The Ontario Securities Commission

OSC Bulletin

February 8, 2024

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

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

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

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

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

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19 Duncan Street
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19 Duncan Street
Toronto, ON
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A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Manticore Labs OÜ (o/a Coinfield) and Manticore Labs Inc.

FOR IMMEDIATE RELEASE
February 1, 2024

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

TORONTO – An additional merits hearing date is scheduled for May 23, 2024 at 10:00 a.m. in the above-named matter.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.2 Troy Richard James Hogg et al.

FOR IMMEDIATE RELEASE
February 2, 2024

TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC.,
ARBITRADE EXCHANGE INC.,
ARBITRADE LTD.,
T.J.L. PROPERTY MANAGEMENT INC. AND
GABLES HOLDINGS INC.,
File No. 2022-20

TORONTO – The merits hearing in the above-named matter on February 7, 2024 scheduled to commence at 11:30 a.m. will instead commence at 10:00 a.m. at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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inquiries@osc.gov.on.ca

A.2.3 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
February 5, 2024

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

TORONTO – The following merits hearing dates have changed in the above-named matter:

(1) the previously scheduled days of February 6, 12 and 14, 2024 will not be used for the hearing;

(2) the hearing will continue on February 13, 2024 at 10:00 a.m. by videoconference; and

(3) the hearing on April 30 and May 1, 2024 at 10:00 a.m. will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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Ontario Securities Commission

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media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.4 Nvest Canada Inc. et al.

FOR IMMEDIATE RELEASE
February 6, 2024

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

TORONTO – The merits and sanctions hearing in the above-named matter scheduled to be heard on March 8, 2024 at 10:00 a.m. will instead be heard on April 18, 2024 at 10:00 a.m.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.5 TeknoScan Systems Inc. et al.

FOR IMMEDIATE RELEASE
February 6, 2024

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

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

A copy of the Reasons for Decision dated February 5, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

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A.4
Reasons and Decisions

A.4.1 TeknoScan Systems Inc et al. – Rule 29(1) of the CMT Rules of Procedure and Forms

Citation: *TeknoScan Systems Inc (Re)*, 2024 ONCMT 7
Date: 2024-02-05
File No. 2022-19

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

REASONS FOR DECISION
(Rule 29(1) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators:	Andrea Burke (chair of the panel) James Douglas	
Hearing:	By videoconference, November 7, 2023	
Appearances:	Eric Brousseau	For H. Samuel Hyams
	Sunil Joseph	For TeknoScan Systems Inc., Philip Kai-Hing Kung and Soon Foo (Martin) Tam
	Hanchu Chen	For Staff of the Ontario Securities Commission

REASONS FOR DECISION

1. OVERVIEW

[1] These are our reasons for:

a. granting a motion by H. Samuel Hyams to adjourn the start of the merits hearing in this proceeding, scheduled to commence on November 14, 2023 (**Hyams Motion**);

b. granting a motion by TeknoScan Systems Inc., Philip Kai-Hing Kung and Soon Foo (Martin) Tam (**Second Motion**), in part, to vary deadlines previously set by the Tribunal for the respondents to serve a hearing brief on Staff of the Commission and to provide the Registrar a copy of the *E-Hearing Checklist* for the merits hearing; and

c. dismissing the relief sought in the Second Motion as it related to an adjournment of the merits hearing and a request that we order the parties to take part in a confidential settlement conference.[1]

[2] The merits hearing was scheduled to take place over 20 days between November 2023 and February 2024. All the respondents sought to adjourn the nine hearing days scheduled in November and December, 2023. Staff consented only to an adjournment of the November hearing dates.

[3] The bar for granting an adjournment is a high one. Only Hyams satisfied us that there were exceptional circumstances present applicable to him that justified adjourning the start of the merits hearing.

[4] We were satisfied that the circumstances, including the adjournment of the start of the merits hearing, justified extending filing deadlines that had previously been missed by the respondents.

[5] Lastly, we dismissed the request for a settlement conference as premature, but our decision is without prejudice to any party's ability to request a confidential conference or settlement conference in the future.

[1] (2023) 46 OSCB 9001

2. BACKGROUND

[6] There has been no shortage of delays in this enforcement proceeding.

[7] Since the Statement of Allegations was issued on August 23, 2022 (later amended on March 28, 2023), the respondents have made several requests for extensions of deadlines, most of which have been granted by the Tribunal.

[8] Many of these requests, including the current motions, have centered around the representation status of the respondents.

[9] The following facts are those most relevant to our analysis on the motions, which we heard and decided together on November 7, 2023:

a. on March 23, 2023, the respondents, who until this time had all been jointly represented by Fogler Rubinoff LLP (**Fogler**), filed a motion seeking extensions of previously ordered deadlines because they intended to obtain new legal representation;

b. on May 25, 2023, the respondents notified the Tribunal that they were now represented by DLA Piper (Canada) LLP (**DLA Piper**);

c. on August 3, 2023, the merits hearing in this matter was scheduled to commence on November 14, 2023, and continue until February 2024[2] (certain of those dates were later rescheduled, but until the hearing of these motions, the evidentiary portion of the merits hearing was still scheduled for 20 days and set to commence on November 14 and end in February 2024);

d. also on August 3, 2023, the Tribunal set deadlines for the parties to serve every other party with a hearing brief (October 2) and to file an *E-Hearing Checklist* for the merits hearing (October 6);

e. on October 13, 2023, the Tribunal granted DLA Piper's motion filed on September 29, 2023, to be removed as representative of record for all respondents;[3]

f. on October 27, 2023, Staff made additional disclosure to the respondents, comprised of the transcripts of two individuals, neither of which is a proposed witness for the merits hearing, and notes of a November 1, 2023 telephone call to Staff from another individual. On November 3, 2023, Staff added this third individual to its witness list for the merits hearing;

g. on October 30, 2023, Hyams filed his motion for an adjournment to allow him time to prepare to represent himself at the merits hearing; and

h. on November 2, 2023, the remaining respondents filed the Second Motion, indicating that they were in the process of retaining new legal representation for the merits hearing.

3. ANALYSIS

3.1 Adjournment motions

[10] Rule 29(1) of the *Capital Markets Tribunal Rules of Procedure and Forms* (**Rules**) provides that every merits hearing shall proceed on the scheduled dates unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment".

[11] The Tribunal has ruled that the standard set out in rule 29(1) is a "high bar" that reflects the important objective set out in rule 1, that Tribunal proceedings be conducted in a "just, expeditious and cost-effective manner". The objective must be balanced against the parties' ability to participate meaningfully in the hearing and present their case.[4]

[12] Staff consented to an adjournment of the four hearing dates in November 2023 because of concerns arising from Hyams' evidence that he had had difficulties receiving materials from his former counsel that were relevant to his ability to prepare for the merits hearing. Therefore, the parties' submissions focused largely on whether the hearing dates set in December 2023 ought to be adjourned in favour of the merits hearing commencing on the scheduled dates in February 2024 or on new dates (subject to the parties' availability) as early as the last week of January 2024.

2 (2023) 46 OSCB 6601
3 (2023) 46 OSCB 8425
4 *First Global Data Ltd (Re)*, 2022 ONCMT 23 (***First Global***) at paras 7 and 8

3.1.1 Hyams Motion

[13] Hyams submitted that there are three main reasons why, in his case, there are exceptional circumstances requiring an adjournment of the December hearing dates. These reasons are the fact that:

a. he is now going to represent himself at the merits hearing;

b. as of the hearing of his motion, he was still uncertain about whether he had access to material and work product that was supposed to have been transferred to the respondents by their prior counsel; and

c. the litigation landscape and dynamics have significantly shifted at the last minute, in that up until the removal of DLA Piper as representatives of record, Hyams was represented, along with the other respondents, jointly by the same counsel, whereas he must now mount his own defence, while all the other respondents will be jointly represented by new counsel in a defence group that does not include Hyams.

[14] Hyams submitted that these three reasons, considered together, amount to exceptional circumstances. He also submitted that his change in circumstances was not voluntary or of his own making. If the start of the merits hearing was delayed until the end of January 2024 or February 2024, he would be better able to prepare to defend himself and meaningfully participate in the hearing as a self-represented party. Hyams also submitted that granting the requested adjournment would not result in a significant delay to the conclusion of the evidentiary portion of the merits hearing.

[15] Staff submitted that the December dates ought to be maintained because:

a. Hyams' circumstances are of his own creation, and he should be treated no differently than the remaining respondents;

b. when DLA Piper were removed as representatives of record, they asserted that there was "very little that needs to be done by replacement counsel to be ready for [the hearing], given all of the transferable work product available";

c. there have already been a significant number of delays in this matter in connection with interlocutory steps and missed deadlines, and the public interest weighs in favour of having the merits hearing held expeditiously;

d. if the merits hearing were to begin in December 2023, Hyams (as well as the other respondents) would not have to present their evidence until February 2024 – giving them additional time to prepare for the merits hearing in the new year; and

e. the litigation landscape has not, in fact, changed for Hyams given that the nature of the proceeding and the core allegations that Hyams faces have not changed.

[16] A determination about whether to grant a request to adjourn a merits hearing is necessarily dependent on the particular facts and circumstances of the case.[5] We are satisfied that Hyams' unique circumstances satisfy the high bar required for an adjournment in this case.

[17] In this case, the change from Hyams being a represented party to being an unrepresented party on the eve of the merits hearing, coupled with the late-stage significant change to the litigation dynamics resulting in Hyams no longer being included in the joint defence group with the other respondents, collectively rise to the level of "exceptional circumstances" and justify a brief adjournment of the merits hearing. Contrary to Staff's submissions, the relevant litigation landscape is not solely defined by the allegations against a respondent. The potential that all respondents may not be aligned in interest is extremely significant to respondents and to how they may carry out their defence.

[18] A significant component of our finding that these changes collectively rise to the level of "exceptional circumstances" was our conclusion that Hyams' new status as an unrepresented party was not "voluntary". We find that this change was outside his control and was not anticipated by him.

[19] DLA Piper brought their motion to be removed as the respondents' representative of record on grounds that they were no longer being paid. Hyams' unchallenged evidence was that:

a. TeknoScan was responsible for paying DLA Piper's fees on behalf of all the respondents (and had been responsible for paying counsel's fees for all the respondents since the outset of the proceeding);

b. he was not the person who dealt primarily with DLA Piper, and he was not aware of the state of the relationship with DLA Piper "until it was too late"; and

[5] *First Global* at para 8; *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 35 at para 19

c. importantly, he had expected to be represented by lawyers at the merits hearing until only very recently.

[20] Our decision should not be taken to mean that any circumstances resulting in a previously represented respondent becoming unrepresented will necessarily meet the "exceptional circumstances" test.

[21] These changes in circumstances did not appear to have occurred for any improper tactical purpose or with any intention of Hyams to delay the proceeding. Indeed, Hyams proposed that if his adjournment request were granted, he would be agreeable to the new merits hearing start date being made "peremptory" (that is, not subject to further change at his request). Hyams also indicated that he was available for all the possible dates that we canvassed with the parties at the outset of the hearing of the motions as potential substitute merits hearing dates if we granted the requested adjournment.

[22] We are not particularly sympathetic to Hyams' argument that the requested adjournment is also justified because he could not find DLA Piper's work product and had been unable to confirm whether he had received it as of the date of the hearing of the motions, despite the fact that by that time approximately five weeks had passed since DLA Piper had been removed as representatives of record. Self-represented respondents must take responsibility and agency for their own affairs. Hyams' submissions about the unavailability of DLA Piper's work product were not part of our reasons for granting the adjournment request.

[23] While Staff may be correct that even if the merits hearing were to begin in December 2023, Hyams would not have to present his evidence until February 2024 (because Staff will require all the December hearing dates to present its evidence and call its witnesses), we do not see this as a viable answer to the exceptional circumstances established by Hyams. Hyams would still be expected to cross-examine Staff's witnesses in December 2023 and cross-examination is an important aspect of the adversarial process. Given the exceptional circumstances Hyams has established, we are satisfied that his ability to cross-examine Staff's witnesses might be compromised if he were required to do so starting in December 2023.

[24] Staff placed significant reliance on DLA Piper's assertion that there was "very little that needs to be done by replacement counsel to be ready for [the hearing], given all of the transferable work product available". Given that Hyams is now self-represented we discounted this argument by Staff, as we recognize the difficulty that a newly self-represented party may have in reviewing and digesting former counsel's work product.

[25] In balancing the public interest in having the merits hearing proceed in a timely fashion with Hyams' ability to prepare for and defend himself at the merits hearing, we decided to delay the start of the merits hearing until the last week of January 2024. With the scheduling of additional hearing days, the conclusion of the evidentiary portion of the merits hearing will only be delayed by approximately five weeks. This relatively insignificant delay weighed in favour of our decision to grant the Hyams Motion.

3.1.2 Second Motion: adjournment request

[26] The Second Motion failed to satisfy us of the required exceptional circumstances for granting an adjournment of the merits hearing. The remaining respondents did not provide any evidence in support of their adjournment request. They relied primarily on claims unsubstantiated by evidence that they were actively working on retaining new legal representatives and those new legal representatives would require additional time to properly prepare for the merits hearing.

[27] The remaining respondents submitted that an adjournment of the November and December 2023 merits hearing dates is required because:

a. the allegations against these respondents are serious and will have a significant and permanent impact on them;

b. these respondents are entitled to put forward a full answer and defence to the allegations;

c. these respondents are close to formally retaining new counsel, who will need time to prepare for the merits hearing, including to consider the issue of whether they should waive privilege over certain aspects of TeknoScan's retainer of Fogler;

d. Staff recently produced new material evidence including the transcripts of two individuals, neither of which is a proposed witness for the merits hearing, and notes of a November 1, 2023 telephone call to Staff from another individual;

e. granting the requested adjournment will have a minimal impact on the date for completion of the evidentiary portion of the merits hearing; and

f. only 16 days, instead of the scheduled 20 days are required for the merits hearing, such that an adjournment of the November and December 2023 hearing dates can be readily addressed by adding no more than five additional hearing days.

[28] In addition to Staff's submissions noted above in subparagraphs 15(b) to 15(d) that also applied to the Second Motion, Staff objected to the requested relief given the complete lack of evidence filed in support.

[29] While it is true that the allegations in this matter are serious and the respondents are entitled to make full answer and defence, this alone does not place the respondents in a different position from any other respondent. Parties are entitled to make full answer and defence but are not entitled to unlimited time to prepare for merits hearings.

[30] Leading up to the filing and hearing of the Second Motion, the remaining respondents repeatedly advised us that the retainer of new counsel was imminent. As of the date of the hearing of the Second Motion, the Tribunal had not been advised of any new counsel for these respondents. These respondents' claims about the imminence of a new retainer and the time required for new counsel to prepare for the merits hearing are unsupported by any evidence and we give them little weight. While parties generally need not explain their choice about how they are represented, when a party seeks an adjournment based solely on that choice the party bears the burden of demonstrating the exceptional circumstances that warrant the adjournment.[6]

[31] The Tribunal has previously held that the mere fact of a change in counsel does not, in and of itself, rise to the level of "exceptional circumstances".[7] These respondents offered no evidence by way of explanation or justification that would amount to exceptional circumstances. Furthermore, the attempt to justify the adjournment because of the need for time to consider whether TeknoScan should waive privilege was not compelling given that we understood from prior interlocutory attendances that this had been an open issue for some time.

[32] We concluded that Staff's recent production of transcripts of two individuals (not proposed as witnesses at the merits hearing) and notes of a recent call with another individual also did not amount to exceptional circumstances. While in some circumstances particularly voluminous or significant disclosure shortly before the merits hearing may justify an adjournment request, the remaining respondents did not offer any rationale or details as to why such production by Staff warranted the requested adjournment in this case.

[33] With respect to the number of days necessary for the merits hearing, we posed this question to all parties and there was no consensus that the hearing could be completed in less than 20 days. The parties were expecting to call more than 20 witnesses, including an expert witness, which will necessarily take time and require the scheduling of additional hearing days.

[34] For these reasons, we dismissed this part of the Second Motion. We understand that all the respondents reap the benefits of the Hyams Motion, as they sought the same relief. Hyams' circumstances warranted an adjournment, and we understand the implications that come along with that.

3.2 Second Motion: request to extend certain deadlines

[35] The Second Motion included a request to extend two deadlines that had previously been missed by the respondents: service of the respondents' hearing briefs and the filing of the *E-Hearing Checklist* for the merits hearing. Hyams did not ask for this relief in the Hyams Motion, but supported the request.

[36] The deadlines for both documents were set for early October. While Staff objected to us extending the deadlines, we were satisfied that the circumstances, including the adjournment of the start date for the merits hearing and Staff's recent additional disclosure, warranted allowing the respondents additional time to provide these materials.

3.3 Second Motion: request for a settlement conference

[37] The Second Motion also requested "that a Settlement Conference be scheduled for a date in December 2023 or January 2024, subject to Tribunal availability". Staff objected to this relief, submitting that a settlement conference at this point in the proceeding would be premature and a waste of resources.

[38] We agreed with Staff. A confidential settlement conference, under rule 32 of the Rules, requires the parties to a proposed settlement to jointly bring a proposed settlement to a panel of the Tribunal for consideration. The parties were not in a position to do so.

[39] We asked the representative for the remaining respondents if what they were really asking for was a confidential conference under rule 20 of the Rules. Rule 20(1) states that at any stage of a proceeding, a party may request or a panel may direct that the parties participate in a confidential conference to consider multiple issues, including the

[6] *First Global* at para 15
[7] *Valentine (Re)*, 2023 ONCMT 33 at para 19

settlement of any or all of the issues, the simplification of issues, agreed facts, and other matters that might make the proceeding more efficient. The representative was not able to confirm whether this was correct.

[40] We declined to order that the parties participate in a confidential settlement conference but advised them that it was still open to any party to request a confidential conference under rule 20(1) or a confidential settlement conference under rule 32 in the future.

4. CONCLUSION

[41] For these reasons, we:

a. adjourned the first eight scheduled days of the hearing (and vacated one date due to Tribunal availability), and rescheduled those dates to occur in 2024, such that the evidentiary portion of the merits hearing in this proceeding will begin on January 29, 2024 and continue until April 9, 2024;

b. extended the deadlines for all the respondents to serve their hearing briefs and provide a copy of their *E-Hearing Checklist* for the merits hearing to the Registrar to December 15, 2023; and

c. dismissed the balance of the relief requested in the Second Motion.

Dated at Toronto this 5th day of February, 2024

"Andrea Burke"

"James Douglas"

B. Ontario Securities Commission

B.1
Notices

B.1.1 Notice of Commission Approval of OSC Rule 45-508 Extension to Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption

NOTICE OF COMMISSION APPROVAL OF
OSC RULE 45-508
EXTENSION TO ONTARIO INSTRUMENT 45-507
SELF-CERTIFIED INVESTOR PROSPECTUS EXEMPTION

February 6, 2024

Introduction

On January 30, 2024, the Ontario Securities Commission (the **OSC**) made as a rule under the *Securities Act* (Ontario) (the **Act**) local OSC Rule 45-508 *Extension to Ontario Instrument 45-507 Self-Certified Investor Prospectus Exemption* in Ontario (the **Rule**).

The Rule extends the class relief issued on October 25, 2022 by Ontario Instrument 45-507 *Self-Certified Investor Prospectus Exemption* (Interim Class Order) (the **OSC Class Order**) by 18 months.

The OSC Class Order provides relief to non-investment fund issuers with a head office in Ontario from the requirement to file a prospectus in respect of the distribution of securities to a Self-Certified Investor (as defined in the OSC Class Order), or a Self-Certified Investor's permitted designate, provided that certain conditions are met.

The OSC Class Order will cease to be effective on April 25, 2024 and the Rule will cause the relief provided in the OSC Class Order to be in force for an additional 18-month period.

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

Substance and Purpose

In its final report (the **Taskforce Final Report**) dated January 22, 2021, the Capital Markets Modernization Taskforce (the **Taskforce**) acknowledged the importance of capital formation for businesses and recommended that the OSC expand the accredited investor definition to those individuals who have completed and passed relevant proficiency requirements indicating a high degree of understanding of investments and markets.[1]

On April 27, 2021, the Ontario government amended the OSC's legislative mandate to include fostering competitive capital markets and capital formation. This expanded mandate provides additional areas of focus for the OSC's operational and policy development activities, as well as its approach to regulatory decisions.

Having considered the Taskforce's recommendation and its amended mandate, the OSC issued the OSC Class Order on October 25, 2022.

The OSC Class Order will cease to be effective on April 25, 2024. The purpose of the Rule is to cause the class relief issued under the OSC Class Order to be extended for an additional 18-month period.

Issuers are required to report the use of the OSC Class Order by filing reports of exempt distribution. The data in these reports can be used by the OSC to determine whether to pursue future rule amendments and, if pursued, the scope of these amendments. Any such rule amendments would be adopted through the normal rule-making procedures.

Authority for the Local Amendments

Paragraph 143.11(3)(b) of the Act provides the authority for the making of a rule that extends a class order for a further period of up to 18 months, in accordance with sections 143.3 to 143.6.

[1] See Recommendation No. 23 in the Taskforce Final Report, available at https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021.

Delivery of Rule to Minister

The OSC delivered the Rule to the Minister of Finance on February 7, 2024. The Minister may approve or reject the Rule or return it for further consideration. If the Minister approves the Rule or does not take any further action, the Rule will come into force on April 25, 2024.

Questions

Please refer any questions to the following OSC staff:

Erin O'Donovan
Manager
Corporate Finance Branch
Ontario Securities Commission
(416) 204-8973
eodonovan@osc.gov.on.ca

Joanna Akkawi
Senior Legal Counsel
Corporate Finance Branch
Ontario Securities Commission
(416) 593-8179
jakkawi@osc.gov.on.ca

ANNEX A

OSC RULE 45-508
EXTENSION TO ONTARIO INSTRUMENT 45-507
SELF-CERTIFIED INVESTOR PROSPECTUS EXEMPTION

Purpose

1. This Rule provides, in Ontario, a temporary extension to the exemption provided in Ontario Instrument 45-507 *Self-Certified Investor Prospectus Exemption* (Interim Class Order), pursuant to paragraph 143.11(3)(b) of the *Securities Act* (Ontario).

Extension of temporary exemption

2. ***Paragraph 14(a) of* Ontario Instrument 45-507 *Self-Certified Investor Prospectus Exemption* (Interim Class Order) *is amended by replacing "***April 25, 2024, unless extended by the Commission" ***with "***October 25, 2025***".***

Effective date

3. This Rule comes into force on April 25, 2024.

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B.2
Orders

B.2.1 Akumin Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications (NP 11-206) – application for an order that the issuer cease to be a reporting issuer under applicable securities laws – issuer cannot avail itself of the simplified or modified procedure under NP 11-206 – issuer obtained US bankruptcy court order approving a plan of reorganization (Plan) pursuant to applicable US bankruptcy laws – under terms and conditions of the Plan, issuer to become privately-held, non-reporting US issuer with outstanding contingent value rights (CVRs) issued to former shareholders – pursuant to the Plan, absent the requested relief the issuer would only be permitted to issue CVRs to Canadian holders to the extent it could avail itself of the simplified or modified procedure under NP 11-206 – Canadian shareholders could be penalized by not being eligible to receive CVRs – requested relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).
National Policy 11-206 Process for Cease to be a Reporting Issuer Applications.

February 6, 2024

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
AKUMIN INC.
(the Filer)

ORDER

Background

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

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

(1) The Ontario Securities Commission is the principal regulator for this application (the **OSC** or **Principal Regulator**), and

(2) 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 each of the provinces and territories of Canada, other than Quebec (together with the Jurisdiction, collectively, the **Reporting Jurisdictions**),

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 a leading provider of outpatient radiology and oncology solutions to hospitals, health systems, and physician groups in the United States. All of the Filer's assets and operations are in the United States.

2. The Filer was formed on August 12, 2015, through the amalgamation of Elite Imaging Inc. (**Elite Imaging**) with 2473241 Ontario Inc. (**2473241**). 2473241 was incorporated under the *Business Corporation Act* (Ontario) (the **OBCA**) on June 30, 2015. Elite Imaging was incorporated under the OBCA on September 23, 2013, as "Tristate Canadian Holdings Inc." and changed its name to "Elite Imaging Inc." on September 17, 2014. Elite Imaging subsequently changed its name to "Akumin Inc." pursuant to articles of amendment filed with the Ontario registrar on March 22, 2017.

3. Effective September 30, 2022, the Filer completed a change of jurisdiction of incorporation from the Province of Ontario to the State of Delaware (the **Domestication**).

4. As a result of the Domestication, the Filer is now continued under and is governed by the General Corporation Law of the State of Delaware.

5. The Filer's head office is located at 8300 W. Sunrise Blvd, Plantation, Florida, 33322.

6. The Filer's registered office is located at 651 N. Broad St., Suite 201, Middletown, New Castle County, Delaware, 19709.

7. The Filer is a reporting issuer under the laws of each of the Reporting Jurisdictions and is not in default of its obligations under the securities laws of any of the Reporting Jurisdictions.

8. The Filer's shares of Common Stock (the **Common Shares**) were registered under section 12 of the U.S. Securities Exchange Act of 1934, as amended (the **U.S. Exchange Act**) prior to the Common Shares' deregistration on November 30, 2023.

9. The Filer's Common Shares were previously listed for trading on the NASDAQ Stock Market LLC (**Nasdaq**) under the symbol "AKU". The Common Shares were delisted from Nasdaq on November 30, 2023 and began trading on the OTC Pink Open Market under the symbol "AKUMQ". The Common Shares were delisted from the OTC Pink Open Market on Effective Date (as defined below).

10. The Common Shares were listed for trading on the Toronto Stock Exchange (**TSX**) under the symbol "AKU". The Common Shares were suspended from trading on the TSX between October 23, 2023 and November 2, 2023, and resumed trading on the opening of markets on November 3, 2023. The Common Shares were delisted from the TSX on the Effective Date.

11. The Filer is an "SEC issuer" pursuant to National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**).

12. On October 20, 2023, the Filer entered into a restructuring support agreement (the **Restructuring Support Agreement**) with, *inter alios,* (i) certain of its affiliates and subsidiaries, (ii) Stonepeak, as the holder of 100% of the Prepetition Series A Notes, (iii) certain noteholders holding approximately 69.6% of the 2025 Prepetition Notes, (iv) certain noteholders holding approximately 79.9% of the 2028 Prepetition Notes, (v) 100% of the lenders to Filer's revolving credit facility, and (vi) certain shareholders holding approximately 34.2% of the Common Shares. As set forth in the Restructuring Support Agreement, the parties agreed to the principal terms of a financial restructuring of the Filer to be implemented pursuant to the prepackaged chapter 11 plan of reorganization (the **Prepackaged Plan**).

13. On October 22, 2023 (the **Petition Date**), the Filer and certain of its affiliates and subsidiaries (each a **Debtor** and collectively, the **Debtors**) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the **Bankruptcy Code**) in the United States Bankruptcy Court for the Southern District of Texas (the **Bankruptcy Court**), thereby commencing chapter 11 cases for the Debtors.

14. On November 30, 2023, the Bankruptcy Court, confirmed the provisions of the Prepackaged Plan and authorized the Filer to perform its obligations under the Prepackaged Plan, including the restructuring transactions contemplated therein (the **Restructuring Transactions**). The Prepackaged Plan and Restructuring Transactions became effective on February 6, 2024 (the **Effective Date**).

15. Immediately prior to the Effective Date, the authorized capital of the Filer consisted of (i) 300,000,000 Common Shares, of which 91,173,491 Common Shares were issued and outstanding, and (ii) 50,000,000 shares of preferred stock (**Preferred Shares**), of which no Preferred Shares were issued and outstanding. The Filer's transfer agent determined that the Filer's issued and outstanding Common Shares were held by approximately 2,578 registered and beneficial shareholders immediately prior to the Effective Date.

16. Market data on each of the Nasdaq and TSX for the six months ended October 10, 2023 (the last full trading day prior to the Nasdaq suspension), indicated approximately 96.4% of the total trading value and 96.2% of the total trading volume of the Filer occurred on the Nasdaq, and approximately 3.6% of the total trading value and 3.8% of the total trading volume of the Filer occurred on the TSX.

17. Immediately prior to the Effective Date, the Filer had (i) 3,191,758 outstanding and unvested restricted share units (**RSUs**), (ii) 4,403,120 outstanding stock (**Stock Options**) and (iii) 17,114,093 outstanding common share purchase warrants (**Warrants**). All of the Warrants were held by Stonepeak Magnet Holdings LP (**Stonepeak**) which is not a resident of Canada.

18. Immediately prior to the Effective Date, the following issued notes of the Filer were outstanding:

    (i) US$475,000,000 of 7.00% senior secured notes due 2025, plus any accrued and unpaid interest (the **2025 Prepetition Notes**), under a trust indenture dated November 2, 2020;

    (ii) US$375,000,000 of 7.50% senior secured notes due 2028, plus any accrued and unpaid interest (the **2028 Prepetition Notes**, together with 2025 Prepetition Notes, the **Prepetition Notes**), under a trust indenture dated August 9, 2021; and

    (iii) US$470,000,000 of unsecured PIK toggle series A notes due 2033, plus any accrued and unpaid interest, issued by Akumin Corp., a wholly-owned subsidiary of the Filer (the **Prepetition Series A Notes**), all of which were issued to and held by Stonepeak, which is not a resident of Canada.

    None of the aforementioned notes were convertible into or exchangeable for Common Shares or any other securities of the Filer.

19. The 2025 Prepetition Notes, 2028 Prepetition Notes and Prepetition Series A Notes were not listed on any exchange or marketplace in Canada or elsewhere and their respective indentures did not contain any provision prohibiting the Filer from ceasing to be a reporting issuer in the Reporting Jurisdictions.

20. Pursuant to the Reorganization Transaction, on the Effective Date, among other things:

    (i) The Filer was reorganized in accordance with the Prepackaged Plan;

    (ii) 2025 Prepetition Notes were cancelled and exchanged for new senior secured notes due 2027 (the **New 2027 Notes**);

    (iii) 2028 Prepetition Notes were cancelled and exchanged for new senior secured notes due 2028 (the **New 2028 Notes**, together with New 2027 Notes, the **New Notes**);

    (iv) Prepetition Series A Notes were cancelled and converted into Common Shares (**New Common Shares**) of the Filer;

    (v) Common Shares outstanding (the **Existing Common Shares**) were cancelled in exchange for each holder of Existing Common Shares receiving a pro rata share of (i) $25,000,000 in cash and (ii) subject to the CVR Receipt Requirements set forth below, potentially contingent value rights (**CVRs**) issued by the Filer or cash equal to the inherent value of CVRs as at the Effective Date in lieu of such CVRs; and

    (vi) Stonepeak invested approximately $130 million in new money into the Filer as a capital contribution.

    On the Effective Date, Stonepeak (a non-resident of Canada) became the sole shareholder of the Filer.

21. The CVRs represent uncertificated, non-transferrable (other than to certain limited permitted assigns as described in the following sentence) contractual value rights, governed by a CVR agreement entered into by the Filer and the CVR agent (the **CVR Agreement**). The limited circumstances under which CVRs may be transferred are (i) transfer by will or intestacy upon the death of the holder, (ii) transfer to an inter vivos or testamentary trust for the benefit of beneficiaries upon death of the trustee or to any trust for the benefit of the holder or an immediate family member of the holder, (iii) transfer to a beneficiary of the holder, including custodians or trustees of a trust, partnership or limited liability company for the benefit of the holder or an immediate family member of the holder, (iv) transfer to a family member or an entity owned entirely by or for the benefit of one or multiple family members of the holder in connection with holder's estate, tax, retirement planning, (v) transfer to another CVR holder, (vi) transfer pursuant to a court order, and (vii) transfer by operation of law in connection with a merger, consolidation, dissolution or liquidation of the holder in compliance with applicable securities laws.

22. The CVRs provide the holder the right to receive contingent cash payments at a future date triggered upon a future liquidity event involving the Filer that results in any payment to Stonepeak on account of its ownership of Common Shares

in the Filer or any successor equity interest (such transaction, a **CVR Trigger Transaction**), if and to the extent payable pursuant to the terms of the CVR Agreement. In respect of a CVR Trigger Transaction, Stonepeak will identify an independent accountant, which shall be a "big four" accounting firm, to certify the cash proceeds (if any) payable to holders of CVRs pursuant to such CVR Trigger Transaction (**Independent Accountant Certification Process**). As Stonepeak is the sole shareholder of the Filer, the decision to effect a CVR Trigger Transaction is solely at the discretion of Stonepeak. The CVRs do not have any voting, dividend or other residual rights common to equity stock nor are they convertible into other security of the Filer, and as such, CVR holders have no say whether or when to effect a CVR Trigger Transaction or with respect to any of the terms (economic or otherwise) thereof. CVR holders will be entitled to a cash payment only if (i) a CVR Trigger Transaction occurs, and (ii) the CVR Trigger Transaction results in aggregate proceeds that are in excess of a pay-out threshold as determined by the CVR Agreement. CVR holders will not be entitled to any cash payment if the aggregate proceeds from the CVR Trigger Transaction are less than the pay-out threshold.

23. No later than 14 days after the Effective Date, the Filer will mail a notice of potential right to receive one CVR per Existing Common Share (the **CVR Notice**) to all known registered and beneficial holders of Existing Common Shares immediately prior to the Effective Date (such holders, the **Potential CVR Recipients**). The CVR Notice will contain all relevant terms and conditions applicable to the CVRs.

24. In order to be eligible to receive CVRs, by no later than 90 days after service of the CVR Notice, Potential CVR Recipients shall be required to return a certification (the **CVR Recipient Certification**) that will provide for, among other things, (i) whether the Potential CVR Recipient is an accredited investor (as defined in Rule 501 promulgated under the United States Securities Act of 1933 (the **U.S. Securities Act**)), (ii) for any beneficial holders that hold their Existing Common Shares through a registered broker or agent, a certification as to the amount of shares beneficially owned by such holder as of the Effective Date (immediately prior to the cancellation thereof) and (iii) such other information reasonably requested by the Filer.

25. Any Potential CVR Recipient who does not submit the completed CVR Recipient Certification within 90 days of service (the **CVR Submission Deadline**) will not receive CVRs nor any cash payment in lieu of CVRs (the **CVR Recipient Certification Requirement**).

26. The Filer will distribute the CVRs (or cash in lieu thereof) to those that satisfy the CVR Recipient Certification Requirement; provided that the Filer, (i) is a privately held company (within the meaning of applicable US securities laws) whose securities are not required to be registered under the U.S. Exchange Act, and (ii) ceases to be a reporting issuer under Canadian securities laws, provided further that the CVRs shall not be distributed to more than 1,900 beneficial holders of Existing Common Shares, of which no more than 450 shall be non-Accredited Investors (as such term is defined in Rule 501 promulgated under the U.S. Securities Act) (the **Maximum CVR Recipients**).

27. If more Potential CVR Recipients than the Maximum CVR Recipients return a properly executed CVR Recipient Certification by the CVR Submission Deadline, then the Filer shall only distribute the CVRs pursuant to the Reorganization Transaction to the Potential CVR Recipients that hold the largest percentage of Existing Common Shares until the CVRs have been distributed to the Maximum CVR Recipients (the **Maximum CVR Requirement** and together with the CVR Recipient Certification Requirement, the **CVR Receipt Requirements**).

28. The Maximum CVR Requirement ensures that the Filer shall continue to be a privately held company (within the meaning of applicable US securities laws) following the Effective Date whose securities are not required to be registered under the U.S. Exchange Act.

29. For any Potential CVR Recipient that would have been eligible to receive the CVRs but for the Maximum CVR Requirement, the Filer shall, subject to the CVR Certification Requirement, pay cash in an amount equal to the inherent value of the CVR as at the Effective Date (to be determined by an independent valuator retained by the Filer) to a particular holder in lieu of distribution of a CVR to a holder.

30. The CVRs will not be listed on a public stock exchange or voluntarily subjected to any reporting requirements promulgated by the SEC or under Canadian securities laws.

31. In order to comply with Canadian securities laws, the Filer intends to rely on the exemption from prospectus requirements provided by Section 2.11(a) of National Instrument 45-106 *Prospectus Exemptions* in connection with the distribution of CVRs on the basis that the Bankruptcy Court's approval of the Prepackaged Plan constitutes a reorganization under a statutory procedure.

32. The Filer made diligent enquiry with Broadridge Financial Solutions, Inc. and D.F. King & Co. Inc. and obtained information to ascertain the beneficial ownership of Common Shares, 2025 Prepetition Notes and 2028 Prepetition Notes (collectively, the **Securityholder Reports**).

33. Immediately prior to the Effective Date, the Securityholder Reports showed the following:

    (i) Approximately 778 holders of the Filer's outstanding Common Shares were Canadian residents, representing approximately 30.18% of aggregate number of holders of Common Shares;

    (ii) Approximately 1,800 holders of the Filer's outstanding Common Shares were worldwide holders, representing approximately 69.82% of the aggregate number of holders of Common Shares;

    (iii) Of the 66 holders of outstanding 2025 Preparation Notes, only 1 holder was a Canadian resident, representing 1.52% of the 2025 Prepetition Note holders. The remaining 65 holders of the 2025 Prepetition Notes, representing 98.48% of the aggregate number of 2025 Prepetition Note holders, were worldwide holders; and

    (iv) All 49 holders of the 2028 Prepetition Notes, representing 100% of the aggregate number of 2028 Prepetition Note holders, were worldwide holders.

34. If the Filer were to issue CVRs in proportion to the percentage of outstanding Common Shares immediately prior to the Effective Date, it would result in 573 Canadian resident holders of CVRs (30.18% of 1900 holders). However, of the 778 Canadian resident holders immediately prior to the Effective Date, only 27 held positions in the Filer equal to or greater than $10,000 such that it is expected that a significant number of Canadian resident holders may not satisfy the Maximum CVR Requirement. Consequently, the Filer believes that the actual number of Canadian resident holders that CVRs will be issued to will be significantly lower compared to the number of Canadian resident holders immediately prior to the Effective Date.

35. On the Effective Date, the Existing Common Shares were cancelled and converted into the right to receive cash and, subject to CVR Receipt Requirements, CVRs (or, in applicable circumstances described above, cash in lieu of CVRs).

36. On the Effective Date, the 2025 Prepetition Notes were cancelled and exchanged for New 2027 Notes, of which 1 New 2027 Note (i.e., 1.52% of 66 holders) was issued to a Canadian resident holder.

37. On the Effective Date, the 2028 Prepetition Notes were cancelled and exchanged for New 2028 Notes, none of which were issued to Canadian resident holders.

38. On the Effective Date, all of the Filer's outstanding Options and Warrants were cancelled.

39. On the Effective Date, all of the Filer's outstanding RSUs vested in accordance with the acceleration provisions of the Filer's RSU plan and were treated as Existing Common Shares of the Filer. As such, on the Effective Date, all Existing Common Shares resulting from the acceleration of RSUs were cancelled and converted into the right to receive cash and, subject to CVR Receipt Requirements, CVRs (or, in applicable circumstances described above, cash in lieu of CVRs).

40. The New Notes are not voting nor equity securities and are not convertible into Common Shares (or any other equity securities) under their respective indentures (the **New Note Indentures**). The New Note Indentures do not require the Filer to maintain any ongoing public reporting obligations if the Filer is not subject to public reporting under applicable securities laws other than certain customary information required under the New Note Indentures or U.S. securities laws.

41. If the Filer were to issue CVRs to the Maximum CVR Recipients in proportion to the percentage of shareholdings immediately prior to the Effective Date, it would have a maximum of 2,015 securityholders worldwide with 574 securityholders in Canada (being 573 Canadian holders of CVRs plus 1 Canadian holder of New 2027 Notes), which equals a maximum of approximately 28.49% of the total number of securityholders worldwide.

42. The CVRs are uncertificated, non-transferrable (other than to certain limited permitted assigns described above) contractual value rights, governed by the CVR Agreement. The CVRs provide the holder the right to receive contingent cash payments at a future date upon a CVR Trigger Transaction following an Independent Accountant Certification Process, if and to the extent payable pursuant to the terms of the CVR Agreement. The CVRs do not have any voting, dividend or other residual rights common to equity stock nor are they convertible into other security of the Filer. The CVR Agreement does not require the Filer to maintain any ongoing public reporting obligations. As third-party transfers are not permitted, no market will develop in the CVRs and, as a result, there will be no CVR holders (or potential CVR holders) making investment decisions, nor any risk of imbalance of information as between market participants that an ongoing disclosure requirement would address or resolve.

43. The CVR Notice will contain all relevant terms and conditions applicable to the CVRs so as to provide holders of CVRs the necessary information they will need in respect of the CVRs.

44. The Bankruptcy Court's order approving the Prepackaged Plan (including, among others, the issuance of the CVRs) constituted a finding that the Prepackaged Plan was: (i) in exchange for the good and valuable consideration provided

by the Debtors; (ii) in the best interests of the Debtors and all holders of claims and interests; (iii) fair, equitable, and reasonable; and (iv) given and made after due notice and opportunity for hearing. The Prepackaged Plan and the Reorganization Transaction expressly require that the Filer will not be subject to any continuous disclosure obligations required by the SEC or Canadian securities laws.

45. Immediately prior to the Effective Date, the Filer benefited from the continuous disclosure exemptions contained in NI 51-102 because it met the definition of an "SEC Issuer". Thus, the Filer satisfied its Canadian continuous disclosure obligations by using the US documentation it filed with the SEC. However, as of the Effective Date, the Filer is no longer subject to any continuous disclosure obligations required by the SEC.

46. The Filer is not required under any of the terms of CVRs and the New Notes to remain an SEC registrant required to file reports under the U.S. Exchange Act or to remain a reporting issuer in any Canadian jurisdiction.

47. 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. The Filer has no current intention to distribute any securities to the public in Canada, nor does it intend to other than through the distribution of CVRs and New Notes pursuant to the Prepackaged Plan.

48. As of the Effective Date, the Filer is an unlisted, non-reporting privately-held company (within the meaning of applicable US securities laws) in the United States.

49. As of the Effective Date, the Filer has a very limited number (if any) of non-institutional Canadian securityholders. Such limited number of securityholders hold CVRs and New Notes of a private U.S. company (within the meaning of applicable US securities laws) and have no expectation of receiving Canadian continuous disclosure documents, since no disclosure documents are required under U.S. securities laws. The holders of CVRs have no expectation of receiving Canadian continuous disclosure documents given the inherent nature of the payment scheme and are afforded sufficient protection by the Independent Accountant Certification Process. Members of the public are not expected to acquire securities of the Filer (the New Notes are predominantly (if not all) held by institutional lenders and CVRs are non-transferable (other than to certain limited permitted assigns)). As such, Canadian continuous disclosure requirements outlined in NI 51-102 and other obligations under applicable Canadian securities laws applicable to the Filer would not be of material benefit to the public interest and in particular, of no benefit to the holders of the CVRs.

50. The Filer will only distribute the CVRs to the extent that (i) it is a privately held company (within the meaning of applicable US securities laws) whose securities are not required to be registered under the U.S. Exchange Act, and (ii) it ceases to be a reporting issuer under Canadian securities laws. Given the material difference in requirements under U.S. securities laws and Canadian securities laws to continue as a privately-held company, the Order Sought affords an equal opportunity for Canadian resident holders alongside with U.S. resident holders to participate and receive the consideration that it would otherwise be entitled to under the Reorganization Transaction.

51. The Filer has no current intention to seek public financing by way of a public offering of securities.

52. The Filer is not eligible to use the simplified procedure under Section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (**NP 11-206**) because the Filer has determined, based on the Securityholder Reports, that its outstanding securities, including debt securities, are beneficially owned, directly or indirectly, by more than 15 securityholders in a jurisdiction of Canada and by more than 51 securityholders in total worldwide.

53. The Filer is not eligible to use the modified procedure under Section 20 of NP 11-206 as the Filer estimates that residents of Canada, directly or indirectly, comprise more than 2% of the total number of securityholders of the Filer worldwide, and beneficially own more than 2% of a class or series of outstanding securities of the Filer, including debt securities, worldwide.

54. The Filer is applying for a decision that it has ceased to be a reporting issuer in all of the Reporting Jurisdictions as of the Effective Date.

55. The Filer acknowledges that, in granting the Order Sought, the Principal Regulator is not expressing any opinion or approval as to the terms of the Prepackaged Plan.

56. The Filer will promptly issue a news release upon the granting of the Order Sought specifying that the Filer is no longer a reporting issuer in the Reporting Jurisdictions.

57. Upon the granting of the Order Sought the Filer will no longer be a reporting issuer or the equivalent thereof in the Reporting Jurisdictions.

Order

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

The decision of the Principal Regulator under the Legislation is that the Order Sought is granted.

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

OSC File #: 2023/0579

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B.3
Reasons and Decisions

B.3.1 Samer Shamshum

IN THE MATTER OF
THE APPLICATION FOR REGISTRATION OF
SAMER SHAMSHUM

DECISION OF THE DIRECTOR

Having reviewed and considered the agreed statement of facts, the admissions by Samer Shamshum (**Shamshum**), and the joint recommendation to the Director by Shamshum and the Compliance and Registrant Regulation Branch of the Ontario Securities Commission (the **CRR Branch**) contained in the settlement agreement signed by Shamshum on January 12, 2024, and by the CRR Branch on January 18, 2024 (the **Settlement Agreement**), a copy of which is attached as Appendix "A" to this Decision, and on the basis of those agreed facts and admissions, I, Debra Foubert, in my capacity as Director under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**), accept the joint recommendation of the parties, and make the following decision:

1. Shamshum will withdraw his application for registration as a mutual fund dealing representative with Royal Mutual Funds Inc. and will not reapply for registration under the Act for a period of at least six months from the date of this decision.

2. Before reapplying for registration, Shamshum will provide the CRR Branch with proof that he has successfully completed the Ethics and Professional Conduct Course offered by the IFSE Institute.

3. If Shamshum complies with the requirements of paragraphs 1 and 2 above, then upon Shamshum reapplying for registration, the CRR Branch will not recommend to the Director that his application be refused unless the CRR Branch becomes aware after the date of this Settlement Agreement of conduct impugning Shamshum's suitability for registration or rendering his registration otherwise objectionable, provided Shamshum meets all other applicable criteria for registration at the time he reapplies.

4. If Shamshum reapplies for, and is granted, registration, his registration will be subject to close supervision terms and conditions for a period of at least one year from the date his registration is granted.

5. This Settlement Agreement will be published on the website of the Ontario Securities Commission and in the OSC Bulletin.

January 23, 2024

"Debra Foubert"

Appendix "A"

IN THE MATTER OF
THE APPLICATION FOR REGISTRATION OF
SAMER SHAMSHUM

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the **Settlement Agreement**) between the Compliance and Registrant Regulation Branch of the Ontario Securities Commission (the **CRR Branch**) and Samer Shamshum (**Shamshum**) relates to Shamshum's application for registration as a mutual fund dealing representative with Royal Mutual Funds Inc. (the **Application**).

2. As more particularly described in this Settlement Agreement, Shamshum failed to conduct himself with the integrity required of a registered individual on three occasions: (a) when he completed his Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form F4**) to seek registration under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**), (b) when he was interviewed by Scotiabank regarding a series of workplace incidents, and (c) when he was interviewed by TD Bank regarding another workplace incident.

3. As a result of this conduct, the CRR Branch informed Shamshum that it was recommending to the Director that the Application be refused. This recommendation would entitle Shamshum to an opportunity to be heard by the Director pursuant to s. 31 of the Act. To resolve this matter, Shamshum and the CRR Branch have agreed to the joint recommendation set out herein.

II. AGREED STATEMENT OF FACTS

4. The CRR Branch and Shamshum agree as to the following facts.

A. Registration History

5. Shamshum has been registered under the Act as a mutual fund dealing representative as follows: (a) TD Investment Services Inc.: August 12, 2015 to April 10, 2017; (b) Scotia Securities Inc.: July 19, 2018 to April 23, 2019; and (c) TD Investment Services Inc.: June 16, 2020 to June 2, 2022.

6. Each time Shamshum was registered, he was also employed by his sponsor firm's bank parent.

B. False Statement on Form F4

7. In 2014, Shamshum was briefly employed by CIBC as a teller, but was terminated from this position during his probationary period for failing to come to work on time.

8. On August 11, 2015, Shamshum applied for registration with TD Investment Services Inc. for the first time by submitting a Form F4. In Item 11 – *Previous employment and other activities* of his Form F4, Shamshum gave the following explanation for his departure from CIBC: "Pursue other endeavours". This statement was false.

9. On July 18, 2018, Shamshum applied for registration with Scotia Securities Inc. by submitting another Form F4 that contained the same false statement concerning his departure from CIBC.

10. On May 8, 2020, Shamshum applied for registration with TD Investment Services Inc. for the second time by submitting another Form F4 that contained the same false statement concerning his departure from CIBC.

11. On February 9, 2023, Shamshum made the Application by submitting another Form F4 that contained the same false statement concerning his departure from CIBC.

12. Shamshum has now amended his Form F4 with the correct information concerning his departure from CIBC and has thoroughly reviewed the balance of it and is satisfied that it does not contain any other false statements, to the best of his knowledge.

C. Misrepresentations to Scotiabank

13. In or around March 2019, Shamshum was involved in a series of incidents at Scotiabank that generally involved him making statements to colleagues that violated the bank's policy concerning respect in the workplace.

14. Scotiabank's human resources department interviewed Shamshum as part of its internal investigation into complaints about the statements he had made to his colleagues. During this interview, Shamshum was not truthful with the

investigators and initially denied that he had made the statements that were the subject of the complaints. Shamshum eventually admitted to the investigators that he had made the comments, but changed the context in which they were made in an effort to minimize them.

15. Shamshum was terminated for cause by Scotiabank and Scotia Securities Inc. on April 23, 2019 for his statements, and consequently by operation of Ontario securities law, his registration was suspended immediately.

D. Misrepresentations to TD Bank

16. On December 8, 2021, Shamshum was involved in a workplace dispute with two colleagues at TD Bank. During this dispute, one of the colleagues (**Colleague A**) made an inappropriate comment to Shamshum.

17. Angered by the inappropriate comment made by Colleague A, later on December 8, 2021, Shamshum made an inappropriate statement concerning Colleague A. This statement was not made in Colleague A's presence, but was made at different times in the presence of three other colleagues.

18. TD Bank's human resources department interviewed Shamshum as part of its internal investigation into the statement he had made concerning Colleague A. Shamshum was not truthful with the investigators and he denied that he had made the statement.

19. Shamshum resigned from TD Bank and TD Securities Inc. effective June 2, 2022, while the internal investigation was still ongoing, and consequently by operation of Ontario securities law, his registration was suspended immediately.

20. TD Bank ultimately determined that Shamshum had made the statement in question regarding Colleague A, and that in doing so, he had violated the bank's policy concerning respect in the workplace.

E. The CRR Branch Recommends Refusal of the Application

21. Shamshum submitted the Application on February 9, 2023.

22. Following an investigation into the matters described in this Part II of the Settlement Agreement, and on the basis of the findings of that investigation, on November 17, 2023, the CRR Branch recommended to the Director that the Application be refused.

III. ADMISSIONS BY SHAMSHUM

23. Shamshum admits that he engaged in the conduct described in Part II of this Settlement Agreement.

24. Shamshum admits that by submitting a Form F4 that contained a false explanation regarding his departure from CIBC, he failed to comply with s. 122(1)(b) of the Act and failed to act with the integrity that is required of a registered individual under s. 27 of the Act.

25. Shamshum admits that by not being truthful with investigators at Scotiabank and TD Bank, he failed to act with the integrity that is required of a registered individual under s. 27 of the Act.

IV. JOINT RECOMMENDATION

26. Pursuant to s. 31 of the Act, Shamshum is entitled to an opportunity to be heard in respect of the recommendation by the CRR Branch that the Application be refused. To settle this matter without recourse to the opportunity to be heard process, the CRR Branch and Shamshum make the following joint recommendation to the Director regarding the Application:

    (a) Shamshum will withdraw the Application and will not reapply for registration under the Act for a period of at least six months from the date this Settlement Agreement is approved by the Director;

    (b) Before reapplying for registration, Shamshum will provide the CRR Branch with proof that he has successfully completed the Ethics and Professional Conduct Course offered by the IFSE Institute;

    (c) If Shamshum complies with paragraphs 26(a) and (b) above, then upon Shamshum reapplying for registration, the CRR Branch will not recommend to the Director that his application be refused unless the CRR Branch becomes aware after the date of this Settlement Agreement of conduct impugning Shamshum's suitability for registration or rendering his registration otherwise objectionable, provided Shamshum meets all other applicable criteria for registration at the time he reapplies;

    (d) If Shamshum reapplies for, and is granted, registration, his registration will be subject to close supervision terms and conditions for a period of at least one year from the date his registration is granted; and

(e) This Settlement Agreement will be published on the website of the Ontario Securities Commission and in the OSC Bulletin.

27. The parties submit that their joint recommendation to the Director is reasonable, having regard to the following factors:

(a) Shamshum does not have a prior disciplinary history with the Ontario Securities Commission or the Canadian Investment Regulatory Organization (or its predecessor organizations);

(b) Shamshum's conduct did not result in any financial losses to investors;

(c) Shamshum has recognized and acknowledged his misconduct; and

(d) By agreeing to this Settlement Agreement, Shamshum has saved the CRR Branch and the Director the time and resources that would have been required for an opportunity to be heard.

28. The parties acknowledge that if the Director does not accept this joint recommendation:

(a) This joint recommendation and all discussions and negotiations between the CRR Branch and Shamshum in relation to this matter, including the admissions in this Settlement Agreement, shall be without prejudice to the parties; and

(b) Shamshum will be entitled to an opportunity to be heard in accordance with section 31 of the Act in respect of the recommendation made by the CRR Branch that the Application be refused.

"Elizabeth A. King"
Deputy Director, Registrant Conduct
Compliance and Registrant Regulation

January 18, 2024

"Samer Shamshum"

January 12, 2024

B.3.2 EquiLend, LLC – s. 15.1 of NI 21-101, s. 12.1 of NI 23-101, s. 10 of NI 23-103

Headnote

Application for relief under s. 15.1 of National Instrument 21-101 Marketplace Operation, s. 12.1 of National Instrument 23-101 Trading Rules, and s. 10 of National Instrument 23-103 Electronic Trading and Direct Access to Marketplaces – relief from the application of all provisions of the Marketplace Rules that apply to a person or company carrying on business as an alternative trading system in the Jurisdictions – relief granted subject to terms and conditions.

Applicable Legislative Provisions

National Instrument 21-101 Marketplace Operation, s. 15.1.
National Instrument 23-101 Trading Rules, s. 12.1.
National Instrument 23-103 Electronic Trading and Direct Access to Marketplaces, s. 10.

January 3, 2024

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

AND

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

AND

IN THE MATTER OF
EQUILEND, LLC (the Filer)

DECISION
(Section 15.1 of NI 21-101 and section 12.1 of NI 23-101 and section 10 of NI 23-103)

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be:

(a) exempt pursuant to subsection 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from NI 21-101 in whole;

(b) exempt pursuant to subsection 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**) from NI 23-101 in whole;

(c) exempt pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) from NI 23-103 in whole

(the relief mentioned in paragraphs (a) to (c) being collectively referred to herein as the **Exemptive Relief Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a coordinated review application):

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and Multilateral Instrument 11-102 *Passport System* 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 private limited liability company incorporated under the laws of the State of Delaware in the United States of America (**U.S.**), whose head office is located at 225 Liberty Street, 10th Floor, Suite 1020, New York, New York, 10281, U.S.

2. The Filer is a direct wholly-owned subsidiary of EquiLend Holdings LLC (**EquiLend Holdings**). EquiLend Holdings is a holding company for various EquiLend entities, including the Filer and EquiLend Canada Corp. (**EquiLend Canada**).

3. The Filer was formed in October 2001. It is registered as an alternative trading system (**ATS**) and a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) pursuant to section 15 of the U.S. *Securities Exchange Act of 1934*, as amended, (the **Exchange Act)**. The Filer is also a member of the Financial Industry Regulatory Authority (**FINRA**) and the Securities Investor Protection Corporation. The Filer operates one (1) ATS that is registered with the SEC.

4. The Filer is subject to a comprehensive regulatory regime in the U.S. The Filer is registered with and regulated by the SEC and FINRA as a broker-dealer and an ATS. The SEC and FINRA fulfil their regulatory responsibilities within the framework established by the Exchange Act and FINRA member rules.

5. The Filer operates an electronic negotiation platform (the **NGT Platform**) that facilitates the negotiation of potential securities borrow and loan transactions in equities and fixed income securities, which fit into the broader category of securities financing transactions (**SFTs**) by providing secure access and connectivity between potential borrowers and lenders through a private network or the internet. All SFTs communicated through the NGT Platform are "potential SFTs" as the counterparties to a potential SFT must migrate off of the NGT Platform to complete or reject the prospective transaction under their respective bilateral or global securities lending agreements.

6. There is no obligation on the part of any counterparty to a potential SFT to ultimately settle the prospective transaction under the terms by which the potential SFT was communicated and matched on the NGT Platform. Rather, the counterparties may ultimately settle the prospective transaction in the over-the-counter market under those terms or the counterparties may cancel the prospective transaction after migrating off of the NGT Platform.

7. The Filer is informed of the ultimate status of the prospective transaction (i.e., whether the counterparties settle the prospective transaction under the terms through which it was communicated and matched on the NGT Platform or cancel the prospective transaction) through a feedback function in which the counterparties report back to the Filer on the status of the potential SFT after they have migrated off of the NGT Platform.

8. The NGT Platform is operated through EquiLend Holdings and its subsidiaries (the **Subsidiaries**), including the Filer, each which are separately regulated, registered or are otherwise exempt from registration in their respective jurisdictions, including the U.S., Canada, the United Kingdom, the Republic of Ireland and the European Union, Australia, Hong Kong and certain other jurisdictions in Asia.

9. EquiLend Canada operates the NGT Platform in Canada. EquiLend Canada is registered as an investment dealer in Ontario and Québec and is also a member of the Canadian Investment Regulatory Organization (**CIRO**) for the purposes of operating as an ATS in Ontario and Québec.

10. The NGT Platform facilitates the negotiation of potential SFTs in equities and fixed income securities.

11. The securities exchanged in the potential SFTs communicated and matched on the NGT Platform are as follows:

    (a) "foreign exchange traded securities" within the meaning of NI 21-101;

    (b) non-Canadian debt securities, including:

        (i) high-grade and high-yield U.S. corporate bonds;

        (ii) U.S. Government-sponsored agency bonds;

        (iii) U.S. Government debt securities (e.g., Treasury Bonds, Treasury Notes, etc.);

        (iv) emerging market bonds, which are defined as U.S. dollar or Euro-denominated bonds issued by sovereign entities or corporations domiciled in a developing country, including both high grade and non-investment grade debt;

(v) European high-grade and high-yield corporate bonds, which are defined as corporate bonds issued by entities domiciled in Europe; and

(vi) non-U.S. sovereign government bonds (e.g., UK gilts or German bundesbonds).

12. In addition, the Filer currently enables NGT Platform communication functionality involving potential SFTs referencing "exchange-traded securities", "corporate debt securities" and "government debt securities" (collectively, **Canadian Securities**) with counterparties outside of Canada, and intends in the future to enable NGT Platform communication functionality involving potential SFTs referencing such securities with Canadian subscribers located in the Jurisdictions, each within the meaning of NI 21-101, as an incidental part of its business, which will constitute less than 10% of global NGT Platform attributed volume as measured across each twelve (12) month calendar year cycle.

13. The Filer does not have any offices or maintain other physical installations in Nova Scotia, Ontario, Québec or any other Canadian province or territory except for an office in Toronto, Ontario whose activities are limited to sales and marketing.

14. Prior to getting access to the NGT Platform, a subscriber (customer) must sign an EquiLend Global User Agreement (**User Agreement**) with the Filer that covers, among other things, obligations of the subscriber, and termination events.

15. The subscriber identifies to the Filer by name an authorized Administrator, who then permissions each employee or contractor of the subscriber to use the NGT Platform (**Named Users**). The Named Users are the only individuals within the subscriber licensed to access and use the NGT Platform.

16. Once a potential SFT is mutually agreed and completed outside the NGT Platform by the counterparties, and the Filer is informed of the completion by the counterparties through the Filer's feedback function, the NGT Platform will send trade details to the parties of the transaction via a pre-approved method (e.g., email). Subscribers, independently and in advance, notify the Filer that they are properly documented with and able to trade with specific counterparties prior to engaging in transactions with that counterparty. The Filer is not a party to the potential SFT and is not otherwise directly or indirectly involved in the execution, clearing or settlement of any potential SFT communicated on the NGT Platform.

17. The Filer proposes to offer direct access to the NGT Platform to prospective subscribers in the Jurisdictions (**Canadian Subscribers**) to facilitate transactions in potential SFTs. Access to the NGT Platform will be limited to Canadian Subscribers who meet the Filer's eligibility criteria. Subscribers generally fall into the following categories: "qualified institutional buyers", as such term is defined in Rule 144A under the U.S. *Securities Act of 1933*, as amended, "eligible contract participants", as such term is defined in Section 1a(18) of the U.S. *Commodity Exchange Act of 1936*, as amended; large multi-national banks; insurance companies; registered investment companies / investment funds; registered broker-dealers / investment dealers; derivatives dealers; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least U.S.$50 million which can include pension funds and hedge funds.

18. Before being provided direct access to the NGT Platform, the Filer will confirm that each Canadian Subscriber is a non-individual "permitted client" as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). Retail customers and natural persons will not be provided with access to the NGT Platform.

19. After a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must execute the User Agreement in which the prospective Canadian Subscriber represents to the Filer that the Canadian Subscriber's conduct of potential SFTs is subject to a level of regulation and oversight under applicable securities, banking or other appropriate laws that impose upon the Canadian Subscriber a combination of requirements such as audits, public disclosure of financial information, capital rules, collateral requirements, record keeping requirements or other similar safeguards, and agrees to use the NGT Platform and the related user documentation only in the ordinary course of its own business for its own internal use and be and remain at all times a non-individual "permitted client" as defined in NI 31-103.

20. Under the User Agreement, a Canadian Subscriber and its affiliates constitute a "Subscriber Group". The Subscriber Group will authorize Named Users, who are the only persons authorized to use the NGT Platform. The Subscriber Group's right to use the NGT Platform is conditioned upon the Subscriber Group obtaining and maintaining all government, legal and regulatory approvals, consents, authorizations, registrations, permits and licenses required for the conduct of its activities and its use of the NGT Platform, and using the NGT Platform only in compliance with applicable law.

21. The Filer has determined that it may be subject to dealer registration under applicable Canadian securities legislation and so it proposes to rely on the "international dealer exemption" under section 8.18 of NI 31-103 in the Jurisdictions and, subject to observing the volume ceiling in paragraph 10 above, on the "specified debt" exemption under section 8.21 of NI 31-103 and the "trades through or to a registered dealer" exemption under section 8.5 of NI 31-103.

22. The Filer will ensure that all applicants who become Canadian Subscribers satisfy the Filer's eligibility criteria, including, among other things, that each Canadian Subscriber is a "permitted client" as that term is defined in NI 31-103.

23. The Filer is not in default of securities legislation in any Jurisdiction.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that

(a) in the case of the registration requirements that may otherwise apply to the Filer in connection with the trading of Canadian Securities, the Filer

(i) does not execute trades in Canadian Securities with or for its clients, except as permitted under applicable securities laws, and

(ii) complies with the conditions of the international dealer exemption in section 8.18 of NI 31-103 as if such securities were "foreign securities" as defined in section 8.18 of NI 31-103; and

(b) the Filer complies with the terms and conditions attached hereto as Schedule A.

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission

SCHEDULE A

Terms and Conditions

Regulation and Oversight of the Marketplace

1. The Filer will continue to be subject to the regulatory oversight of the regulator in its home jurisdiction;

2. The Filer will either be registered in an appropriate category or rely on an exemption from registration under Canadian securities laws;

3. The Filer will promptly notify the Decision Makers if its status in its home jurisdiction has been revoked, suspended, or amended, or the basis on which its status has significantly changed;

Access

4. The Filer will not provide direct access to a Canadian Subscriber unless the Canadian Subscriber is a non-individual "permitted client" as that term is defined in NI 31-103;

5. The Filer will require Canadian Subscribers to provide prompt notification to the Filer if they no longer qualify as non-individual "permitted clients";

6. The Filer must make available to Canadian Subscribers appropriate training for each person who has access to trade on the NGT Platform;

Trading by Canadian Subscribers

7. The Filer will only offer potential SFTs (securities borrow and loan transactions) to Canadian Subscribers and in that context use only the collateral listed in accordance with representation numbers 9 to 10 of this Decision;

8. Potential SFTs communicated on the NGT Platform by Canadian Subscribers will be executed, cleared and settled outside the NGT Platform, by subscribers and without any direct facilitation or involvement on the part of the Filer;

9. The Filer will only permit Canadian Subscribers to communicate potential SFTs in securities that are permitted to be traded in the United States under applicable securities laws and regulations;

Reporting

10. The Filer will promptly notify staff of the Decision Makers of any of the following:

    (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:

        (i) changes to its regulatory oversight;

        (ii) the access model, including eligibility criteria, for Canadian Subscribers;

        (iii) systems and technology; and

        (iv) its clearing and settlement arrangements;

    (b) any change in its regulations or the laws, rules, and regulations in the home jurisdiction relevant to the products traded;

    (c) any known investigations of, or regulatory action against, the Filer by the regulator in the home jurisdiction or any other regulatory authority to which it is subject;

    (d) any matter known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and

    (e) any default, insolvency, or bankruptcy of any subscriber known to the Filer or its representatives that may have a material, adverse impact upon the NGT Platform, the Filer or any Canadian Subscriber;

11. The Filer will maintain the following updated information and submit such information in a manner and form acceptable to staff of the Decision Makers on a semi-annual basis (within thirty (30) days of the end of each six (6) month period), and at any time promptly upon the request of staff of the Decision Makers:

(a) a current list of all Canadian Subscribers, presented on a per provincial basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to the Filer that it could be provided with direct access to the NGT Platform;

(b) a list of all Canadian applicants for status as a Canadian Subscriber, presented on a per provincial basis, who were denied such status or access or who had such status or access revoked during the period;

(i) for those Canadian applicants for status as a Canadian Subscriber that were denied access, an explanation as to why access was denied;

(ii) for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;

(c) for each product:

(i) the total volume and value of SFTs communicated and matched on the NGT Platform as originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis;

(ii) the proportion of worldwide volume and value of SFTs communicated and matched on the NGT Platform as conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers;

(iii) the volume and value of SFTs in Canadian Securities (as defined in representation 10 of this Decision) communicated and matched on the NGT Platform, and proportion of volume in such Canadian Securities relative to the total volume communicated and matched on the NGT Platform for the six (6) month period, calculated in a manner acceptable to the Decision Makers; and

(d) a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the NGT Platform which were reported to the regulator in the home jurisdiction;

Disclosure

12. The Filer will provide to its Canadian Subscribers disclosure that states that:

(a) rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;

(b) the rules applicable to trading on the NGT Platform may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and

(c) the Filer is regulated by the regulator in the home jurisdiction, rather than the Decision Makers;

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Decision Makers, staff of the Decision Makers or another applicable securities regulatory authority in Canada arising out of, related to, concerning or in any other manner connected with such regulatory authority's regulation and oversight of the activities of the Filer in Canada, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Canada, and (ii) an administrative proceeding in Canada;

14. The Filer will file with the Decision Makers a valid and binding appointment of Osler, Hoskin & Harcourt LLP, or any subsequent agent, as the agent for service in Canada upon which the Decision Makers or other applicable regulatory authority in Canada may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal, or other proceeding arising out of or relating to or concerning the regulation and oversight of the NGT Platform or the Filer's activities in Canada; and

Information Sharing

15. The Filer must, and must cause its affiliated entities, if any, to promptly provide to the Decision Makers, on request, any and all data, information, and analyses in the custody or control of the Filer or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(a) data, information, and analyses relating to all of its or their businesses; and

(b) data, information, and analyses of third parties in its or their custody or control; and

16. The Filer must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, investor protection funds and other appropriate legal and regulatory bodies.

B.3.3 NewGen Asset Management Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – alternative mutual funds granted relief from: subsection 2.6(2), section 2.6.1 and section 2.6.2 of NI 81-102 to physically short sell and borrow cash up to 100% of NAV – alternative mutual funds granted relief from subsection 6.1(1) of NI 81-102 to appoint additional custodians and to clarify that short sale proceeds are excluded for the purposes of calculating non-custodial borrowing agent collateral limits under section 6.8.1 of NI 81-102 – relief subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.6(2)(c), 2.6.1(1)(c)(v), 2.6.2, 6.1(1), 6.8.1 and 19.1.

February 2, 2024

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
NEWGEN ASSET MANAGEMENT LIMITED
(NewGen)
OR AN AFFILIATE
(collectively, the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of NewGen Focused Alpha Fund, NewGen Alternative Income Fund, and NewGen Credit Strategies Fund (each, an **Existing Fund** and, collectively, the **Existing Funds**), and any future alternative mutual funds as may be managed by the Filer (each, a **Future Fund** and, collectively with the Existing Funds, the **Funds** and each, a **Fund**), each of which is, or will be, an investment fund subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) for a decision under the securities legislation (**Legislation**) of the Jurisdiction:

(i) exempting each of the Funds from:

(a) subparagraph 2.6.1(1)(c)(v) of NI 81-102, which restricts a Fund from selling a security short if, at the time, the aggregate market value of all securities sold short by the Fund exceeds 50% of the Fund's NAV (together with (i)(c) below, the **Short Selling Limit**);

(b) subparagraph 2.6(2)(c) of NI 81-102, which restricts a Fund from borrowing cash if the value of cash borrowed, when aggregated with the value of all outstanding borrowing by the Fund, exceeds 50% of the Fund's NAV (together with (i)(c) below, the **Cash Borrowing Limit**); and

(c) section 2.6.2 of NI 81-102, which restricts a Fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Fund (the **Combined Aggregate Value**) would exceed 50% of the Fund's NAV and which requires a Fund, if the Combined Aggregate Value exceeds 50% of the Fund's NAV, as quickly as commercially reasonable, to take all necessary steps to reduce the Combined Aggregate Value to 50% or less of the Fund's NAV; and

(ii) exempting each of the Funds from the requirement in subsection 6.1(1) of NI 81-102, which provides that, except as provided, all portfolio assets of a Fund be held under the custodianship of one qualified custodian:

(a) to permit a Fund to deposit portfolio assets with a borrowing agent that is not the Fund's custodian or sub-custodian in connection with a short sale of securities, if the aggregate market value of the portfolio assets held by the borrowing agent after such deposit, excluding the aggregate market value of the proceeds from outstanding short sales of securities held by the borrowing agent, does not exceed 25% of the Fund's NAV at the time of deposit (the **Short Sale Collateral Relief**); and

(b) to permit each Fund to appoint more than one custodian, each of which is qualified to be a custodian under Section 6.2 of NI 81-102 and each of which is subject to all of the other requirements in NI 81-102 Part 6 – *Custodianship of Portfolio Assets* other than the prohibition against the Fund appointing more than one custodian in subsection 6.1(1) of NI 81-102 (the **Custodian Relief**),

((i)(a) and (i)(c), together, the **Short Selling Relief**, (i)(b) and (i)(c), together, the **Cash Borrowing Relief**, and, collectively with the Short Sale Collateral Relief and the Custodian Relief, 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 the 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories, and Nunavut (collectively, together with the Jurisdiction, the **Canadian Jurisdictions**).

Defined Terms

Unless expressly defined herein, terms in this Application have the respective meanings given to them in National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), NI 81-102, National Instrument 14-101 *Definitions* or MI 11-102.

NAV means net asset value;

Prime Broker means any entity that acts as a lender or borrowing agent to one or more investment funds;

Prospectus means a simplified prospectus of a Fund prepared in accordance with Form 81-101F1 – *Contents of Simplified Prospectus* or a prospectus of a Fund prepared in accordance with Form 41-101F2 *Information Required in an Investment Fund Prospectus*, as the same may be amended from time to time;

Securities Lending Agreements means agreements that effect securities lending, repurchase, or reverse repurchase transactions between a Fund, as lender of the securities, third party borrowers, and the Fund's securities lending agent; and

Short Sale Collateral Limits means the limits specified in subparagraph 6.8.1(1)(b) of NI 81-102 on the deposit of portfolio assets by a Fund with a borrowing agent (that is not the custodian or a sub-custodian of the Fund) as security in connection with a short sale of securities.

Representations

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

The Filer

1. NewGen is a corporation incorporated under the laws of the Jurisdiction. The head office of NewGen is in Toronto, Ontario.

2. NewGen is registered as an investment fund manager in the Provinces of Ontario, Québec, and Newfoundland and Labrador. NewGen is also registered as an adviser in the category of portfolio manager in the Provinces of Alberta and Ontario and as an exempt market dealer in the Provinces of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Ontario, Québec, and Saskatchewan.

3. NewGen is the investment fund manager of each Existing Fund and the Filer will be the investment fund manager of any Future Funds.

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

The Funds

5. Each of the Funds is, or will be, established under the laws of a Canadian Jurisdiction as an investment fund that is a trust, a class of shares of a mutual fund corporation, or limited partnership and is, or will be, a reporting issuer in one or more of the Canadian Jurisdictions.

6. Each of the Funds is, or will be, an alternative mutual fund governed by NI 81-102, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

7. The securities of each Fund are, or will be, qualified for distribution in one or more of the Canadian Jurisdictions under a Prospectus prepared and filed in accordance with the securities legislation of such Canadian Jurisdictions.

8. None of the Existing Funds is in default of applicable securities legislation in any of the Canadian Jurisdictions.

9. The custodian of the Existing Funds is CIBC World Markets Inc. or TD Securities Inc., as applicable. Each custodian is independent of the Filer.

Reasons for the Exemption Sought

Short Selling Relief and Cash Borrowing Relief

10. The investment objective of each Fund will differ but, in each case, key investment strategies that may be utilized by a Fund may include: (a) the use of market-neutral, offsetting, inverse, or shorting strategies requiring the use of short selling in excess of the Short Selling Limit; and/or (b) the use of cash borrowing to provide additional investment exposure in connection with the investment strategies of the Fund in excess of the Cash Borrowing Limit.

11. Market-neutral strategies are well-recognized for limiting market risk and balancing long and short positions within an investment portfolio with the objective of providing positive returns regardless of whether the broader market rises, falls, or is flat. Market-neutral strategies are designed to have less volatility than the broader market when measured over medium to long-term periods. Market-neutral strategies also provide diversification to investors as returns are intended to be uncorrelated to the performance of the broader market – such strategies are designed to effectively remove any "beta" component from their returns and investment exposures.

12. As part of an investment strategy, short positions can serve as both a hedge against exposure to a long position or a group of long positions, and also as a source of returns with an offsetting long position or positions. The Funds will generally seek to generate an attractive risk/return profile independent of the direction of the broad markets. As such, at the portfolio level, these strategies will seek to hedge out a Fund's exposure to the direction of broad markets, and to generate positive performance from the difference, specifically, the spread, between the performance of the portfolio's long and short positions.

13. The ability to engage in additional short selling and cash borrowing in connection with the investment strategies of a Fund may provide material cost savings to the Fund compared to obtaining the same level of investment exposure through the use of specified derivatives while, at the same time, not increasing the overall level of risk to the Fund.

14. The costs to the Funds of engaging in physical short sales and cash borrowing are typically less when compared to the equivalent derivative transactions due to a number of factors, which may include:

    (a) Prime Brokers typically have greater flexibility to offer more favourable financing terms to a Fund in relation to the aggregate amount of the Fund's assets held in the prime brokerage margin account in relation to short sales and cash borrowing;

    (b) Margin requirements for derivative instruments are primarily based on the underlying investment exposure and, as a result, can be high; and

    (c) Certain derivative instruments (such as futures contracts) require cash or near cash securities (such as government treasuries) to be deposited with the counterparty as collateral. This would require a Fund to use these portfolio assets to satisfy collateral requirements rather than utilizing them in connection with the Fund's investment strategies.

15. The Funds may use cash borrowing as a more flexible and cost-efficient means of providing additional leverage for investment strategies such as merger arbitrage strategies where the use of derivative instruments to provide the same level of exposure may not be practical. In connection with such strategies, the Filer is typically required to respond in a timely manner to public disclosure relating to a transaction and market movements in the share price of the target and/or acquiror company. The use of cash borrowing in such circumstances provides an easily accessible tool that enables the

Filer to implement the investment decision more quickly compared to the use of derivative instruments that provide the same level of exposure on a synthetic basis.

16. Cash borrowing is more efficient to utilize on a day-to-day basis compared to derivative instruments, which generally require a higher degree of negotiation and ongoing administration on the part of the Filer. The Cash Borrowing Relief would provide the Filer with access to a more functional source of additional leverage to utilize on behalf of the Funds at a lower cost which, in turn, would benefit investors.

17. The investment strategies of each Fund permit, or will permit, it to:

    (a) sell securities short, provided that, at the time the Fund sells a security short (i) the aggregate market value of securities of any one issuer (other than "government securities" as defined in NI 81-102) sold short by the Fund does not exceed 10% of the Fund's NAV, and (ii) the aggregate market value of all securities sold short by the Fund does not exceed 100% of its NAV;

    (b) borrow cash, provided that, at the time, the value of cash borrowed when aggregated with the value of all outstanding borrowing by the Fund does not exceed 100% of the Fund's NAV;

    (c) borrow cash or sell securities short, provided that the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Fund does not exceed 100% of the Fund's NAV (the **Total Borrowing** and **Short Selling Limit**). If the Total Borrowing and Short Selling Limit is exceeded, the Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to be within the Total Borrowing and Short Selling Limit; and

    (d) borrow cash, sell securities short, or enter into specified derivatives transactions, provided that, immediately after entering into a cash borrowing, short selling, or specified derivative transaction, the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and aggregate notional amount of the Fund's specified derivatives positions (other than positions held for hedging purposes, as defined in NI 81-102) would not exceed 300% of the Fund's NAV as set out in section 2.9.1 of NI 81-102 (the **Leverage Limit**). If the Leverage Limit is exceeded, the Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and the aggregate notional amount of the Fund's specified derivatives positions (other than positions held for hedging purposes) to be within the Leverage Limit.

18. An alternative mutual fund that is subject to NI 81-102 is permitted to take leveraged long and short positions using specified derivatives up to the Leverage Limit. As such, the Short Selling Relief and Cash Borrowing Relief would not be required if a Fund utilized solely specified derivatives to obtain short exposure to the underlying securities or to provide additional investment exposure in connection with the Fund's investment strategies. NI 81-102 contemplates that alternative mutual funds may utilize shorting strategies using a combination of short sale transactions (subject to the Short Selling Limit) and specified derivative positions and obtain additional investment exposure using a combination of cash borrowing (subject to the Cash Borrowing Limit) and specified derivative positions subject, in all cases, to the Leverage Limit. Alternative mutual funds that were previously known as commodity pools provide 100% or 200% inverse exposure through the use of specified derivatives, which is consistent with the Leverage Limit and does not trigger the application of the Short Selling Limit or Cash Borrowing Limit for which the Filer is requesting exemptive relief. Accordingly, the Short Selling Relief and Cash Borrowing Relief would simply allow the Funds to do directly what they could otherwise do indirectly through the use of specified derivatives.

19. The Funds require the flexibility to enter into physical short positions and borrow cash when doing so is, in the opinion of the Filer, in the best interests of the applicable Fund and to not be obligated to utilize an equivalent short position or amount of leverage synthetically through the use of specified derivatives as a result of regulatory restrictions in NI 81-102 that the Filer believes do not provide any material additional benefit or protection to investors.

20. The Filer believes that the Short Selling Relief and the Cash Borrowing Relief would allow the Filer to more effectively manage each Fund's investment exposure by providing it with the ability to respond to market developments in a timely manner and enabling the Filer to reduce the related expenses incurred by the Funds. In addition, specified derivative options may not be readily available for certain securities, may be relatively illiquid or may require large capital commitments on the part of the Fund.

21. While there may be certain situations where using a synthetic short position may be preferable, physical short positions are typically less costly, because of the ability to execute trades with a larger number of counterparties, compared to a single counterparty for synthetic shorts. This can result in lower borrowing costs for the Fund and reduce its exposure to counterparty risk (e.g., counterparty default, counterparty insolvency, and premature termination of derivatives) compared to a synthetic short position.

22. The Filer, as a registrant and a fiduciary, is in the best position to determine, depending on the surrounding circumstances, whether the Funds should enter into a physical short position and/or obtain additional investment exposure via cash borrowing versus achieving the same result through the use of specified derivatives. The Short Selling Relief and Cash Borrowing Relief would provide the Filer with the required flexibility to make timely trading decisions between physical and synthetic short sale positions and/or achieving additional investment exposure through cash borrowing or synthetic transactions. Accordingly, the Short Selling Relief and the Cash Borrowing Relief would permit the Filer to implement more effective portfolio management activities on behalf of a Fund and its investors. Investors would benefit by obtaining access to a more diversified set of investment opportunities than are currently available, while remaining within the overall investment limits set out in NI 81-102.

23. Any physical short position or cash borrowing transaction entered into by a Fund will be consistent with the investment objectives and strategies of the applicable Fund.

24. The investment strategies of each Fund will clearly disclose that the short selling and cash borrowing strategies and abilities of the Fund are outside the scope of NI 81-102, including that the aggregate market value of all securities sold short by the Fund and/or the aggregate amount of cash borrowed may exceed 50% of the Fund's NAV. The Prospectus will also contain appropriate risk disclosure, alerting investors of any material risks associated with such investment strategies.

25. The Filer does not consider that granting the Short Selling and Cash Borrowing Relief would constitute either a fundamental or material change for the Existing Funds under NI 81-102 or National Instrument 81-106 *Investment Fund Continuous Disclosure*.

26. The Filer will determine the risk rating for each Fund using the Investment Risk Classification Methodology as set out in Appendix F of NI 81-102. The Filer does not anticipate that the current risk ratings of the Existing Funds would change if the Short Selling and Cash Borrowing Relief are granted.

27. The Filer has comprehensive risk management policies and/or procedures that address the risks associated with short selling and cash borrowing in connection with the implementation of the investment strategies of each Fund.

28. Each Fund will implement the following controls when conducting a short sale:

    (a) The Fund will assume the obligation to return to the borrowing agent the securities borrowed to effect the short sale;

    (b) The Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

    (c) The Filer will monitor the short positions within the constraints of the Exemption Sought as least as frequently as daily;

    (d) The security interest provided by the Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

    (e) The Filer will maintain appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls, and proper books and records; and

    (f) The Filer will keep proper books and records of short sales and all assets of a Fund deposited with borrowing agents as security.

29. The Filer believes that it is in the best interests of each of the Funds to be permitted to engage in physical short selling and to obtain additional investment exposure through the use of cash borrowing in excess of the current limits set out in NI 81-102.

Short Sale Collateral Relief

30. As part of its investment strategies, each Fund that engages in short sales of securities is permitted to grant a security interest in favour of and to deposit pledged portfolio assets with its Prime Broker. If a Fund engages as its Prime Broker an entity that is not its custodian or sub-custodian, then a Fund may only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 25% of the Fund's NAV at the time of deposit.

31. A Prime Broker may not wish to act as the borrowing agent for a Fund that has the ability to sell securities short that have an aggregate market value of up to 50% of the Fund's NAV (or more if the Short Selling Relief is granted) if the Prime

Broker is only permitted to hold, as security for such transactions, portfolio assets having an aggregate market value that is not in excess of 25% of the Fund's NAV.

32. Prime Brokers that are qualified to act as a custodian or sub-custodian under NI 81-102 are not widely appointed as custodians or sub-custodians under NI 81-102 as it can be both operationally challenging and costly to appoint them to act in such capacity.

33. Given the typical collateral requirements that Prime Brokers impose on their customers who engage in the short sale of securities, if the Short Sale Collateral Limits apply, the Funds would need to retain multiple Prime Brokers in order to sell short securities to the extent permitted under Section 2.6.1 of NI 81-102 and, if granted, the Short Selling Relief described above. Managing and overseeing relationships with multiple Prime Brokers introduces unnecessary operational and administrative complexities and additional costs of operation for the Funds.

Custodian Relief

34. The Filer would like the flexibility for each Fund to engage additional custodians that are qualified to act as a custodian under subsection 6.2(3) of NI 81-102, which may include engaging Prime Brokers that satisfy such requirements (each, an **Additional Custodian**). The ability to appoint a Prime Broker to act as an Additional Custodian will increase operational efficiency and reduce execution risk and costs for a Fund as it will avoid the need to transfer the Fund's portfolio assets from a third party custodian to the Prime Broker to effect transactions conducted by the Fund through the Prime Broker. The Filer and any Additional Custodians would be subject to all requirements applicable to custodians under Part 6 of NI 81-102, other than the requirement in subsection 6.1(1) of NI 81-102 that there only be one custodian.

35. An Additional Custodian may also be appointed as a securities lending agent of the Funds and, in such circumstances, would provide the Funds with the opportunity to enter into a greater number of Securities Lending Agreements than would be the case with a single custodian and would, therefore, have the potential to increase revenues to the Funds from securities lending activities.

36. Prime Brokers are not widely appointed as sub-custodians by custodians under NI 81-102 as it can be both operationally challenging for the custodian and the Filer to appoint them to act in such capacity.

37. If the Custodian Relief is granted, an Additional Custodian's responsibility for custody of a Fund's assets will apply only to the assets held by the Additional Custodian on behalf of the Fund (the **Relevant Assets**). The custodial arrangements between a Fund and an Additional Custodian will comply with the requirements of Part 6 of NI 81-102 other than subsection 6.1(1).

38. Any Additional Custodian will meet the requirements of NI 81-102 to act as a custodian for an investment fund and will have experience acting as custodian of the assets of public investment funds governed by NI 81-102. As custodian of the Relevant Assets, an Additional Custodian will comply with the standard of care applicable to qualified custodians under Section 6.6 of NI 81-102, will hold the Relevant Assets in the name of the applicable Fund in accordance with Section 6.5 of NI 81-102, and will include the provisions prescribed in Section 6.4 of NI 81-102 in its custody agreement with the Filer and applicable Fund(s). Each Additional Custodian will complete the review and provide compliance reports to the Filer as contemplated in Section 6.7 of NI 81-102.

39. The ability to terminate an Additional Custodian as custodian of the Relevant Assets of a Fund at any time without cause on written notice will ensure that the Filer maintains ultimate control over all of the portfolio assets of the Funds if the Filer considers it to be in the best interests of the Funds and their respective securityholders to do so.

40. The appointment of an Additional Custodian should not have an impact on the safety of the portfolio assets of the Funds while also enhancing the Funds' abilities to engage in the efficient short selling of securities under Section 6.8.1 of NI 81-102 and to enter into additional Securities Lending Arrangements.

41. Disclosure regarding the particulars of the appointment of any Additional Custodian of the Existing Funds with respect to the Relevant Assets will be included in the next Prospectus filed with respect to the applicable Funds after such appointment is made.

Decision

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

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

In respect of the Short Selling Relief and the Cash Borrowing Relief

1. A Fund may sell a security short or borrow cash only if, immediately after the cash borrowing or short selling transaction:

   (a) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV;

   (b) the aggregate value of all cash borrowing by the Fund does not exceed 100% of the Fund's NAV;

   (c) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV; and

   (d) the Fund's aggregate exposure to short selling, cash borrowing, and specified derivatives does not exceed the Leverage Limit.

2. In the case of a short sale, the short sale:

   (a) otherwise complies with all of the short sale requirements applicable to alternative mutual funds under sections 2.6.1 and 2.6.2 of NI 81-102; and

   (b) is consistent with the Fund's investment objective and strategies.

3. In the case of a cash borrowing transaction, the transaction:

   (a) otherwise complies with all of the cash borrowing requirements applicable to alternative mutual funds under sections 2.6 and 2.6.2 of NI 81-102; and

   (b) is consistent with the Fund's investment objective and strategies.

4. The Prospectus under which securities of a Fund are offered discloses in the investment strategies that the Fund can sell securities short or borrow cash up to, and subject to, the limits described in condition 1 above.

In respect of the Short Sale Collateral Relief:

5. Each Fund otherwise complies with subsections 6.8.1(2) and (3) of NI 81-102.

In respect of the Custodian Relief:

6. A Fund may appoint one or more Additional Custodians provided that the following conditions are met:

   (a) a single entity reconciles all the portfolio assets of the Fund and provides the Fund with valuation and securityholder recordkeeping services and will complete daily reconciliations amongst the custodians before calculating a daily net asset value;

   (b) the Filer maintains such operational systems and processes, as between two or more custodians and the single entity referred to in (a) above, in order to keep a proper reconciliation of all the portfolio assets that will move amongst the custodians, as appropriate; and

   (c) the Additional Custodian will act as custodian, securities lending agent, and/or prime broker only for the portion of portfolio assets of the Funds transferred to it.

“Darren McKall”
Manager
Investment Funds and Structured Products Branch
Ontario Securities Commission

Application File #: 2024/0031
SEDAR File #: 6073683

B.3.4 Hybrid Power Solutions Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the requirements of paragraph 3.3(1)(a)(i) of National Instrument 52-107 Financial Disclosure requiring relief from financial statements to be accompanied by an auditor's report that expresses an unmodified opinion – relief granted on terms and conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am.

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

AND

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

AND

IN THE MATTER OF
HYBRID POWER SOLUTIONS INC.
(the Filer)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirement in section 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements that are required by securities legislation to be audited must be accompanied by an auditor's report that expresses an unmodified opinion does not apply to the Filer's audited financial statements for the years ended May 31, 2023 (the 2023 Financial Statements) and May 31, 2022 (the 2022 Financial Statements) (the Exemption Sought).

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

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

(b) the Filer has provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, and Newfoundland and Labrador; and

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

Interpretation

¶ 2 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

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

1. the Filer previously operated under the name HPSI Holdings Inc. (HSPI), which was incorporated on December 7, 2015 under the Ontario *Business Corporations Act* (the OBCA); on June 13, 2022, HPSI continued its existence out of Ontario and into British Columbia under the British Columbia *Business Corporations Act* (the

BCBCA); on July 22, 2022, HPSI and its former parent Hybrid Power Solutions Inc. (formerly, 2494760 Ontario Inc.) completed a vertical short-form amalgamation into a single corporate entity to form the Filer under the BCBCA; in connection with the vertical amalgamation, HPSI changed its name to Hybrid Power Solutions Inc., which is the current name of the Filer;

2. the Filer's head office is located in Vancouver, British Columbia;

3. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario, and Newfoundland and Labrador;

4. the Filer's common shares are listed for trading on the Canadian Securities Exchange under the symbol HPSS;

5. the Filer is a clean energy company specializing in producing industrial grade clean technology products such as portable power packs and stationary energy storage; the Filer's business is not seasonal;

6. the Filer's auditor is MNP LLP (MNP);

7. on April 14, 2023, the Filer filed a preliminary long form prospectus with the BCSC and OSC (the Preliminary Prospectus) in connection with the Filer's initial public offering of units; the BCSC and OSC provided a receipt for the Preliminary Prospectus on April 17, 2023;

8. the Preliminary Prospectus incorporated the 2022 Financial Statements and auditor's report thereon, which contained a qualified audit opinion from MNP related to opening inventories and the effect of opening inventories on the results of operations and cash flows (the 2022 Modified Opinion); as MNP was appointed as auditor of the Filer during the financial year ended May 31, 2022, MNP was not able to observe the counting of physical inventories at June 1, 2021 or satisfy themselves concerning those inventory quantities by alternative means;

9. the Preliminary Prospectus also incorporated the Filer's audited interim financial statements for the 6-month period ended November 30, 2022 (the November 2022 Interim Statements); the audit report included with the November 2022 Interim Statements expressed an unmodified audit opinion;

10. on July 14, 2023, the Filer filed its final long form prospectus with the BCSC and OSC (the Prospectus), containing the 2022 Financial Statements and the November 2022 Interim Statements; the BCSC and OSC provided a receipt for the Prospectus on July 17, 2023;

11. subsequent to the Prospectus, the Filer filed, and was issued receipts from the BCSC and OSC for:

    (a) an amended and restated long form prospectus dated August 28, 2023 (amending the Prospectus) (the Amended and Restated Prospectus);

    (b) an amendment dated September 13, 2023 to the Amended and Restated Prospectus; and

    (c) an amendment dated October 18, 2023 to the Amended and Restated Prospectus

    (the Amended and Restated Prospectus together with subsequent amendments are referred to as the Final Prospectus);

12. on September 28, 2023 (the Default Date), the Filer filed the 2023 Financial Statements and auditor's report thereon, pursuant to its obligations as a reporting issuer under section 4.1 of NI 51-102; the 2022 Financial Statements were included as comparative information in the 2023 Financial Statements; the 2023 Financial Statements contained the 2022 Modified Opinion; the auditor's report for the 2023 Financial Statements was otherwise unmodified;

13. in its submissions to the BCSC and OSC regarding the Prospectus containing the 2022 Financial Statements, the Filer requested exemptive relief from the requirement that the audited financial statements contained in the Prospectus contain an unmodified audit opinion, relying on section 5.8(2) of 41-101CP, which provides that relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements to contain a qualified opinion relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report expresses an unmodified opinion and the business is not seasonal (which requirement was met with the inclusion of the November 2022 Interim Statements in the Prospectus); the receipt provided for the Prospectus constituted evidence that the relief requested had been granted;

14. the Filer is currently in default of securities legislation due to the inclusion of the 2022 Modified Opinion in the 2023 Financial Statements;

15. except for the default noted above, the Filer is not in default of securities legislation in any jurisdiction;

16. the Filer acknowledges that any right of action, remedy, penalty or sanction available to any person or company or to a securities regulatory authority against the Filer from the Default Date until the date of this decision document is not terminated or altered as a result of this decision;

17. the 2023 Financial Statements contain an unmodified opinion respecting the statement of financial position, statement of loss and comprehensive loss, statement of change in shareholders deficiency and statement of cash flows for the 12 months ended May 31, 2023;

18. on December 28, 2023, the Filer filed a Notice Declaring Intention to be Qualified Under NI 44-101 and NI 44-102 so that it could proceed with the filing of a short form base shelf prospectus*;*

19. without the Exemption Sought, the Filer will continue to be in default of securities legislation in connection with the filing of the 2023 Financial Statements and will not qualify to file a short form base shelf prospectus pursuant NI 44-101 and NI 44-102; and

20. except for the qualification referred to above, the 2023 Financial Statements and the 2022 Financial Statements comply with NI 52-107.

Decision

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

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

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

OSC File #: 2024/0020

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B.4
Cease Trading Orders

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

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
THC BIOMED INTL LTD	February 1, 2024	
Scryb Inc.	February 2, 2024	February 5, 2024
Memex Inc.	February 2, 2024	
First Choice Products Inc.	February 2, 2024	
Urbanimmersive Inc.	February 2, 2024	
Alpha Copper Corp.	February 2, 2024	
Coloured Ties Capital Inc.	February 2, 2024	
Imaging Medical Inc.	February 2, 2024	
Pepcap Resources Inc.	February 2, 2024	
Premier Diversified Holdings Inc.	February 2, 2024	
Terranueva Corporation	February 5, 2024	

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

Company Name	Date of Order	Date of Lapse
PlantFuel Life Inc.	January 30, 2024	
Odd Burger Corporation	January 30, 2024	
Tokens.com Corp.	January 2, 2024	February 2, 2024

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
Tokens.com Corp.	January 2, 2024	February 2, 2024
PlantFuel Life Inc.	January 30, 2024	
Odd Burger Corporation	January 30, 2024	

B.7
Insider Reporting

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

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

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

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Desjardins Canadian Corporate Bond Fund
Principal Regulator – Quebec
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Feb 1, 2024
NP 11-202 Preliminary Receipt dated Jan 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06076683

Issuer Name:
Wise Balanced 50 ETF Portfolio
Principal Regulator – Quebec
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jan 26, 2024
NP 11-202 Preliminary Receipt dated Jan 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06076709

Issuer Name:
Ninepoint Capital Appreciation Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Feb 2, 2024
NP 11-202 Final Receipt dated Feb 5, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06064999

Issuer Name:
Ninepoint 2024 Short Duration Flow-Through Limited Partnership - National Class
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 30, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06067590

Issuer Name:
Desjardins Sustainable Canadian Corporate Bond Fund
Principal Regulator – Quebec
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jan 26, 2024
NP 11-202 Preliminary Receipt dated Jan 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06076705

Issuer Name:
Ninepoint 2024 Short Duration Flow-Through Limited Partnership - Quebec Class
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 30, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06067592

Issuer Name:
MRF 2024 Resource Limited Partnership
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 30, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06066137

Issuer Name:
Canadian Large Cap Leaders Split Corp.
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 29, 2024
NP 11-202 Final Receipt dated Jan 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06065203

Issuer Name:
Mackenzie Northleaf Private Credit Interval Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 29, 2024
NP 11-202 Final Receipt dated Jan 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06053303

Issuer Name:
CI Auspice Alternative Diversified Corporate Class
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Feb 1, 2024
NP 11-202 Final Receipt dated Feb 5, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06060954

Issuer Name:
Evolve Canadian Banks and Lifecos Enhanced Yield Index Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated January 24, 2024
NP 11-202 Final Receipt dated Jan 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03507643

Issuer Name:
Hamilton Enhanced U.S. Covered Call ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated February 2, 2024
NP 11-202 Final Receipt dated Feb 5, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06059982

NON-INVESTMENT FUNDS

Issuer Name:
BGX - BLACK GOLD EXPLORATION CORP.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Jan 26, 2024
NP 11-202 Final Receipt dated Jan 30, 2024
Offering Price and Description:
90,627 Common Shares on Exercise of 90,627 Outstanding Special Warrants
Filing# 06005260

Issuer Name:
Brookfield Corporation (formerly Brookfield Asset Management Inc.)
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Jan 29, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
US$1,500,000,000.00
Class A Exchangeable Limited Voting Shares of Brookfield Reinsurance Ltd.
Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd.
Class A Limited Voting Shares of Brookfield Corporation (issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Limited Voting Shares or Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd.)
Filing# 06072590

Issuer Name:
Brookfield Reinsurance Ltd. (formerly Brookfield Asset Management Reinsurance Partners Ltd.)
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Jan 29, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
US$1,500,000,000.00
Class A Exchangeable Limited Voting Shares of Brookfield Reinsurance Ltd.
Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd.
Class A Limited Voting Shares of Brookfield Corporation (issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Limited Voting Shares or Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd.)
Filing# 06072604

Issuer Name:
Dye & Durham Limited
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus (NI 44-101) dated Jan 31, 2024
NP 11-202 Final Receipt dated Feb 1, 2024
Offering Price and Description:
$125,840,000.00
10,400,000 Common Shares
Price: $12.10 per Common Share
Filing# 06072893

Issuer Name:
Fédération des caisses Desjardins du Québec
Principal Regulator – Quebec
Type and Date:
Final Short Form Base Shelf Prospectus dated Jan 31, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
$2,000,000,000.00
Debt Securities (unsubordinated indebtedness)
Debt Securities (subordinated indebtedness)
Filing# 06072778

Issuer Name:
Foran Mining Corporation
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated Feb 2, 2024
NP 11-202 Preliminary Receipt dated Feb 2, 2024
Offering Price and Description:
$200,000,000.00
Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Filing# 06081068

Issuer Name:
Galloper Gold Corp.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Jan 25, 2024
NP 11-202 Final Receipt dated Jan 30, 2024
Offering Price and Description:
No securities are being offered pursuant to this non-offering prospectus
Filing# 06046684

Issuer Name:
HIVE Digital Technologies Ltd.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated Jan 30, 2024
NP 11-202 Final Receipt dated Feb 1, 2024
Offering Price and Description:
$28,750,000.00
5,750,000 Units Issuable upon Exercise of 5,750,000 Previously Issued Special Warrants
Filing# 06072184

Issuer Name:
Hypercharge Networks Corp.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Base Shelf Prospectus dated Jan 29, 2024
NP 11-202 Final Receipt dated Jan 30, 2024
Offering Price and Description:
$50,000,000.00
Common Shares, Subscription Receipts, Convertible Securities, Warrants, Debt Securities, Units
Filing# 06060288

Issuer Name:
kneat.com, inc.
Principal Regulator – Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated Jan 29, 2024
NP 11-202 Preliminary Receipt dated Jan 29, 2024
Offering Price and Description:
$3.25
5,351,200 Common Shares
Filing# 06075493

Issuer Name:
McEwen Mining Inc.
Principal Regulator – Ontario
Type and Date:
Final Prospectus – MJDS dated Jan 30, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
US$200,000,000.00
Debt Securities, Common Stock, Warrants, Subscription Rights, Subscription Receipts, Units
Filing# 06043361

Issuer Name:
Reconnaissance Energy Africa Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated Jan 29, 2024
NP 11-202 Preliminary Receipt dated Jan 29, 2024
Offering Price and Description:
$120,000,000.00
Common Shares, Warrants, Subscription Receipts. Units, Debt Securities
Filing# 06078445

Issuer Name:
Satellos Bioscience Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Jan 26, 2024
NP 11-202 Preliminary Receipt dated Jan 29, 2024
Offering Price and Description:
$100,000,000.00
Common Shares, Preferred Shares, Warrants, Units, Subscription Receipts, Debt Securities
Filing# 06077155

Issuer Name:
Trisura Group Ltd.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated Jan 31, 2024
NP 11-202 Final Receipt dated Jan 31, 2024
Offering Price and Description:
Common Shares, Preference Shares, Debt Securities, Subscription Receipts
Filing# 06080191

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	Assante Capital Management Ltd.	From: Investment Dealer To: Investment Dealer and Mutual Fund Dealer	January 30, 2024
Name Change	From: MANULIFE SECURITIES INCORPORATED/PLACEMENTS MANUVIE INCORPORÉE To: MANULIFE WEALTH INC. / PATRIMOINE MANUVIE INC.	Investment Dealer and Mutual Fund Dealer	January 2, 2024
Change of Registration Category	Pratte Portfolio Management Inc.	From: Portfolio Manager and Investment Fund Manager To: Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	February 1, 2024

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

B.11.2 Marketplaces

B.11.2.1 EquiLend LLC – Application for Exemptive Relief – Notice of Commission Decision

NOTICE OF COMMISSION DECISION

APPLICATION FOR EXEMPTIVE RELIEF

EQUILEND LLC

February 8, 2024

On January 3, 2024, the Commission issued a decision under s. 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), s. 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**), and s. 10 of National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces* (**NI 23-103** and, together with NI 21-101 and NI 23-101, the **Marketplace Rules**) exempting EquiLend, LLC (**EquiLend**) from the application of all provisions of the Marketplace Rules in Ontario (the **Decision**), subject to terms and conditions as set out in the Decision. The Autorité des marchés financiers also issued its respective decision.

The Decision is consistent with CSA Staff Notice 21-328 *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities* that outlines an exemption approach that is based on a substituted compliance model of ATS oversight.

A copy of the Decision is published in section B.3 of the Bulletin.

The Commission published EquiLend's application and draft decision for comment on November 23, 2023 on the OSC website. No comments were received.

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