s 2.4.
[13] NI 81-102, s 1.1.

[52] In addition to the trading platforms, OTC trading desks facilitate larger bitcoin transactions. Since the precise volumes traded in the OTC market are unknown, I place little weight on this evidence. However, Mr. Cumby did state in his evidence that the trading volume may be as large as, if not larger than, the volume traded on trading platforms, and his evidence on this point was uncontroverted.

[53] Many of the bitcoin trading platforms and OTC desks are regulated by the New York State Department of Financial Services (**New York State**) under the so-called BitLicense, a comprehensive scheme for regulating virtual currency businesses. Regardless of the OTC trading volume, trading volumes for bitcoin exceed trading volumes for some liquid Canadian equities and funds.

C. Conclusion on Liquidity

[54] For the above reasons, I conclude that, in so far as Staff has not demonstrated that bitcoin is an illiquid asset, the Fund will be compliant with the NI 81-102 restrictions on illiquid assets.

[55] Staff has not identified any other requirements of the Act or the regulations with which the Fund does not comply. Therefore, s. 61(2)(a) of the Act does not apply to the Fund's prospectus and does not preclude the Director's issuance of a receipt for the Fund's prospectus.

[56] In this proceeding, there is no issue engaging s. 61(2) of the Act (*i.e.*, the 'blue sky' laws) other than the issue regarding liquidity, which is addressed above. The public interest becomes the only remaining issue, which I turn to next.

VI. IS ISSUING A RECEIPT FOR THE FUND'S PROSPECTUS NOT IN THE PUBLIC INTEREST?

A. Law on the Public Interest Test

[57] Subsection 61(1) of the Act provides that the Director "shall issue a receipt for a prospectus filed … unless it appears to the Director that it is not in the public interest to do so."

[58] The Commission has a broad discretion under the Act to determine what is or is not in the public interest. However, its discretion must be exercised with some caution and restraint,[14] and is not unlimited. The Commission must exercise its jurisdiction in a manner consistent with the purposes and fundamental principles set out in the Act, and must not focus on one purpose at the expense of the others.[15]

[59] The Commission does not need to find a breach of Ontario securities law in order to exercise its public interest jurisdiction and refuse a receipt for the Fund's prospectus.[16] It is sufficient that issuing a receipt to the Fund would be inconsistent with Ontario securities law or the animating principles underlying that law, or an abuse of shareholders or the capital markets.[17]

[60] The Applicants and Staff made submissions on the scope of the Commission's public interest jurisdiction under s. 61(1), including referring me to several decisions of the Commission or a Director of the Commission in which s. 61(1) was considered.[18] Having regard to those submissions, I am not persuaded that the Commission's public interest jurisdiction under s. 61(1) is broader or narrower than articulated above.

[61] In particular, the inclusion of the phrase "it appears" in s. 61(1) does not mean that the standard of proof under s. 61(1) is lower than a balance of probabilities. In this regard, I agree with and adopt the Commission's reasons in *Dhillon*.[19] Accordingly, the inclusion of the phrase "it appears" does not mean that the Commission's public interest jurisdiction under s. 61(1) is necessarily broader than under the sections of the Act that do not contain this phrase.

[62] Staff submits that issuing a receipt for the Fund's prospectus is not in the public interest because the operational risks inherent in the Fund cannot be adequately managed at this time. The operational risks identified by Staff are concerns about:

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[14] See *e.g.*, *Magna International Inc (Re)*, 2010 ONSEC 13, (2010) 34 OSCB 1290 (***Magna***) at para 186.
[15] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 SCR 132 at paras 39-41.
[16] *Biovail Corporation (Re)*, 2010 ONSEC 21, (2010) 33 OSCB 8914 at paras 373-89; *Canadian Tire Corp (Re)*, (1987) 10 OSCB 857 at para 130, aff'd *Canadian Tire Corp v CTC Dealer Holdings Ltd* (1987), 59 OR (2d) 79 (Div Ct).
[17] *Magna* at para 186.
[18] *ONE Financial Corp (Re),* (2012) 35 OSCB 3083; *Biocapital Biotechnology & Healthcare Fund (Re)*, (2001) 24 OSCB 2659; *Inland National Capital Ltd (Re),* (1996) 19 OSCB 2053; *Tricor Holdings Co Inc (Re)*, (1988) 11 OSCB 4059.
[19] *Dhillon (Re)*, 2018 ONSEC 14, (2018) 41 OSCB 3053 at paras 14-24.

a. the Fund's ability to value its assets for investors given the significant market integrity concerns regarding the trading of bitcoin;

b. the security and safekeeping of the Fund's bitcoin; and

c. the Fund's ability to file audited financial statements, as required.

[63] I will first consider each of the operational risks that Staff has identified. I will then consider whether Staff has established that issuing a receipt for the Fund's prospectus is not in the public interest.

B. Valuation and Market Manipulation

[64] Under National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**),[20] the Fund will be required to calculate its net asset value using the fair value of its assets and liabilities. "Fair value" means either: 1) the market value based on reported prices and quotations in an active market or, if such market value is unreliable or unavailable, 2) a value that is fair and reasonable in all of the circumstances.[21]

[65] The Applicants propose to value the Fund's bitcoin by reference to an index maintained by MV Index Solutions GmbH (**MVIS**). The index is called the MVIS CryptoCompare Institutional Bitcoin Index (**MVIBTC**). MVIS is regulated as an index administrator by the German Federal Financial Supervisory Authority. The MVIBTC is calculated by CryptoCoin Comparison Ltd., based on transaction data from multiple exchanges and markets (**MVIBTC Platforms**), which have entered into information sharing agreements with CryptoCoin. The MVIS pricing benchmarks comply with the European Union benchmark regulations and the International Organisation of Securities Commissions regulations.

[66] Staff submits that the Fund will not be able to arrive at a net asset value that satisfies the requirements of NI 81-106. Staff argues that there are issues with the proposed valuation methodology and a number of concerns with several of the MVIBTC Platforms. Staff points to allegations of price distortion caused by market manipulation, such as wash trading, spoofing, pump-and-dump schemes, abusive trading and fake trading patterns. Some MVIBTC Platforms lack formal market surveillance tools and some allow for employees to trade on their own platforms, raising conflict of interest issues.

[67] Staff argues further that the MVIBTC is not based on the required "active market" because the reported bitcoin prices do not reflect "actual and regularly occurring market transactions on an arm's length basis".[22] Rather, Staff argues that the majority of the reported bitcoin trading is fake, occurring on trading platforms with limited monitoring and regulatory oversight, if any. Staff says that no "active market" or even a "fair and reasonable" value for bitcoin currently exists because of arbitrage, whereby bitcoin pricing on "bad platforms" invariably affects the bitcoin pricing on "good platforms".

[68] Although the risk of price manipulation associated with crypto-asset markets is real and Staff's concerns in this regard are genuine, for the reasons that follow, I find that Staff has not established that the Fund will be unable to arrive at a net asset value that satisfies the requirements of NI 81-106.

[69] I place considerable weight on the Fund's investment parameters and restrictions that are set out in the Fund's prospectus and confirmed by Mr. Cumby's evidence:

a. the Fund will invest in bitcoin, not in all crypto-assets,

b. the Fund will be static and will pursue a buy and hold strategy and not an active trading strategy, and

c. the Fund will only buy and sell bitcoin on regulated exchanges.

[70] The Fund will invest in bitcoin only. While there is evidence of market manipulation and the associated risks, there is also sufficient evidence of a real market in bitcoin, with real trading. Though that real trading may be somewhat impacted by fake trading and though other crypto-asset trading and unregistered market trading may have some knock-on effect, Staff has not proven that true price discovery in the bitcoin market is prevented by insufficient 'true trading' or price manipulation, at least on the regulated exchanges.

[71] While the Applicants acknowledge the existence of wash trading and fake volume on certain bitcoin trading platforms, there is less evidence of wash trading or fake volume in the bitcoin-to-USD markets on the top ten platforms.

[20] (2005), 28 OSCB 4911.
[21] NI 81-106, s 14.2.
[22] Companion Policy to National Instrument 81-106 - *Investment Fund Continuous Disclosure,* (2005) 28 OSCB 4949 and (Supp-1) 1, as amended, s 9.4.

[72] Staff did not demonstrate that the purpose of such trading was to manipulate the price of bitcoin or that wash trading or fake volume has had a significant effect on bitcoin prices. On the evidence before me, the purpose of wash trading and fake volume is to attract crypto-asset traders and issuers of new crypto-assets by creating the illusion that a platform has liquidity.[23] The evidence of other types of market manipulation identified by Staff also did not establish systemic and sustained manipulation of the price of bitcoin.

[73] I also place weight on the evidence of the steps the Applicants have taken to mitigate the existing risks of manipulation. While the risks of price manipulation in the bitcoin spot market still exist, 3iQ has mitigated the potential impact on the Fund's valuation through several steps: its selection of MVIBTC as the index, the use of a professional investment manager experienced in bitcoin markets, and the Fund's use of the non-redeemable investment fund structure.

[74] The Fund intends to use the MVIBTC to calculate the net asset value of the Fund's bitcoin. MVIBTC is composed of bitcoin market prices drawn from 22 trading platforms and is provided by MVIS, a regulated index administrator. The methodology for MVIBTC reduces the ability of manipulation on any one platform to distort MVIBTC and therefore the valuation of the Fund's bitcoin. I give credit to the Applicants for evolving the valuation methodology that it proposes to use for the Fund. Staff characterized their past changes as "a moving target" and asked me to draw a negative inference. I view the Applicants' evolving methodology as evidence of the Applicants' willingness to adapt, and I would hope that the Fund would continue to evolve its methodology in this regard over time, if circumstances warrant it.

[75] Mr. Cumby is a professional investment manager experienced in bitcoin markets. I rely on his evidence that he is confident he can price the bitcoin for the purposes of the Fund. The MVIBTC's calculations are based on publicly available transaction data. 3iQ will therefore be able to confirm the accuracy of the MVIBTC, including through references to other alternative bitcoin pricing sources. However, in the event the MVIBTC price is not available or is believed to be unreliable, 3iQ has discretion as the portfolio manager to apply a bitcoin value that it considers to be fair and reasonable in all the relevant circumstances. 3iQ, as manager of the Fund, will have the ability to use other pricing sources to value the Fund's bitcoin if, in the exercise of its professional judgment, it determines that MVIBTC is not fairly valuing the Fund's bitcoin. This discretion is available to all registered investment fund managers, pursuant to NI 81-106.[24]

[76] I also note that other bitcoin holdings have been successfully valued. For instance, 3iQ has operated a private crypto-asset fund for over a year and has not encountered an issue valuing those crypto-assets. In addition, GBTC, which has units available to retail investors in the exempt market, holds over $1 billion USD worth of bitcoin and there was no evidence of any issues valuing its bitcoin.

[77] The fact of the Fund's static portfolio is also a key means of mitigation. The Fund has ample time to plan for annual redemption and monthly reporting of pricing. This will help to mitigate the impact of any price manipulation at the margins of the markets. The analysis might have been somewhat different for an exchange-traded fund (**ETF**), which is distinguished by its nature. An ETF would require continuous purchases and sales to balance and rebalance the portfolio frequently and daily. An ETF is, by nature and design, a dynamic trading vehicle. In contrast, the Fund only has to report pricing monthly and provide for potential redemption yearly, so the impact of any manipulation in the market is mitigated for the Fund. Therefore, as a non-redeemable investment fund that does not create or redeem units on a daily basis, the Fund is less susceptible to price manipulation than an ETF or other type of investment vehicle that must create or redeem units daily.

[78] In reaching a determination, I distinguish the Bitcoin decisions issued by the SEC to date.[25] These decisions concerned applications by exchanges for proposed rule changes to allow the listing and trading of shares of bitcoin-based ETFs. All but one of the seven submitted SEC decisions were issued by the Division of Trading and Markets of the SEC under delegated authority, and not issued by the SEC Commissioners themselves. The SEC decisions applied a different legal test to different evidence, with a different burden of proof, which burden was not placed on agency staff. In the most recent SEC decision filed by Staff on October 18, 2019, the Division of Trading and Markets of the SEC summarizes its considerations as follows:[26]

> Although the Commission is disapproving this proposed rule change, the Commission emphasizes that its disapproval does not rest on an evaluation of whether bitcoin, or blockchain technology

[23] T. Rodgers, *95% Of Volume Could Be Wash Trading As Bitcoin Price Surges* (4 April 2019); Y. Khatri, *Executives at Korean Crypto Exchange UPbit Indicted for Fraud* (21 December 2018); O. Williams-Grut, *Crypto exchanges are charging up to $1 million per ICO to list tokens: 'It's pure capitalism'* (12 March 2018), Exhibits 28, 29 and 30 to C. Cazan's Affidavit sworn May 16, 2019.
[24] NI 81-106, s 14.2(1.2)(b).
[25] *Winkelvoss Bitcoin Trust* (Division of Trading and Markets, March 10, 2017), *SolidX Bitcoin Trust* (Division of Trading and Markets, March 28, 2017), *Winkelvoss Bitcoin Trust* (SEC Panel, July 26, 2018), *ProShares Trust II* (Division of Trading and Markets, August 22, 2018), *Direxion Shares ETF Trust II* (Division of Trading and Markets, August 22, 2018), *GraniteShares ETP Trust* (Division of Trading and Markets, August 22, 2018),and *Bitwise Bitcoin ETF Trust* (Division of Trading and Markets, October 9, 2019) (collectively, the **SEC decisions**).
[26] *Bitwise Bitcoin ETF Trust* (Division of Trading and Markets, October 9, 2019), p 3.

> more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, NYSE Arca has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and, in particular, the requirement that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices.
> (footnotes omitted)

[79] The SEC decisions related to different products, with different structures. There are key material differences between ETFs and the Fund, including the amount of exposure to bitcoin and the frequency at which bitcoin is required to be purchased, sold and valued. Accordingly, I give little if any weight to the SEC's consideration of proposed rule changes to allow the listing and trading of shares of bitcoin-based ETFs.

[80] Although this doesn't impact my conclusion about price manipulation and valuation, it is worth noting that bitcoin is a commodity, not an equity or other security. As such, the bitcoin market should be examined like other commodity markets and not held to the standards applicable to securities markets. The risk of market manipulation exists in all commodity markets. Many of Staff's stated concerns could apply equally to other commodities, such as precious metals or foreign currencies. Staff did not persuade me that bitcoin is more susceptible to manipulation than other commodity products.

C. Safeguarding of the Fund's Assets

[81] To safeguard its assets, the Fund will use a regulated Canadian trust company as its custodian and a New York State trust company as a sub-custodian. The custodian, Cidel Trust Company (**Cidel**), is regulated by the federal Office of the Superintendent of Financial Institutions. It has experience as a custodian and with managing relationships with sub-custodians. The sub-custodian, Gemini Trust Company, LLC (**Gemini**), is regulated by New York State and is a qualified custodian under NI 81-102.

[82] Staff raises two concerns with the safeguarding of the Fund's assets: 1) risk of loss, and 2) lack of insurance.

[83] Regarding the risk of bitcoin losses, Staff points to the risks of unauthorized access to the private keys that are used to send bitcoin. Once a private key is taken or lost, it is difficult or impossible to recover a crypto-asset. Staff also submits that it is commonplace for crypto-asset trading platforms to have substantial losses due to hackings, insider thefts, phishing scams and other security breaches. Though Staff acknowledges that Gemini has security controls in place, they argue that the specific implementation of the security controls is important. Gemini does not yet have a System and Organization Controls for Service Organizations (**SOC 2**) type 2 report, which would provide assurance and comfort that Gemini's security controls are working effectively. Staff says that, in the absence of a SOC 2 type 2 report, there is no available information on the effectiveness of Gemini's internal controls.

[84] On the issue of the lack of insurance, Staff submits that neither the Fund nor Cidel will maintain insurance against the loss of bitcoin because such insurance is not available in Canada on economically reasonable terms. Gemini will have insurance for the Fund's bitcoin when it is held in hot wallets, which will only be for brief periods when it is sold to satisfy redemption requests. Otherwise, the Fund's bitcoin will be held offline, in "cold storage", which is less vulnerable to hacking, and will be uninsured.[27] Though Gemini will maintain commercial crime insurance for the digital assets in its hot wallets, Gemini will have no insurance for the bitcoin held in cold storage. Therefore, since the Applicants will hold the vast majority of its bitcoin in cold storage, there will be no government or private insurance in place for most of the Fund's bitcoin assets.

[85] Like any valuable commodity, I accept that bitcoin can be stolen or lost. The Applicants also concede that point. But Staff did not establish that Cidel or Gemini, specifically, do not follow sufficient practices for safeguarding bitcoin. Rather, Staff relies on evidence of examples of losses incurred by crypto-asset trading platforms, all but one of which were unregulated and most of which involved hacks of hot wallets. I am not persuaded that there was sufficient evidence that professional, regulated crypto-asset custodians, like Gemini, have suffered losses of customer assets.

[86] I recognize the operational risks presented by the Applicants' proposed safeguarding arrangements. However, in evaluating Staff's concerns in the circumstances of this Application, I also weigh the risks of the Applicants' proposed arrangements against the safekeeping risks that face investors who hold bitcoin directly, whether on crypto-asset trading platforms or otherwise. Staff has not shown that the bitcoin held by the Fund will be inadequately safeguarded despite the Fund's use of qualified custodians and other protective measures.

[27] A "cold storage" wallet is created and stored on a computer with no access to a network, *i.e.*, an "air-gapped" computer with no ability to access the Internet.

[87] The general safeguarding of assets is an "operational risk" that is highlighted in the Fund's prospectus. Staff's concerns on this issue were sufficiently addressed by the Applicants for the purposes of this Application. In particular, I note that:

a. Cidel is a regulated Canadian trust company;

b. Cidel is an experienced custodian;

c. Gemini is regulated by New York State and is subject to a regulatory regime specific to crypto-assets. Every two years, New York State conducts an examination to determine the safety of the conduct of Gemini's business;

d. Gemini has a legal obligation under New York law to establish and maintain an effective cybersecurity program and a written business continuity and disaster recovery plan;

e. Gemini is a qualified custodian under NI 81-102;

f. Gemini has over $100 million in assets (which could be used to satisfy any settlement or judgment in favor of the Fund, even without insurance); and

g. Gemini will have insurance for the Fund's bitcoin to the extent it is held in hot wallets, for the brief periods when the bitcoin is sold to satisfy redemption requests. Otherwise, the Fund's bitcoin will be held offline in cold storage. This approach to insurance appears to be the standard industry practice.

[88] Gemini obtained a SOC 2 type 1 report from a reputable accounting firm and expects to obtain a SOC 2 type 2 report by the end of 2019. I accept the Applicants' submission that the absence of a SOC 2 type 2 report does not necessarily mean that Gemini's controls are inadequate. Rather, Gemini has not yet satisfied an auditor applying a particular assurance that Gemini's controls are effective. On the other hand, there is some evidence that Gemini has effective internal controls, including Gemini's operation for over three years without a loss from its hot or cold wallets.

D. Auditability of the Fund's Financial Statements

[89] Investment funds that are reporting issuers are required to file financial statements that have been audited and contain an auditor's report.[28] When an investment fund relies on a service organization,[29] the controls at the service organization are relevant to the investment fund's audit. Service organizations may rely on subservice organizations, such as Cidel relies on Gemini as the sub-custodian for the Fund. Pursuant to Canadian Auditing Standards, an investment fund's auditor must obtain information about the operating effectiveness of controls at an investment fund's subservice organization.

[90] The Fund's proposed auditor is Raymond Chabot Grant Thornton LLP (**Raymond Chabot**), which is a participating firm under National Instrument 52-108 – *Auditor Oversight*. Raymond Chabot is a qualified and reputable auditor, with experience in the auditing of companies holding crypto-assets.

[91] When auditing the Fund to meet the objectives of the Canadian Auditing Standards, Raymond Chabot will need to obtain audit evidence about the operating effectiveness of Gemini's controls. To do so, Raymond Chabot could: 1) obtain a SOC 2 type 2 report from Gemini's auditor, or 2) perform appropriate testing of Gemini's controls (either directly or by using another auditor to perform such testing). As already noted, Gemini does not currently have a SOC 2 type 2 report, but anticipates having one by the end of 2019.

[92] Staff submits that it is not in the public interest to issue a receipt for the Fund's prospectus because of concerns over the Fund's ability to file audited annual financial statements in the future.

[93] Staff points to the current lack of Gemini's SOC 2 type 2 report and the fact that Gemini may deny Raymond Chabot access to test the operating effectiveness of Gemini's controls. Gemini's agreement with 3iQ does not oblige Gemini to provide access to their systems, books or records. Though Gemini provided a letter to the Commission in support of the Application, Gemini's letter did not address the issue of access for Raymond Chabot if a SOC 2 type 2 report is not available.

[94] More generally, Staff also notes significant deficiencies in previous audits of other reporting issuers holding crypto-assets. There is no comparable audit of a public investment fund holding crypto-assets because no such investment fund currently exists. But Staff notes that the Canadian Public Accountability Board (**CPAB**), which is

[28] NI 81-106, s 2.1.

[29] The Canadian Auditing Standard 402, s 8(e) defines a "service organization" as a third-party organization that provides services to user entities where those services are part of the entity's information systems relevant to financial reporting.

Canada's audit regulator, issued an inspection report of audits of three other crypto-miners and/or reporting issuers holding crypto-assets. That report found significant deficiencies in all three reviewed files.

[95] I note that the CPAB report confirmed that the identified deficiencies were in the course of being remediated. The CPAB report did not identify the nature of the deficiencies found for the audits of other issuers, including whether the deficiencies pertained to crypto-asset mining activities (which the Fund would not do) or crypto-assets other than bitcoin (which the Fund would not hold). The CPAB report does not provide a reasonable basis for me to conclude that Raymond Chabot will be unable to audit the Fund.

[96] Overall, I find that Staff has not shown that the Fund will be unable to obtain the required audit opinion. While I accept Staff's concerns about the availability of the SOC 2 type 2 report, I rely on the Applicants' evidence that a qualified and reputable auditor says it can conduct the audit, even without the report, and still comply with generally accepted auditing standards (**GAAS**).

[97] In coming to that determination, I consider the consequences of all three potential outcomes for the Fund's efforts to obtain audited financial statements, which are:

a. Gemini's auditor provides Raymond Chabot with a SOC 2 type 2 report,

b. in the absence of a report, Raymond Chabot performs appropriate testing of Gemini's controls (either directly or by using another auditor to perform such testing), or

c. the Fund is ultimately unable to obtain the required audit opinion.

[98] First, it remains possible that Gemini's auditor could provide Raymond Chabot with a SOC 2 type 2 report. There is evidence that work on Gemini's SOC 2 type 2 report is underway and a timely SOC 2 type 2 report remains possible. Staff's witness conceded on cross-examination that it remains possible for the report to be complete by the end of 2019.

[99] However, even if Gemini does not obtain a timely and satisfactory SOC 2 type 2 report, Raymond Chabot could still express the required unmodified audit opinion on the Fund's financial statements. SOC 2 type 2 reports are not required for audits of public investment funds. There is no dispute that it is possible for an auditor to give an unmodified audit opinion on a reporting issuer, despite the absence of a SOC 2 type 2 report for its sub-custodian. If no report is available, there are other acceptable methods for Raymond Chabot to evaluate Gemini's controls and render a clean audit report. Raymond Chabot would be required to obtain access to, or information from, Gemini and Staff has not shown that Gemini would refuse to provide it.

[100] The Applicants' evidence is that Raymond Chabot is prepared to conduct the audit. As a qualified auditor for public issuers, Raymond Chabot must conduct the audit in compliance with GAAS. In its letter dated March 14, 2019, Raymond Chabot indicates an understanding that NI 81-106 requires an external auditor to express an unmodified opinion on the annual financial statements and states that, for an unmodified opinion to be expressed, the auditor needs to obtain sufficient appropriate audit evidence, including as it relates to the Fund's digital assets. According to Raymond Chabot, such audit evidence may include evidence related to the existence, accuracy, valuation, allocation, and ownership of the Fund's digital assets. Such audit evidence may also include the evidence obtained from third parties, including from SOC reports, if deemed necessary.[30] It is notable that Raymond Chabot is the auditor of 3iQ's private fund and gave an unmodified opinion regarding the private fund's 2018 financial statements. In addition, other reporting issuers holding crypto-assets have obtained unmodified audit opinions on their financial statements.

[101] Finally, there is the possibility that the Fund will ultimately fail to deliver the required audit report. That operational risk is highlighted in the Fund's prospectus. If those circumstances arise in the future, Staff will have access to the normal course measures to address that deficiency, including a potential request for a cease trade order. For a Panel to intervene at this time, based only on the speculation that the Fund might not be able to obtain the required audit report, in pre-emptive circumstances of this sort, would be extraordinary. I reject Staff's submission that, *ex ante*, I should essentially decide now that the Fund is inauditable on the evidence before me.

E. Application of the Public Interest Test

[102] Having considered each of the operational risks identified by Staff, I now consider whether Staff has established that issuing a receipt for the Fund's prospectus is not in the public interest. As discussed above, the Commission's public interest jurisdiction is grounded in the purposes and fundamental principles set out in the Act. The purposes of the Act are as follows, and those that are relevant to my analysis are bolded:

[30] Letter from L. Roy, Raymond Chabot, to 3iQ Corp (14 March 2019), Exhibit Z to S. Cumby's Affidavit sworn April 12, 2019.

> **(a) provide protection to investors from unfair, improper or fraudulent practices;**
>
> **(b) foster fair and efficient capital markets and confidence in capital markets; and**
>
> (c) contribute to the stability of the financial system and the reduction of systemic risk.[31]

[103] I agree with the Applicants and Staff that the third purpose is not applicable in this proceeding.

[104] The fundamental principles set out in the Act are listed below, and those that I find most relevant to my analysis are bolded:[32]

> **1. Balancing the importance to be given to each of the purposes of this Act may be required in specific cases.**
>
> **2. The primary means for achieving the purposes of this Act are,**
>
> **i. requirements for timely, accurate and efficient disclosure of information,**
>
> **ii. restrictions on fraudulent and unfair market practices and procedures, and**
>
> **iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.**
>
> **3. Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission.**
>
> 4. The Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.
>
> 5. The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.
>
> **6. Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.**
>
> **7. Innovation in Ontario's capital markets should be facilitated.**

[105] With respect to the first fundamental principle above, I have balanced the importance given to both purposes that are relevant to my analysis, and I do not attach greater weight to either.

[106] Staff submits that investor protection in the context of s. 61(1) includes a consideration of the assets that the Fund proposes to hold. Staff emphasizes the need to protect investors from the operational risks Staff has identified, which result from the Fund proposing to hold bitcoin.

[107] Staff submits that the market for bitcoin is in its infancy and is too new to have been fully addressed by Ontario securities law. Staff refers to the consultation paper jointly published earlier this year by the Canadian Securities Administrators (**CSA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**),[33] as evidence of the early stage of regulation of bitcoin and other crypto-assets, and of the market integrity and investor protection concerns regulators have with crypto-assets. Staff makes a similar submission about the status of regulation of crypto-assets in the United States. In particular, Staff relies on the SEC decisions in which the SEC rejected proposed rule amendments to list and trade shares of ETFs that would primarily invest in bitcoin or bitcoin futures. Given that the bitcoin market and regulation of that market is in its infancy, Staff submits that the Fund's compliance with NI 81-102's requirements is not enough to exhaust the policy concerns that led to NI 81-102 in the first place or the policy concerns underlying s. 61(1) of the Act.

[31] Act, s 1(1).
[32] Act, s 2.1.
[33] Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Consultation Paper 21-402, *Proposed Framework for Crypto-Asset Trading Platforms* (14 March 2019).

[108] Each of the operational risks identified by Staff arises from the assets that the Fund proposes to hold – bitcoin – and not from the structure or management of the Fund.

[109] I do not agree with Staff's submission that investor protection under s. 61(1) necessarily extends to a consideration of the assets a fund proposes to hold or the markets in which those assets trade. If that analysis were applied to deny a receipt to the Fund, as Staff submits it should, it would amount to a ban on any funds holding bitcoin, regardless of their structure or management. Further, the length of Staff's proposed ban would be uncertain. Staff is effectively proposing a ban on funds holding bitcoin that would remain in place until Staff deems the market for bitcoin to have matured enough that Staff's concerns about the operational risks have diminished. Staff has not provided any authority for imposing such an indeterminate ban.

[110] Given that investors have other means of acquiring bitcoin, I question whether the ban proposed by Staff would protect investors from "unfair, improper or fraudulent practices",[34] as provided for under the Act's purposes. Instead of ensuring that investors could not invest in bitcoin, denial of the receipt would only ensure that investors could not invest in bitcoin through a public fund.

[111] Denying investors the opportunity to invest in bitcoin through a public fund would not promote fair and efficient capital markets and confidence in capital markets. Instead, it would suggest that investors should acquire bitcoin through unregulated vehicles, and capital market participants should be encouraged to create those vehicles.

[112] Imposing a ban of uncertain length on investment funds that propose to hold particular assets would not be timely, open or efficient, and would not provide certainty for capital market participants.

[113] In the Panel's view, investor protection under s. 61(1) of the Act is most often concerned with the issuer and matters that are within the issuer's control or power, like the structure of the fund and the operations of the issuer by the issuer's management and employees. For example, the Commission has refused a receipt where the issuer did not have a true business,[35] and where the issuer could not prove that an unacceptable person with prior securities related criminal convictions for fraud was not in charge of the fund.[36] Subsection 61(1) is less concerned with extraneous or external forces beyond the Fund's control or power, like the issues Staff has identified with the assets the Fund intends to hold and the markets in which those assets are traded.

[114] There are no allegations in this matter that the Applicants would engage in unfair, improper or fraudulent practices in their operations and management of the Fund and, in fact, the evidence is to the contrary; the Applicants intend to operate and manage the Fund in a prudent and professional manner. Furthermore, insofar as the operational risks identified by Staff relate to potential unfair, improper or fraudulent practices in the bitcoin markets, these practices are not within the Applicants' control or power. Rather, the evidence is that the Applicants are well aware of these operational risks and intend to take reasonable steps to mitigate them.

[115] The issue before me is not whether and how bitcoin or crypto-assets in general should be regulated. That issue is the subject of the joint consultation paper published by the CSA and IIROC and may also be a broader issue for governments of competent jurisdiction to consider within the scope of their legislative authority.

[116] The issuance of a receipt for the final prospectus of the Fund would promote efficient capital markets by creating an alternative to GBTC (which is available to Canadian retail investors in the secondary exempt market, but trades at a significant premium to its net asset value) and to RTO Crypto Issuers. The issuance of a receipt would also promote efficient capital markets by giving retail investors a means of diversifying their investment portfolios through access to an additional uncorrelated asset class.

[117] A refusal to issue a receipt would be contrary to the principle that business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.

[118] The issue before me is whether a receipt should be issued for the Fund. The issue is fund-specific. In that regard, the SEC decisions referred to by Staff are distinguishable. The SEC was applying a different legal test to a different type of fund. It was considering whether to amend the rules to permit the listing of bitcoin ETFs. The SEC was also dealing with matters where the burden of proof was on the exchanges proposing rule changes, not on the agency staff.

[119] An ETF needs to create and redeem units on a frequent and ongoing basis. In contrast, the Fund need only redeem units at specific times. The Fund is a static buy and hold fund. It does not propose to be an active trader and does not need to trade actively to meet redemption requests. An ETF is, by nature and design, a dynamic trading vehicle and

[34] Act, s 1(1)(a).
[35] *Inland National Capital Ltd (Re)*, (1996) 19 OSCB 2053.
[36] *Tricor Holdings Co Inc (Re)*, (1988) 11 OSCB 4059.

materially different than a static buy and hold fund. If the Fund were an ETF, that might have impacted my analysis of the risks identified by Staff, in particular, with regard to price manipulation risk.

[120] In addition to structuring the Fund so that it does not need to trade actively, the Applicants have sought to mitigate the risks posed by bitcoin and the bitcoin markets, by putting in place professional management, advisers and third-party service providers. 3iQ is also a registrant and as such, it must satisfy the proficiency, integrity and ongoing compliance requirements applicable to all registrants, which adds an additional measure of protection for investors.

[121] The notion of professionalizing investing in risky assets to mitigate risks should be encouraged, not discouraged. Ontario capital market participants should be encouraged to engage with the Commission, and not incentivized to avoid doing so.

[122] Pooling of investor funds under a professional management structure to address and mitigate risks in an underlying asset market is innovative and should be encouraged, especially when it provides an alternative to investors acquiring bitcoin through unregulated vehicles.

[123] Much has been said in the hearing of this matter about doors and gates; the front door and back door into Ontario's capital markets, and the gates that control access of retail investors to investment products in the public securities markets. While the parties' submissions in this regard did not impact my decision that Staff did not show, on a balance of probabilities, that issuing a receipt for the final prospectus would be contrary to the public interest, it is nevertheless worth addressing these issues relating to doors and gates, to provide some context.

[124] I disagree with Staff's submission that approving the Fund's final prospectus will open the floodgates to other public offerings of crypto-asset issuers.

[125] While I note the role of securities regulators as a front door gatekeeper of the capital markets through its function of approving prospectuses, it certainly isn't the only front door gatekeeper. Investment dealers and their salespersons are also gatekeepers for retail investors through their know your client, suitability and other obligations and duties to their retail clients. In addition, investment dealers must approve products for their shelves before their salespersons are permitted to sell the products, and it is yet to be seen whether and to what extent such approval will be forthcoming regarding these types of investment products. This investment dealer/salesperson gatekeeper role should not be disregarded or discounted.

[126] In addition, and as noted above, the Applicants have come through the front door for prospectus review and approval, and this behaviour should be encouraged.

[127] While this doesn't mean that every issuer coming in the front door for prospectus approval is entitled to approval (it does not), the front door prospectus approval process also needs to be viewed in the context of the back door to the Ontario capital markets that is still available.

[128] In Ontario and other Canadian jurisdictions, back door access to the public securities markets is available through one or more types of reverse take over corporate structures, whereby a private issuer with a business or assets combines with an existing public issuer (*i.e.*, reporting issuer) whose business is dormant or defunct, effectively becoming a public issuer without ever coming in the front door for prospectus review and approval. This backdoor access has resulted in some of the largest and most prominent issuer failures in the Canadian capital markets (*e.g.*, Sino-Forest Corporation and YBM Magnex International Inc., to name a few), with catastrophic financial consequences for investors in these issuers.

[129] It is outside the scope of this proceeding to address whether and to what extent the back door should be regulated or closed. Nevertheless, the fact of its existence, and the fact that, according to the evidence in this case, there are now approximately ten reporting issuers operating in Ontario that are RTO Crypto Issuers, which have accessed Ontario's capital markets in this back door fashion, is a factor that the Panel considers in addressing both the investor protection test in the purposes of the Act and the broader public interest test, as outlined above.

[130] Finally, and as noted above, while the public interest jurisdiction under the Act is broad, it is not unlimited. In the context of the purposes of the Act, investor protection means protection from "unfair, improper and fraudulent practices" and not risk. If there are consumer protection issues or investor protection issues or concerns in relation to the issues raised in the preceding sections that are beyond the scope of the jurisdiction of the Commission under the Act, it is incumbent upon governments of competent jurisdiction to address those concerns, within the scope of their powers.

[131] Having considered all of the operational risks identified by Staff, viewed through the lens of the public interest test in s. 61(1) of the Act, and as informed by the purposes and principles in ss. 1.1 and 2.1 of the Act, I find that the issuance of a receipt for the final prospectus of the Fund is not contrary to the public interest.

VII. CONCLUSION AND TERMS AND CONDITIONS

A. Conclusion

[132] Staff has not demonstrated that:

a. bitcoin is an illiquid asset such that the Fund will not be compliant with the restrictions on illiquid assets in NI 81-102, or

b. it is not in the public interest to issue a receipt for the Fund's prospectus, because of Staff's concerns regarding the integrity of the bitcoin markets, and the Fund's ability to value and safeguard the bitcoin it holds and file audited financial statements.

[133] Accordingly, I will order that the Director's decision be set aside and the Director issue a receipt for the Fund's prospectus.

B. Terms and Conditions

[134] Before closing arguments, I invited both Staff and the Applicants to provide submissions on the terms and conditions that may apply to an order that the Director issue a receipt for the Fund's prospectus, should I decide to make that order.

[135] Staff submits that, in the event the Director is ordered to issue a receipt, the order: 1) should recognize that there are remaining steps for completion before a final offering prospectus can be receipted, and 2) should be subject to several specific terms.

[136] Regarding outstanding steps, Staff submits that if the Applicants wish to proceed with an offering of the Fund, they must file a final prospectus that contains the information required by Form 41-101F2 – *Information Required in an Investment Fund*. The final prospectus would include additional information regarding the offering, such as pricing information and details regarding underwriters. Also, if the Fund anticipates offering units in Canadian jurisdictions outside of Ontario, Staff submits that the Applicants will likely still need to consult with other CSA jurisdictions and file a prospectus in those jurisdictions.

[137] In response, the Applicants delivered a draft preliminary prospectus for the Fund (the **July 2019 Preliminary Prospectus**) to the Panel and Staff in advance of the oral closing arguments in this Application. They also delivered a blackline tracking the changes to the non-offering prospectus that was filed in March 2019 to inform the record for this proceeding. 3iQ also confirmed that it does intend to offer units of the Fund to Canadian retail investors in all provinces and territories of Canada. The filing of a preliminary prospectus of the Fund across Canada would require at least one IIROC dealer to certify the prospectus as agent of the Fund and would customarily include a syndicate of several IIROC dealers as agents. 3iQ expects that, if an Order is granted directing the Director to issue a receipt, the preliminary prospectus of the Fund that will ultimately be filed will be substantially in the form of the July 2019 Preliminary Prospectus, subject to input from the agents' syndicate.

[138] Staff's proposed conditions for the Order address several issues:

a. insurance requirements for the Fund's bitcoin held in both hot wallets and cold wallets;

b. restrictions on the entities from whom the Fund may purchase bitcoin and to whom the Fund may sell bitcoin;

c. modified requirements for the quantity and quality of the pricing information that the Fund would use to value to its bitcoin; and

d. disclosure of the matters referred to above in any prospectus for which the Applicants seek a receipt.

[139] The Applicants submit that the Order should not prescribe any terms and conditions on the Fund, since all terms and conditions that must be satisfied prior to the issuance of a receipt are already prescribed in NI 81-102 and other applicable securities regulation.

[140] In the alternative, the Applicants propose a revised version of Staff's conditions. The Applicants accept the proposed conditions about insurance for bitcoin held in hot wallets and about disclosure of the matters referred to in the conditions. But the Applicants maintain that cold wallet insurance is not a necessary condition because Gemini is a qualified custodian under NI 81-102 and Gemini's cold storage has not suffered any previous losses. The Applicants also submit that there should be an expansion of Staff's proposed restrictions on the entities from whom the Fund may

purchase bitcoin: in addition to entities subject to the BitLicense regulations administered by New York State, or other comparable regulatory requirements, the permitted sources should be expanded to include entities registered or licensed as dealers in securities or commodity futures contracts in Group of Seven (G7) countries. The Applicants submit that such an expanded list of counterparties would facilitate the best execution for the Fund.

[141] Finally, the Applicants submit that they are prepared to consider Staff's views regarding the composition and methodology for a modified valuation index. Although the Applicants maintain that MVIBTC is an appropriate index, they are amenable to using a different index. But the Applicants argue that Staff's proposed condition is not practical if it requires valuation to use pricing information from at least five entities that hold BitLicenses. The Applicants point to restrictions on information-sharing maintained by certain bitcoin sources and the limited number of BitLicensed trading platforms. Instead, 3iQ proposes a condition to value its bitcoin using pricing information primarily from at least three entities that hold a BitLicense, and verified with reference to the price of Chicago Mercantile Exchange bitcoin futures and the market price for bitcoin quoted on Bloomberg under ticker XBTUSD BGN.

[142] I find that the Applicants have taken reasonable steps to mitigate the risks associated with the Fund and the bitcoin markets through the structure of the Fund and the use of professional and qualified third-party service providers. The Applicants submit that the Order should not prescribe any terms and conditions on the Fund as described in paragraph [139] but, in the alternative, proposed modifications to Staff's proposed terms and conditions if the Panel were to decide to impose terms and conditions.

[143] Specifically, the Applicants submit that they are prepared if necessary to accept the condition requested by Staff about insurance for bitcoin held in hot wallets. The Panel's view is that it is not necessary to impose this condition on the Applicants. While such hot wallet insurance may be currently available and available on a reasonable cost basis, there is no assurance that such insurance will always be available to the Applicants or, if available, that it will be so on a reasonable cost basis. The Panel does not wish to impose a condition that may either be unable to be met in the future or that may only be met on a basis that is very expensive to the Fund. If 3iQ determines in its professional discretion that obtaining such insurance is prudent for the Fund then it should do so, but will not be required to do so by this Panel.

[144] The Applicants addressed Staff's proposed restrictions on the entities from whom the Fund may purchase bitcoin and also Staff's views regarding proposed restrictions on the composition and methodology for the Fund's valuation index. The Panel does not wish to impose conditions that may unduly restrict or constrain 3iQ's ability to exercise its professional judgement regarding these two matters. In both of these cases, as the bitcoin market evolves, it may in fact be prudent for 3iQ to adapt and evolve its practices and methodology. As such, the Panel does not accept Staff's submissions that any constraints should be imposed in this regard by way of terms of conditions in the Order.

C. Order

[145] For the above reasons, I will order that:

a. the Director's decision is set aside; and

b. the Director shall issue a receipt for a final prospectus of The Bitcoin Fund, provided the Director is satisfied that there are no grounds under subsection 61 of the Act for the Director to refuse to issue a receipt for any such prospectus, other than the grounds set out in the Director's decision dated February 15, 2019 or in these reasons.

Dated at Toronto this 29th day of October, 2019.

"Lawrence P. Haber"

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Chapter 4

Cease Trading Orders

4.1.1 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
Advantex Marketing International Inc.	01 November 2019	
Besra Gold Inc.	01 November 2019	
Chemesis International Inc.	01 November 2019	
CellCube Energy Storage Systems Inc.	01 November 2019	
CordovaCann Corp.	01 November 2019	
EGF Theramed Health Corp.	01 November 2019	
Eviana Health Corporation	01 November 2019	
Lifestyle Global Brands Limited	01 November 2019	
Melior Resources Inc.	01 November 2019	
Peeks Social Ltd.	09 September 2019	01 November 2019
Star Navigation Systems Group Ltd.	01 November 2019	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

4.2.2 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
CannTrust Holdings Inc.	15 August 2019	

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.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).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Dividend Growth Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated October 31, 2019
NP 11-202 Preliminary Receipt dated November 4, 2019
Offering Price and Description:
Maximum: $300,000,000 - Preferred Shares and Class A Shares
Price: Preferred Shares - $10.23 and Class A Shares - $4.93
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2981059

Issuer Name:
Harvest Canadian Consolidated Energy Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated October 29, 2019
NP 11-202 Preliminary Receipt dated October 29, 2019
Offering Price and Description:
Maximum Offering: $• - • Units
Minimum Offering: $20,000,004 - 1,666,667 Units
Price per Unit: $12.00
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
PI Financial Corp.
Promoter(s):
N/A
Project #2979123

Issuer Name:
Life & Banc Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated October 31, 2019
NP 11-202 Preliminary Receipt dated November 1, 2019
Offering Price and Description:
$300,000,000.00 - Preferred Shares and Class A Shares
Price: Preferred Shares $10.31 and Class A Shares - $7.89
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2981052

Issuer Name:
Vertex Bond Alpha Fund
Vertex Canadian Equity Alpha Fund
Vertex Liquid Alternative Fund
Vertex Liquid Alternative Fund Plus
Vertex U.S. Equity Alpha Fund
Principal Regulator - British Columbia
Type and Date:
Amendment #2 to Final Simplified Prospectus dated January 11, 2019
Received on October 31, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Vertex One Asset Management Inc.
Project #2831383

Issuer Name:
TD Active Global Income ETF
TD Active Global Real Estate Equity ETF
TD Active U.S. High Yield Bond ETF
TD Canadian Long Term Federal Bond ETF
TD Income Builder ETF
TD Q Canadian Dividend ETF
TD Q Global Dividend ETF
TD Q Global Multifactor ETF
TD Q U.S. Small-Mid-Cap Equity ETF
TD U.S. Long Term Treasury Bond ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Oct 31, 2019
NP 11-202 Final Receipt dated Nov 4, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2968330

Issuer Name:
DFA World Equity Portfolio
Principal Regulator – British Columbia
Type and Date:
Preliminary Simplified Prospectus dated Oct 24, 2019
NP 11-202 Final Receipt dated Oct 29, 2019
Offering Price and Description:
Class F Units, Class I Units and Class A Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2968387

Issuer Name:
Counsel All Equity Portfolio
Counsel Balanced Portfolio
Counsel Canadian Dividend
Counsel Canadian Growth
Counsel Canadian Value
Counsel Conservative Portfolio
Counsel Fixed Income
Counsel Global Dividend
Counsel Global Real Estate
Counsel Global Small Cap
Counsel Global Trend Strategy
Counsel Growth Portfolio
Counsel High Income Portfolio
Counsel High Yield Fixed Income
Counsel International Growth
Counsel International Value
Counsel Money Market
Counsel Monthly Income Portfolio
Counsel Retirement Accumulation Portfolio
Counsel Retirement Foundation Portfolio
Counsel Retirement Income Portfolio
Counsel Retirement Preservation Portfolio
Counsel Short Term Bond
Counsel U.S. Growth
Counsel U.S. Value
IPC Multi-Factor Canadian Equity
IPC Multi-Factor International Equity
IPC Multi-Factor U.S. Equity
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Oct 29, 2019
NP 11-202 Final Receipt dated Oct 31, 2019
Offering Price and Description:
Series A securities, Series Private Wealth I securities, Series T securities, Series O securities, Series FT securities, Series B securities, Series IB securities, Series IT securities, Series I securities, Series C securities and Series F securities **Underwriter(s) or Distributor(s):**
N/A
Promoter(s):
N/A
Project #2965013

Issuer Name:
Vertex Enhanced Income Fund
Vertex Growth Fund
Vertex Value Fund
Principal Regulator – British Columbia
Type and Date:
Amendment #2 to Final Simplified Prospectus dated October 21, 2019
NP 11-202 Final Receipt dated Oct 31, 2019
Offering Price and Description:
Class F Units and Class B Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2921460

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Issuer Name:
TD Q U.S. Small-Mid-Cap Equity ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 29, 2019
NP 11-202 Final Receipt dated Nov 1, 2019
Offering Price and Description:
Class A units and Class O units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2910703

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NON-INVESTMENT FUNDS

Issuer Name:
Ag Growth International Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus (NI 44-101) dated Received on October 30, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2979951

Issuer Name:
Almaden Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Amendment dated November 1, 2019 to Preliminary Shelf Prospectus (NI 44-102) dated October 4, 2019
NP 11-202 Preliminary Receipt dated November 1, 2019
Offering Price and Description:
US$100,000,000.00
Common Shares
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2973185

Issuer Name:
BSR Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated November 1, 2019
NP 11-202 Preliminary Receipt dated November 1, 2019
Offering Price and Description:

US$500,000,000
Units
Debt Securities
Warrants
Subscription Receipts
The price per Offered Unit is stated in U.S. dollars.
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2980993

Issuer Name:
Fire & Flower Holdings Corp. (formerly Cinaport Acquisition Corp. II)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated November 1, 2019
NP 11-202 Receipt dated November 4, 2019
Offering Price and Description:
$200,000,000.00 - COMMON SHARES WARRANTS UNITS SUBSCRIPTION RECEIPTS DEBT SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2950423

Issuer Name:
GFL Environmental Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated November 1, 2019 to Preliminary Long Form Prospectus dated July 19, 2019
NP 11-202 Preliminary Receipt dated November 1, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
J.P. Morgan Securities Canada Inc.
BMO Nesbitt Burns Inc.
Goldman Sachs Canada Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Barclays Capital Canada Inc.
Raymond James Ltd.
TD Securities Inc.
Merrill Lynch Canada Inc.
CIBC World Markets Inc.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
National Bank Financial Inc.
Promoter(s):
-
Project #2941753

Issuer Name:
Golden Star Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated October 28, 2019
NP 11-202 Receipt dated October 29, 2019
Offering Price and Description:
U.S.$300,000,000 Common Shares Preferred Shares Subscription Receipts Warrants Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2970477

Issuer Name:
H2O INNOVATION INC.
Principal Regulator - Quebec
Type and Date:
Amendment dated October 29, 2019 to Preliminary Short Form Prospectus (NI 44-101) dated October 28, 2019
NP 11-202 Preliminary Receipt dated October 30, 2019
Offering Price and Description:
$14,001,750.00
13,335,000 Subscription Receipts each representing the right to receive one Unit
Underwriter(s) or Distributor(s):
Desjardins Securities Inc.
Canaccord Genuity Corp.
Acumen Capital Finance Partners Limited
Beacon Securities Limited
Industrial Alliance Securities Inc,
Haywood Securities Inc.
Promoter(s):
-
Project #2978517

Issuer Name:
Kalon Acquisition Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus (TSX-V) dated October 30, 2019
NP 11-202 Receipt dated November 1, 2019
Offering Price and Description:
$400,000.00 - $550,000.00
4,000,000 Common Shares up to a maximum of 5,500,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #2967410

Issuer Name:
Open Text Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated October 31, 2019
NP 11-202 Preliminary Receipt dated November 1, 2019
Offering Price and Description:
U.S. $1,500,000,000.00
Common Shares
Preference Shares
Debt Securities
Depositary Shares
Warrants
Purchase Contracts
Units
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2980787

Issuer Name:
Titan Medical Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus (NI 44-101) dated October 31, 2019
NP 11-202 Receipt dated November 1, 2019
Offering Price and Description:
Minimum: US $15,000,000 (33,333,333 Units)
Maximum: US $25,000,000 (55,555,556 Units)
Price: US $0.45 per Unit
Underwriter(s) or Distributor(s):
BLOOM BURTON SECURITIES INC.
Promoter(s):
-
Project #2969015

Issuer Name:
Trilogy Metals Inc. (formerly NovaCopper Inc.)
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus (NI 44-102) dated October 31, 2019
NP 11-202 Receipt dated October 31, 2019
Offering Price and Description:
US$100,000,000 - Common Shares, Warrants to Purchase Common Shares, Share Purchase Contracts, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2974492

Issuer Name:
Triple Flag Precious Metals Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 4, 2019
NP 11-202 Preliminary Receipt dated November 4, 2019
Offering Price and Description:
C$* - * Common Shares
Price: C$* per Offered Share
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
RBC Dominion Securiites Inc.
TD Securities Inc.
Promoter(s):
Triple Flag Mining Elliott and Management Co-Invest GP Ltd.
Project #2981424

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Excel Funds Management Inc.	Investment Fund Manager	October 31, 2019
Voluntary Surrender	Excel Investment Counsel Inc.	Portfolio Manger and Exempt Market Dealer	October 31, 2019
Voluntary Surrender	IEPP Investment Management Inc.	Portfolio Manager	November 1, 2019

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.3 Clearing Agencies

13.3.1 CDS Clearing and Depository Services Inc. – Material Amendments to CDS Rules Related to Liquidity Risk Management – Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES RELATED TO LIQUIDITY RISK MANAGEMENT

The Ontario Securities Commission is publishing for 30-day public comment material amendments to the CDS Rules relating to liquidity risk management. The purpose of the proposed rules amendments is to enhance CDS's liquidity risk management by requiring Participants to provide money in Canadian dollars as the sole type of eligible collateral permitted in satisfying certain collateral requirements such as the Default Fund and the Supplemental Liquidity Fund.

The comment period ends on December 9, 2019.

A copy of the **CDS Notice** is published on our website at http://www.osc.gov.on.ca.

13.3.2 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Rules, Risk Manual and Operations Manual with Respect to Liquidity Risk Management – Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

PROPOSED AMENDMENTS TO THE RULES, RISK MANUAL AND OPERATIONS MANUAL WITH RESPECT TO LIQUIDITY RISK MANAGEMENT

The Ontario Securities Commission is publishing for public comment the amendments to CDCC's Rules, Risk Manual and Operations Manual with respect to liquidity risk management. The purpose of the proposed amendments is to enhance CDCC's observance of Principle 7 of the PFMIs by requiring Clearing Members to satisfy their contributions to CDCC's Clearing Fund by using only one form of acceptable eligible collateral: money in Canadian dollars.

The comment period ends December 9, 2019.

A copy of the **CDCC Notice** is published on our website at http://www.osc.gov.on.ca.

13.3.3 CDS Clearing and Depository Services Inc. – Material Amendments to CDS Rules Related to Tiered Participation Information Sharing – Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO
CDS RULES RELATED TO
TIERED PARTICIPATION INFORMATION SHARING

The Ontario Securities Commission is publishing for a 30-day public comment period material amendments to the CDS Rules relating to tiered participation information sharing.

The purpose of the proposed rule amendments is to specify that, upon request from CDS Clearing, Participants will be required to provide information in order to ensure observance of CDS Clearing's obligations under *Principle 19 – Tiered Participation Arrangements* of the CPMI-IOSCO Principles for Financial Market Infrastructures.

The comment period ends on December 6, 2019.

A copy of the CDS Notice is published on our website at http://www.osc.gov.on.ca.

CDS Clearing and Depository Services Inc. (CDS®)

MATERIAL AMENDMENTS TO
CDS PARTICIPANT RULES RELATED TO
TIERED PARTICIPATION INFORMATION SHARING

NOTICE AND REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED RULE AMENDMENTS

The proposed rule amendments will specify that, upon request from CDS Clearing, Participants will be required to provide such information as CDS Clearing may reasonably request in order to ensure observance of CDS Clearing's obligations under *Principle 19 – Tiered Participation Arrangements* of the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs). While disclosure and information sharing obligations are enshrined in several sections of the CDS Participant Rules, CDS Clearing, and CDS Clearing's principal regulators, are of the view that CDS Clearing's general observance of, *inter alia*, the PFMIs, CDS's regulatory oversight by the Bank of Canada, National Instrument 24-102 – *Clearing Agency Requirements* (NI 24-102), and of CDS's provincial recognition framework, will benefit from further clarification in the Rules as to the scope of such obligations.

The proposed rule amendments, to CDS Participant Rule 5.1, consist of the addition of a requirement to share information for the purposes of monitoring Participants' activities, and are provided in Appendix "A" to this Notice.

B. NATURE AND PURPOSE OF THE PROPOSED RULE AMENDMENTS

The legal basis for participation, and the operational relationship, which exists between CDS Clearing and its direct Participants is a fundamental aspect of Canada's indirect securities holding regime. This regime also results in the establishment of indirect clearing arrangements, pursuant to which a clearing broker provides services to a third-party broker. The permissibility of the foregoing structure carries with it the obligation, on CDS Clearing and on CDS Clearing Participants, to ensure continued and fulsome observance of the PFMIs and the implementation of same under Canadian federal and provincial oversight.

Principle 19 of the PFMIs, originally published in April, 2012, requires CDS Clearing to identify, monitor and manage the material risks to CDS Clearing arising from the tiered participation arrangements of its direct Participants. In general, tiered participation arrangements occur when a firm (i.e., an indirect participant, which is defined as an entity that is not bound by the rules of a Financial Market Infrastructure (FMI), but whose transactions are cleared, settled, or recorded by or through the FMI) relies on the services provided by another firm (i.e., a direct Participant) to use CDS Clearing's Securities Settlement Service (SSS), Central Counterparty (CCP) service and/or Cross-Border DTCC (X-Border) services.

The Bank of Canada incorporated the PFMIs, including Principle 19, into their risk management standards for systemically important financial market infrastructures (FMIs) in 2012, and such FMIs have been expected to observe all applicable principles since 31 December, 2016.

Principle 19 applies to CDS Clearing at the provincial level pursuant to Section 3.1 of NI 24-102. CDS Clearing's recognition orders and decisions (2012), as subsequently varied and amended (Ontario Securities Commission Recognition Order, Section 9.1; *Autorité des marches financiers* Recognition Decision, Section 28.1) required that CDS Clearing observe the PFMIs as soon as possible, and continue to so require.

In CDSX, the principal Participant categories are Extenders of Credit, Settlement Agents, and Receivers of Credit. These Participants have direct access to CDSX and are contractually bound by CDS Clearing's Participant Rules. Indirect participants access CDS Clearing's SSS, CCP and X-Border FMI services via direct Participants. In other words, they are clients of CDS Clearing's direct Participants.

CDS Clearing has not, to-date, formalized tiered participation arrangements pursuant to which CDS Clearing recognizes, acknowledges, or maintains a contractual relationship with, the clients of our direct Participants except for purposes of ensuring that beneficial security-holders are not deprived of the rights attached to such holdings. CDS Clearing does, however, retain the ability to both monitor Participant activities in CDSX and to require declarations from CDS Clearing Participants in respect of the securities which CDS Clearing holds on those participants' behalf. In 2017, CDS Clearing presented a Tiered Participation Risk Management Framework and requested certain information and data for the purpose of compliance with PFMI Principle 19. CDS Clearing prepared (i) a risk management framework to ensure that CDS operates within its risk appetite statement; and (ii) a participant questionnaire for the purpose of collecting information from its direct Participants in order to monitor and assess their activities in CDS Clearing's Services as such activities may relate to the magnitude and scope of their respective tiered participation arrangements.

The 2017 questionnaire was voluntary, and was circulated to a limited sample of Participants whose operations were known, by CDS, to include acting as a correspondent/clearing participant for non-participants. The results of the request were collected, analyzed, and presented at the end of 2017. To be assured of timely, complete and detailed survey responses, however, CDS is proposing the present rule amendments to make provision of tiered participation details mandatory for Participants.

The proposed rule amendments are intended to enhance the comprehensiveness of Tiered Participation information gathering by CDS and to improve data related to indirect Participant activity profiles and related risk exposures.

C. IMPACT OF THE PROPOSED RULE AMENDMENTS

(a) CDS Clearing – The proposed rule amendments will align CDS Clearing with the PFMI requirements and with the legal and risk management practices of CDS Clearing's global comparators.

(b) CDS Participants – The proposed rule amendments will codify Participants' obligation to share information related to tiered participation arrangements with CDS Clearing. The proposed rule amendments take account of other legislative or regulatory requirements to which Participants may be subject and of the possibility that disclosure to CDS Clearing may, in certain circumstances, be limited by the foregoing.

(c) Other Market Participants – The proposed rule amendments will have no impact on other market participants. The proposed rule amendments take account of other legislative or regulatory requirements to which Participants may be subject and of the possibility that disclosure of information related to other market participants (i.e., Participant clients) to CDS Clearing may, in certain circumstances, be limited by the foregoing.

(d) Securities and Financial Markets in General – The proposed rule amendments will have no impact on securities and financial markets in general.

C.1 Competition

The proposed rule will apply to all CDS Clearing Participants. As concerns fair access, no CDS Clearing Participant will be disadvantaged or otherwise prejudiced by the introduction of these changes.

C.2 Risks and Compliance Costs

The proposed rule amendments are intended to enhance CDS Clearing's information gathering abilities and risk management capacity and clarify Participant information provision obligations.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

The proposed rule amendments are intended more clearly and specifically to align CDS Clearing's Participant Rules with the PFMIs.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

CDS legal and risk management staff prepared documents describing the proposed rule amendments.

D.2 Rule Amendment Drafting Process

The proposed rule amendments were drafted by CDS Clearing legal staff in consultation with CDS Clearing risk management, and was subsequently submitted for consultation to the CDS Legal Drafting Group ("**LDG**") on October 17, 2019. The LDG comments on the drafting of proposed amendments to the CDS Participant Rules and may suggest further revisions or additions. The LDG's membership includes representatives from a cross-section of the CDS Participant community and meets on an *ad hoc* basis.

D.3 Issues Considered

As noted above, in drafting the proposed rule amendments, CDS Clearing's primary consideration was to update its risk management practices with respect to PFMI 19 and to clarify CDS Clearing's Participant Rules related thereto.

D.4 Consultation

CDS Clearing received input from the following Participant Advisory Committee:

- The CDS Legal Drafting Group reviewed the Rule Amendment (17 October, 2019)

CDS Clearing's regulators attend Participant Advisory Committee meetings as observers.

The Rule Amendment was presented to the Risk Management and Audit Committee and the Board of Directors on October 31, 2019.

D.5 Alternatives Considered

CDS Clearing legal personnel, in consultation with CDS Clearing risk management, reviewed existing CDS Clearing Participant Rules and determined that, while the Participant Rules provide for the monitoring of Participants' activities by CDS Clearing, and for the potential restriction or suspension of a Participant's system functionality, the obligation to provide information in furtherance of CDS Clearing's observance of regulatory oversight requirements was not explicitly or specifically stated.

CDS Clearing personnel considered whether it was appropriate to make specific reference to CDS Participant's existing obligation to provide notice of material change to information (Rule 2.2.11), but determined that the most appropriate location for the proposed amendments was in the context of CDS Clearing's existing rights to monitor Participants, and to take action consequent to such monitoring (Rule 5.1.3).

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the *Securities Act (Ontario)*, by the British Columbia Securities Commission pursuant to Section 24(d) of the *Securities Act (British Columbia)* and by the Autorité des marchés financiers pursuant to section 169 of the *Securities Act (Québec)*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act*.

This Rule Amendment is expected to become effective upon approval by the Recognizing Regulators following the prescribed public notice and comment period.

E. TECHNOLOGICAL SYSTEM CHANGES

The proposed Rule Amendment is not expected to have an impact on technological systems, or re-quire changes to such systems for CDS, CDS Participants, or other market participants.

F. COMPARISON TO OTHER CLEARING AGENCIES

CDS Clearing's principal international comparator is the Depository Trust & Clearing Corporation (DTCC), and its two operating subsidiaries, the Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC) in the United States. CDS Clearing reviewed the DTC & NSCC Rules, and determined that the rules of both DTC and NSCC contained specific reference to the provision of information related to clients of DTC and NSCC members. The PFMI disclosure frameworks for each for each of DTC and NSCC also refer to this authority in the context of DTC and NSCC's management of risk related to tiered participation arrangement.

G. PUBLIC INTEREST ASSESSMENT

CDS Clearing has determined that the proposed rule amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed Rule Amendment should be in writing and submitted within 30 calendar days following the date of publication of this Request for Comments in the Ontario Securities Commission Bulletin to:

Legal Department
Attn: Tony Hoffmann, Senior Legal Counsel
CDS Clearing and Depository Services Inc.
100 Adelaide Street West, Suite 300
Toronto, Ontario M5H 1S3

e-mail: tony.hoffmann@tmx.com

Copies should also be provided to the Autorité des marchés financiers, British Columbia Securities Commission and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

Philippe Lebel
Corporate Secretary and
Executive Director, Legal Affairs

Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Télécopieur: (514) 864-6381
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Télécopieur : 604 899-6506
Courriel : aiaria@bcsc.bc.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS RULE AMENDMENT

Appendix “A” contains text of current CDS Participant Rules marked to reflect the proposed Rule Amendment as well as text of these rules reflecting the adoption of the proposed Rule Amendment.

APPENDIX "A"
PROPOSED CDS RULE AMENDMENT

Text of CDS Participant Rules marked to reflect proposed amendment	Text of CDS Participant Rules reflecting the adoption of proposed amendment
[marked text of rules – deletions are strikethrough text and in red font]	
5.1.3 Monitoring of Participants Monitoring of Participants In order to measure potential risks to CDS and the Services, CDS shall monitor the Transactions, Settlement obligations and activity in the system of that Participant. Acting in good faith and in accordance with the Rules, CDS shall take steps to ensure the due performance by the Participant of its obligations to CDS, when CDS considers such action to be necessary to protect the interests of CDS and to be in the best interest of all other Participants. In taking such steps, CDS shall take into consideration any relevant information, including the financial stability or regulatory status of the Participant, the amount of its obligations to CDS, the market volatility, liquidity, concentration or market float of any issue of Securities held by or to be delivered by or to the Participant, and any other factor that CDS considers relevant. The steps CDS may take include: (a) requiring the Participant to provide additional Contributions to any Fund or Link Fund of which the Participant is a Member, pursuant to Rules 5.8.2 or 10.6.4; (b) requiring the Participant to grant to CDS a security interest in Specific Collateral, CCP Collateral, or Cross-Border Specific Collateral pursuant to Rules 5.2.3, 5.14.3, or 10.5.3; (c) decreasing the Participant's System-Operating Cap pursuant to Rule 5.10.18; restricting the Participant's right to use system functionality in any Function or Service pursuant to Rule 2.7.1; (d) releasing ~~giving~~ information relating to the Participant's CCP Contributions Total in accordance with Rule 5.14.2; or (e) requiring the Participant to provide, upon request by CDS, information sufficient, in a form acceptable to CDS, to demonstrate the Participants satisfactory financial condition and operational capability, including, but not limited to, information in respect of the Participant's operations and in respect of its risk management practices with respect to CDS's Services used by the Participant for another Person or Persons; provided, however, that the provision of any such financial or operational information to CDS shall be subject to Rule 3.6 and to any applicable laws or rules and regulations of regulatory bodies having jurisdiction over the Participant which relate to the confidentiality of records. (f) taking any other feasible steps consistent with the Rules.	5.1.3 Monitoring of Participants Monitoring of Participants In order to measure potential risks to CDS and the Services, CDS shall monitor the Transactions, Settlement obligations and activity in the system of that Participant. Acting in good faith and in accordance with the Rules, CDS shall take steps to ensure the due performance by the Participant of its obligations to CDS, when CDS considers such action to be necessary to protect the interests of CDS and to be in the best interest of all other Participants. In taking such steps, CDS shall take into consideration any relevant information, including the financial stability or regulatory status of the Participant, the amount of its obligations to CDS, the market volatility, liquidity, concentration or market float of any issue of Securities held by or to be delivered by or to the Participant, and any other factor that CDS considers relevant. The steps CDS may take include: (a) requiring the Participant to provide additional Contributions to any Fund or Link Fund of which the Participant is a Member, pursuant to Rules 5.8.2 or 10.6.4; (b) requiring the Participant to grant to CDS a security interest in Specific Collateral, CCP Collateral, or Cross-Border Specific Collateral pursuant to Rules 5.2.3, 5.14.3, or 10.5.3; (c) decreasing the Participant's System-Operating Cap pursuant to Rule 5.10.18; restricting the Participant's right to use system functionality in any Function or Service pursuant to Rule 2.7.1; (d) releasing information relating to the Participant's CCP Contributions Total in accordance with Rule 5.14.2; or (e) requiring the Participant to provide, upon request by CDS, information sufficient, in a form acceptable to CDS, to demonstrate the Participants satisfactory financial condition and operational capability, including, but not limited to, information in respect of the Participant's operations and in respect of its risk management practices with respect to CDS's Services used by the Participant for another Person or Persons; provided, however, that the provision of any such financial or operational information to CDS shall be subject to Rule 3.6 and to any applicable laws or rules and regulations of regulatory bodies having jurisdiction over the Participant which relate to the confidentiality of records. ~~(e)~~(f) taking any other feasible steps consistent with the Rules.

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