

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990 c. S.5 as amended

AND

IN THE MATTER OF AN APPLICATION BY THE
TRUSTEES OF CENTRAL GOLDTRUST and SILVER BULLION TRUST

AND

IN THE MATTER OF SPROTT ASSET MANAGEMENT GOLD BID LP,
SPROTT ASSET MANAGEMENT SILVER BID LP, SPROTT ASSET
MANAGEMENT LP, SPROTT PHYSICAL GOLD TRUST and
SPROTT PHYSICAL SILVER TRUST

APPLICATION

TO: THE SECRETARY OF THE COMMISSION
Ontario Securities Commission
19th Floor, 20 Queen Street West
Toronto, Ontario
M5H 3S8

This application to the Ontario Securities Commission is brought by the applicants, the Trustees of Central GoldTrust ("**CGT**") and Silver Bullion Trust ("**SBT**" and together with CGT, the "**Applicants**"), in connection with the unsolicited take-over bid by Sprott Asset Management Gold Bid LP, Sprott Asset Management LP and Sprott Physical Gold Trust (collectively, "**Sprott Gold**") to acquire all of the outstanding units of CGT in exchange for units of Sprott Physical Gold Trust (the "**Sprott Gold Bid**") and the unsolicited take-over bid by Sprott Asset Management Silver Bid LP, Sprott Asset Management LP and Sprott Physical Silver Trust (collectively with Sprott Gold, "**Sprott**") to acquire all of the outstanding units of SBT in exchange for units of Sprott

Physical Silver Trust (the "**Sprott Silver Bid**", collectively with the Sprott Gold Bid, the "**Sprott Bids**").

This application will come on for a hearing on a date, at a time and at a place to be set by the Secretary of the Commission.

1. The Applicants make an application for:
 - (a) an order permitting this application to be heard;
 - (b) a permanent order pursuant to section 127(1)2 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") that:
 - (i) trading by Sprott cease in securities of CGT and SBT tendered to the Sprott Bids; and
 - (ii) trading cease in the units of Sprott Physical Gold Trust and Sprott Physical Silver Trust to have been issued as consideration pursuant to the Sprott Bids;
 - (c) an order pursuant to section 127(1)5 of the Act that Sprott immediately disseminate to the public a news release advising CGT and SBT unitholders that:
 - (i) as a result of the Commission's orders, Sprott cannot acquire CGT and SBT units or issue the consideration pursuant to the Sprott Bids in payment for tendered CGT and SBT units;
 - (ii) specifies that withdrawal rights are exercisable and continue to be exercisable; and
 - (iii) summarizes how CGT and SBT unitholders can exercise their rights of withdrawal;

- (d) an order pursuant to section 127(1)5 of the Act that Sprott, within 10 days, deliver to every CGT and SBT unitholder a notice containing the information regarding withdrawal rights described in paragraph (c);
 - (e) an order pursuant to section 104(1)(c) of the Act that Sprott honour any valid notice of withdrawal made by or on behalf of CGT and SBT unitholders;
 - (f) an order pursuant to section 104(e) of the Act that the directors, trustees and senior officers of Sprott cause Sprott to honour any valid notice of withdrawal made by or on behalf of CGT and SBT unitholders;
 - (g) an order pursuant to section 127(1)2 of the Act that Sprott cease trading in CGT and SBT units unless and until Sprott satisfies the Commission that the above provisions have been complied with and that all of the CGT and SBT units tendered to the Sprott Bids have been returned to CGT and SBT unitholders;
 - (h) a permanent order pursuant to section 127(1) of the Act that trading by Sprott cease in securities of CGT and SBT in the event Sprott uses or purports to use any power of attorney or proxy granted pursuant to a letter of transmittal delivered in connection with the Sprott Bids before the units represented by such letter of transmittal are withdrawn by or on behalf of the CGT or SBT unitholder; and
 - (i) such alternative or further and other relief as counsel may request and the Commission may order.
2. The grounds for the application are:

Overview of the Applicants' Position

- (a) The Sprott Bids do not comply with Ontario securities laws, and the Sprott Bids and the conduct of Sprott in connection with the Sprott Bids have had and continue to have coercive and prejudicial effects on the holders of units of CGT and SBT. It is contrary to the public interest to allow the Sprott Bids to continue.

Breach of Identical Consideration Requirement

- (b) The Sprott Bids violate a fundamental principle of take-over bid regulation set forth in section 97(1) of the Act that all holders of the same class of securities of an offeree issuer shall be offered identical consideration.
- (c) Under the terms of the Sprott Bids, CGT and SBT unitholders will receive units of Sprott Physical Gold Trust or Sprott Physical Silver Trust, respectively. The units of Sprott Physical Gold Trust and Sprott Physical Silver Trust have a cash redemption feature and a physical gold or physical silver redemption feature. The cash redemption feature is available to all unitholders. The physical gold and silver redemption features are only available to certain unitholders holding a significant number of units.
- (d) The cash redemption feature permits all unitholders to redeem their units for cash at a redemption price per unit equal to 95% of the lesser of: (i) the volume-weighted average trading price of the units; and (ii) the net asset value of the redeemed units on the applicable redemption date. Accordingly, units redeemed using the cash redemption feature are always redeemed at a discount to net asset value.
- (e) The physical gold or silver redemption feature permits only those unitholders holding a sufficient number of units to redeem their units for physical gold or silver bullion, as applicable. Unitholders whose units are redeemed for physical gold or silver bullion, as applicable, will be entitled to receive a redemption price equal to 100% of the net asset value of the redeemed units on the applicable redemption date. Only CGT unitholders who hold units that are at least equivalent to the value

of one London Good Delivery bar of gold and SBT unitholders who hold units that are at least equivalent to the value of ten London Good Delivery bars of silver may exercise the physical redemption feature. Each London Good Delivery bar of gold currently has a market value in excess of U.S. \$430,000 and ten London Good Delivery bars of silver have a market value of approximately U.S. \$139,000. Any fractional amount of redemption proceeds in excess of the value of one London Good Delivery bar of gold or ten London Good Delivery bars of silver, as applicable, will be paid in cash at a rate equal to 100% of the net asset value of the redeemed units on the applicable redemption date. Accordingly, unlike the cash redemption feature available to all holders to have their units redeemed at a discount to net asset value, only those unitholders that hold a sufficient number of units (i.e. based on prevailing market prices, having a value in excess of U.S. \$430,000 in the case of gold or U.S. \$139,000 in the case of silver) may exercise the physical redemption feature and have their units redeemed at 100% of net asset value.

- (f) The result of Sprott Physical Gold Trust's and Sprott Physical Silver Trust's incongruent cash and physical gold/silver redemption features is that CGT and SBT unitholders will not receive identical consideration under the Sprott Bids. CGT and SBT unitholders who hold a sufficient number of units (being mostly institutional holders) will have their CGT or SBT units, as applicable, acquired under the Sprott Bids at a premium (because the units of Sprott Physical Gold Trust or Sprott Physical Silver Trust will be redeemable for physical gold or silver bullion at 100% of net asset value), and other unitholders (being mostly retail holders) will not

participate in that premium (because the units of Sprott Physical Gold Trust or Silver Physical Silver Trust received by such holders will be redeemable only for cash at a discount to net asset value of at least 5%). It is anticipated that such benefits will be conferred on only approximately 138 of the approximately 20,500 unitholders of CGT, representing less than 1% of unitholders. In the case of SBT, such benefits will be conferred on only approximately 35 of the approximately 2,343 unitholders of SBT, representing approximately 1.5% of unitholders.

- (g) Sprott has announced in its public disclosure that three of the largest CGT unitholders entitled to receive this premium, Polar Securities (through North Pole Capital Master Fund), Pekin Singer Strauss Asset Management Inc. and Sutter Health, who hold 5.7%, 7% and 8.6%, of the units, respectively, for an aggregate of 21.3% of the outstanding CGT units, have tendered their units to the Sprott Gold Bid and that one of the largest SBT unitholders entitled to receive this premium, Polar Securities (through North Pole Capital Master Fund), who holds approximately 11.5% of the outstanding SBT units, has tendered its units to the Sprott Silver Bid. The unitholders of CGT and SBT entitled to receive this premium hold in aggregate approximately 42.1% of the outstanding CGT units and approximately 36.98% of the outstanding SBT units, respectively.

Structure of Sprott Bids leads to Units being Tendered Against the Instructions of Unitholders

- (h) The Sprott Bids are unusual in that unitholders of CGT and SBT that tender to the Sprott Bids may elect either the taxable "exchange offer" option or the tax-deferred "merger" option. CGT or SBT unitholders who tender to the Sprott Bids without

making an election will be deemed to have made the merger election. In addition, Sprott has solicited a "power of attorney" in the letters of transmittal for the Sprott Bids from each tendering unitholder.

- (i) If the conditions to the applicable Sprott Bid are satisfied or waived and the Sprott Bid is completed, a CGT/SBT unitholder that makes the exchange offer election will have its units taken up and paid for under the Sprott Bid. A CGT/SBT unitholder that makes the merger election will have its units redeemed pursuant to a "merger transaction" between CGT/SBT and Sprott Physical Gold Trust/Sprott Physical Silver Trust and will not have its units taken up and paid for under the Sprott Bid. The merger transaction will be approved by written resolution using the powers of attorney Sprott solicited from tendering CGT/SBT unitholders.
- (j) This unusual structure has caused and continues to cause significant confusion among unitholders, brokers and other market participants and, as a result, has had coercive and prejudicial effects on CGT and SBT unitholders as many of their units have been tendered to the Sprott Bids on the basis of inaccurate or incomplete information, or against their express instructions. Among other things, several brokers have informed CGT unitholders that they must tender their units to the Sprott Bids and make either the exchange offer election or the merger election. These unitholders were informed that declining to tender their units to the Sprott Bid was not an available option.
- (k) Moreover, Sprott has formed "soliciting dealer groups" in Canada and the United States and is paying a soliciting dealer fee to brokers with respect to any CGT /SBT

units tendered through such broker if the applicable Sprott Bid is completed. The existence of a soliciting dealer fee increased the efforts of brokers to encourage their clients to tender, and reduced the incentive to communicate with CGT/SBT unitholders to clear up confusion on their own initiative if the result might be an election not to tender or the withdrawal of units previously tendered to the Sprott Bid. The dealer managers are affiliates of Sprott, are substantively acting as agents for Sprott and are in a fundamental conflict of interest with little, if any, incentive to clear up the confusion among members of the soliciting dealer group.

Sprott Intentionally Makes Misleading Statements

- (l) Sprott, through its directors and officers, has acted contrary to section 126.2(1) of the Act and the public interest by making materially false and misleading statements regarding CGT and SBT and about the Sprott Bids.

- (m) During the Sprott Bids, Sprott, through its directors and officers, has made materially false and misleading statements regarding CGT, SBT and the Sprott Bids. Sprott has waged a concerted and consistent media campaign, through webcasts, press and newsletter writers, to mislead unitholders of CGT and SBT of the relative values at which units of CGT and Sprott Physical Gold Trust and the units of SBT and Sprott Physical Silver Trust have traded and over what period of time. Such statements contravene section 126.2(1) of the Act, as they were statements which Sprott and its directors and officers knew, or ought reasonably to have known, were in a material respect, at the time and in light of the circumstances under which they were made, misleading or untrue and would reasonably be

expected to have a significant effect on the market price or value of the CGT and SBT units and, as a result, a significant effect on a unitholder's decision about whether or not to tender to the Sprott Bids.

Coercive Changes to Powers of Attorney to Stack the Board in Advance of Unitholder Votes

- (n) Sprott has acted contrary to the public interest by purporting to rely on a loophole in the proxy solicitation rules of the Act to solicit powers of attorney purporting to allow Sprott to pass written resolutions of unitholders on the basis that the proxy solicitation rules in the Act only apply to "proxies" solicited in connection with a "meeting" and not to solicitations of votes in connection with a "written resolution".
- (o) In the letters of transmittal for the Sprott Bids, Sprott has solicited a "power of attorney" from each tendering unitholder. Unlike powers of attorney customarily obtained in take-over bids that become effective upon the offeror taking up and paying for the securities, the powers of attorney solicited by Sprott are abusive of the take-over bid regime in that they purport to be effective immediately upon the unitholder tendering to the Sprott Bids and, as a result, give Sprott a power of attorney to execute proxies or sign written resolutions in respect of all units tendered to the Sprott Bids regardless of whether Sprott ever takes up and pays for the CGT or SBT units.
- (p) Under the original terms of the Sprott Bids, Sprott proposed to use the powers of attorney to place certain of its nominees on the board of trustees of CGT and SBT

only once it obtained sufficient tenders of CGT and SBT units to pass written resolutions of 66 2/3% of the units in connection with the completion of the Sprott Bids, including the merger transaction. Sprott previously represented to CGT and SBT unitholders that the powers of attorney would only be used for that purpose.

- (q) On November 4, 2015, Sprott filed notices of variation to the Sprott Bids. The notices of variation purport to amend the powers of attorney in the letters of transmittal to allow Sprott to execute and deliver written resolutions removing and replacing the current trustees of CGT/SBT (other than the trustee nominated by CGT's / SBT's administrator) effective on and after 5:00 p.m. (Toronto time) on November 19, 2015, if 50.1% or more of the CGT/SBT units are tendered to the applicable Sprott Bid. Once the written resolution has been passed, Sprott announced that it "intends" to convene a meeting of CGT/SBT unitholders to attempt to force the approval of the merger transaction with Sprott Physical Gold Trust/Sprott Physical Silver Trust.
- (r) Sprott has acted contrary to the public interest by purporting to unilaterally amend and expand the power of attorney contained in the letters of transmittal for the Sprott Bids without any legal right to do so. CGT / SBT unitholders who granted the powers of attorney did not grant any right to Sprott to unilaterally amend and expand the powers of attorney solicited by Sprott and did not confer any power to use the amended and expanded powers of attorney to pass written resolutions to replace the trustees of CGT and SBT. Sprott's description of these expanded powers in the Notice of Variation and press release of November 4, 2015 are accordingly false and materially misleading.

- (s) Sprott did not deliver a dissident proxy circular concurrently with or prior to making the solicitation with respect to the removal and replacement of the current trustees of CGT and SBT.
- (t) The change to the board of trustees of CGT/SBT would be effective for an indefinite period while Sprott convenes a meeting of CGT/SBT unitholders (assuming its "current intention" to convene a meeting does not change) in an attempt to force through the completion of the merger transaction with Sprott Physical Gold Trust/Sprott Physical Silver Trust or any other transaction with Sprott subsequently approved by the Sprott-nominated trustees of CGT/SBT.
- (u) All of Sprott's proposed trustee nominees are insiders of Sprott or its parent company, Sprott Inc., and, as a result, are not independent for purposes of considering, approving, providing disclosure in respect of, or implementing, any transaction with Sprott, either in its current form or in any other form subsequently approved by the Sprott-nominated trustees of CGT/SBT, and therefore will be unable to discharge their fiduciary duties owed to CGT/SBT unitholders due to the conflict of interest. Sprott seeks to have the proposed trustee nominees installed in order to force through the transactions on terms favorable to Sprott, rather than to present an offer attractive enough to induce tenders of the requisite numbers of units of CGT/SBT.
- (v) Sprott's attempt to replace the board of trustees of CGT and SBT with its own Sprott insiders is contrary to the public interest and the underlying principles of the take-over bid regime as Sprott is seeking to avoid the intended result of the

take-over bid regime in circumstances where a bidder who proposes to effect a change of control transaction without the consent of the target board fails to achieve or waive the minimum tender condition for its bid. Namely, the policy objective of the take-over bid regime in such circumstances is to require the bidder to either terminate its bid or increase the consideration offered under its bid until the required number of securities have been tendered to the bid.

- (w) In light of the representations made by Sprott regarding its intended use of the powers of attorney, CGT and SBT unitholders have had a reasonable expectation from the outset of the Sprott Bids that Sprott would not replace the Board of Trustees of CGT or SBT unless it obtained sufficient support to concurrently complete the applicable Sprott Bid. There is nothing preventing Sprott from using the powers of attorney in this manner and then forcing through a merger on terms worse than the terms offered in the Sprott Bids.

Purported Voting Prior to the Exercise of Withdrawal Rights

- (x) Sprott has acted contrary to the public interest and the legislative objectives of the withdrawal rights set forth in the Act by purporting to vote units tendered to, but not taken up and paid for under, the Sprott Bids to replace the trustees of CGT and SBT with insiders of Sprott and force a transaction on unitholders of CGT and SBT in circumstances where the unitholders who tendered such units are still entitled to change their minds and exercise their withdrawal rights. This could occur, for example, if an alternative transaction is presented or if additional negative information concerning Sprott's management surfaces.

Six Months, Six Extensions and Insufficient Unitholder Support

- (y) It is contrary to the public interest to allow the Sprott Bids to continue indefinitely, to the detriment of investors in CGT and SBT.
- (z) Sprott announced the Sprott Bids on April 23, 2015, and formally commenced the Sprott Bids over a month later on May, 27, 2015.
- (aa) Since the Sprott Bids were launched, they have been extended six times.
- (bb) The Sprott Bids followed an unsuccessful proxy contest commenced on January 19, 2015 by Polar Securities Inc., on behalf of its offshore hedge fund the “North Pole Capital Master Fund”, to replace certain trustees of CGT and SBT and implement amendments to CGT's and SBT's declarations of trust that would allow CGT/SBT unitholders to redeem their units for physical gold/silver bullion.
- (cc) Polar Securities Inc., on behalf of its offshore hedge fund the “North Pole Capital Master Fund”, is one of the CGT/SBT unitholders that has tendered to the Sprott Bids and would be entitled to a premium not afforded to all of the remaining unitholders by converting the Sprott Physical Gold Trust/Sprott Physical Silver Trust units received in the Sprott Bids for physical gold/silver bullion.
- (dd) CGT and SBT have been under sustained attack by Polar Securities Inc. since January 19, 2015 and by Sprott since April 23, 2015.

- (ee) Despite the Sprott Bids being publicly announced almost seven months ago and open for acceptance for almost six months, Sprott has failed to obtain tenders of the requisite number of CGT/SBT units required to complete the Sprott Bids.
- (ff) The proxy contest with Polar and the Sprott Bids has been expensive and disruptive to CGT and SBT and their unitholders. Sprott appears to be willing to continue the Sprott Bids at significant expense to CGT and SBT, and ultimately their unitholders, despite the fact that Sprott has failed for over six months to achieve sufficient unitholder support for the Sprott Bids. It is contrary to the public interest to allow Sprott to continue to harass one of its principal competitors in the gold and silver trust market and burden unitholders with ongoing punitive costs to the detriment of the unitholders' capital entrusted to CGT and SBT.
- (gg) There comes a time when a bid must go. It is contrary to the public interest to allow the Sprott Bids to continue in the circumstances.

Proposed Merger Transaction is a Business Combination

- (hh) If Sprott is permitted to place the "merger transaction" before CGT unitholders at a meeting, it should be required to obtain minority approval in accordance with Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("MI 61-101").
- (ii) The "merger transaction" is a transaction to which MI 61-101 applies. Sprott is a "related party" as defined in MI 61-101 because it exercises control or direction over the units tendered to the Sprott Bids which account for more than 10% of the

voting securities of each of CGT and SBT. As a result, the merger transaction is a "business combination" as defined in MI 61-101 and in the event Sprott is permitted to hold a meeting of CGT unitholders to vote on the merger transaction, Sprott is required to obtain minority approval. MI 61-101 allows votes attached to securities acquired under a bid to be counted as votes in favour of a subsequent business combination if certain conditions are met, giving tendering security holders the ability to force an expropriation of the securities not tendered. However, this expropriation is premised on the interests of tendering and non-tendering security holders being completely aligned. When large and small security holders receive different consideration under a bid, the alignment does not exist, and it is contrary to the public interest to allow security holdings to be expropriated in a manner that runs counter to the underlying principles of MI 61-101.

(jj) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the application:

(a) The affidavit of Bruce D. Heagle, to be sworn; and

(b) Such further and other evidence as the lawyers may advise and the Ontario Securities Commission may permit.

Date: November 10, 2015

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Robert W. Staley (#27115J)

Email: staley@bennettjones.com

Derek J. Bell (#43420J)

Email: belld@bennettjones.com

Jason Berall (#68011F)

Email: berallj@bennettjones.com

Telephone: (416) 863-1200

Facsimile: (416) 863-1716

Lawyers for the applicants