The Ontario Securities Commission

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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).

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Table of Contents

A. Capital Markets Tribunal

A.1
Notices of Hearing

A.1.1 Raymond Pomroy – ss. 127(1), 127.1

FILE NO.: 2024-3

IN THE MATTER OF
RAYMOND POMROY

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

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: March 8, 2024, at 10:00 am

LOCATION: By videoconference

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Capital Markets Tribunal to approve the Settlement Agreement dated February 26, 2024, between Staff of the Commission and Raymond Pomroy in respect of the Statement of Allegations filed by Staff of the Commission dated February 28, 2024.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 1st day of March, 2024

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

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

IN THE MATTER OF
RAYMOND POMROY

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

A. OVERVIEW

1. Shortly after becoming a reporting issuer, SoLVBL Solutions Inc. (**SoLVBL**) published false and misleading information in news releases regarding a deal to license its technology for use in producing non-fungible tokens (**NFTs**) with a company called "New Foundation" (the **NFT Deal**). These statements generated positive news for the company in advance of private placements that raised $4 million from investors.

2. Other than signing the agreement, no work was ever done on the NFT Deal. Instead, funds from the private placement were used, among other things, to repay debts owed to insiders and shareholders including unpaid salary owed to Pomroy.

3. Public companies that issue false and misleading news releases regarding new business activity, particularly when dealing with popular trends such as NFTs, deprive investors of the ability to make informed investment decisions and result in harm or a risk of harm. It is vital that investors receive complete, factual and accurate information, especially in emerging sectors. Public companies in these sectors that promote and exaggerate their business in aspirational news releases may materially mislead investors.

4. In addition, officers, directors and legal counsel of public companies have important roles in ensuring the public is provided with accurate information. When those with responsibility fail to ensure that public statements to investors are true and not misleading, their conduct undermines confidence in Ontario's capital markets.

B. FACTS

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

(i) SoLVBL's Business and Technology

5. SoLVBL, a reporting issuer in Ontario, is a technology company pursuing the development of its technology platform "Q by SoLVBL," which is intended to provide high speed data authentication.

6. SoLVBL was created on February 10, 2021 as the result of a reverse takeover between Stowe One Investments Corp. and Agile Blockchain Corp. (**Agile**). Upon the amalgamation, SoLVBL carried on the business of Agile. SoLVBL shares trade on the Canadian Securities Exchange (**CSE**) since February 24, 2021, and on the United States over-the-counter (**OTC**) Pink Sheets since December 22, 2021.

7. Starting in September 2019, Raymond Pomroy (**Pomroy**) served as the Chief Executive Officer (**CEO**) of SoLVBL and its predecessor, Agile. On November 19, 2021, Pomroy resigned his position and left the company. While he was the CEO of SoLVBL, Pomroy was responsible for reviewing and approving SoLVBL's public disclosure.

8. Ahmed Kaiser Akbar (**Akbar**) was one of the founders of and initial investors in Agile. During the period from April to July 2021, Akbar was acting as a consultant and served as legal counsel for SoLVBL and, along with his spouse, owned over 10% of the shares of SoLVBL. As of 2021, Akbar had approximately 22 years of experience as a corporate and securities lawyer. When Pomroy resigned on November 19, 2021, Akbar assumed the position of interim CEO and held that position until February 23, 2023. From the inception of SoLVBL in February 2021 until his departure in 2023, Akbar had an active role in the company and drafted certain public disclosure documents for SoLVBL including news releases.

(ii) Planned Private Placement and the NFT Deal

9. SoLVBL began trading on the CSE as a publicly listed company on February 24, 2021 with an initial closing price of $0.60 per share on February 24, 2021. The SoLVBL share price significantly declined in the following months.

10. On April 23, 2021, SoLVBL signed a private placement financing proposal with broker Research Capital Corporation (**Research Capital**) at an indicative price of $0.15 per unit (which would include one SoLVBL share and one warrant at an indicative exercise price of $0.20). The agreement noted that the price would be reconfirmed prior to the launch of the private placements.

11. SoLVBL had an incentive to keep the price of its shares as high as possible in advance of the private placements in order to raise more funds and minimize the dilution of shares, which would affect existing major shareholders such as Akbar.

At this time, SoLVBL was funding its operations primarily through loans from Akbar (or his spouse) and two other SoLVBL shareholders, Gad Caro (**Caro**) and Rahim Allani (**Allani**).

12. Four days after the agreement with Research Capital, on April 27, 2021, Akbar incorporated New Foundation Technologies Corp. (**New Foundation**) in Ontario with himself as the sole officer and director. New Foundation's registered head office was 15 Toronto Street, Unit 602 in Toronto, Ontario, the same registered head office location as SoLVBL at that time. Around this time, Akbar also opened a bank account for New Foundation with himself as the sole owner, director and signing officer.

13. An Intellectual Property Licensing Agreement was entered into between SoLVBL and New Foundation with an effective date of April 29, 2021 (the **Licensing Agreement**). The Licensing Agreement granted New Foundation an exclusive, worldwide license to use SoLVBL's "Q by SoLVBL" intellectual property for the creation of NFTs. SoLVBL agreed to work with New Foundation to assist it in developing NFT products with this technology.

14. As part of the Licensing Agreement, New Foundation agreed to pay a one-time $120,000 licensing fee to SoLVBL. On May 5 and May 14, 2021, a total of $75,000 was sent to SoLVBL's bank account by the New Foundation account created by Akbar. On May 28, 2021, a further $45,000 was sent directly from Akbar's spouse, Allani's company, and Caro.

(iii) Announcement of the NFT Deal

15. In May and June 2021, SoLVBL issued two news releases regarding the NFT Deal that contained false information and misleading information (the **News Releases**).

May News Release

16. On May 13, 2021, SoLVBL announced in a news release (the **May News Release**) that:

    (a) SoLVBL "is pleased to announce that it has won the proposal for a [NFT] product and the associated licensing of Q by SoLVBL™ to an international private company."

    (b) "SoLVBL's winning proposal complied with the technical specifications set out in the request for proposal (**RFP**) by the private company. SoLVBL also complied with all legal and administrative requirements set out in the RFP. The private company has decided that SoLVBL has the required technical experience to provide the technology solutions it needs for its product offerings."

    (c) Without naming the company, the news release stated that: "In the next few days, the corresponding contract will be signed between the private company and SoLVBL so that the work can start as soon as possible. Terms and compensation of the agreement are being finalized and will be announced shortly."

    (d) Pomroy, as CEO for SoLVBL, stated: "As one of our very first revenue generating customers, we are excited to be working with this group of technology entrepreneurs and we believe that this relationship will bring tremendous value to the Company and our stakeholders. In addition, this does not take away from our core business and offerings, it offers us a new revenue stream."

17. The May News Release was drafted by Akbar and was reviewed and approved by Pomroy. Pomroy relied on Akbar, SoLVBL's legal counsel, for the information provided regarding New Foundation but did nothing to verify that information.

18. Certain statements made in the May News Release were false and/or misleading:

    (a) There was no international private company. The counterparty to the NFT Deal was the Ontario company New Foundation, which Akbar incorporated on April 27, 2021. The other two individuals involved in New Foundation, Caro and Allani, were SoLVBL shareholders and were providing loans to SoLVBL.

    (b) The Licensing Agreement was effective as of April 29, 2021, prior to the May News Release. Payments were being made pursuant to the Licensing Agreement prior to the May News Release.

    (c) SoLVBL had no evidence, other than statements by Akbar, that New Foundation carried out an RFP. SoLVBL had no RFP document that set out technical specifications or legal and administrative requirements and did not provide a written response to the RFP. SoLVBL had no evidence, other than statements by Akbar, that New Foundation approached any company other than SoLVBL for this alleged RFP. Instead, the negotiation of the NFT Deal was through verbal conversations primarily between Pomroy and Akbar.

June News Release

19. On June 3, 2021, SoLVBL announced in a news release (the **June News Release**) that:

(a) SoLVBL agreed to the terms of a technology licensing and software development agreement with New Foundation for the licensing of SoLVBL's proprietary software for the purpose of creating NFTs.

(b) "This is the first revenue generating agreement for SoLVBL, with work slated to commence with New Foundation later this year. To ensure that New Foundation secured this deal with SoLVBL, it has advanced a six-figure payment to SoLVBL."

(c) Pomroy stated that: "We are pleased that New Foundation has chosen to license Q by SoLVBL, our flagship product, for its NFT products and has entrusted our Company to develop its NFT products."

(d) The news release quotes Vicky Arora as the Director of Licensing of New Foundation as saying: "… Not only does technology licensing support our growth plans, but it allows our customers in the U.S., Europe and our new Asian markets, the opportunity to produce NFT products supported by this technology. One of the big reasons we chose Q by SoLVBL during the RFP process was that it has the ability to create immutable and verifiable elements of NFTs, at incredible speeds and scalability and can be viewed as a powerful tool for items such as NFTs so as to provide them to the market confidently, effectively and efficiently."

(e) The news release described New Foundation as "a USA based technology investment company with offices in Los Angeles, USA and its European office in London, U.K. New Foundation's mission-driven teams are dedicated to creating non-fungible tokens (NFT) for arts, digital arts, gaming, real estate, sports, fashion, and media & entertainment. Through its global partnerships, the company works across various geographic and cultural sectors.

For more information, please visit nftech.info."

20. The June News Release was drafted by Akbar and was reviewed and approved by Pomroy. Pomroy relied on Akbar, SoLVBL's legal counsel, for the information provided regarding New Foundation but did nothing to verify that information.

21. Certain statements made in the June News Release were false and/or misleading:

(a) New Foundation was not a "USA based technology investment company," nor did it have any office in London or Los Angeles. New Foundation was a recently created Ontario company whose registered head office was the same location as the head office for SoLVBL.

(b) SoLVBL had no evidence, aside from statements, by Akbar that Vicky Arora was the Director of Licensing of New Foundation at the time of this June News Release. Pomroy did not verify the alleged quote by Mr. Arora nor his position with New Foundation.

(c) SoLVBL had no evidence, aside from statements by Akbar, for the statement that New Foundation had customers in the U.S., Europe and Asia. SoLVBL had no evidence, aside from statements by Akbar, that New Foundation had any "mission driven teams" or "global partnerships" or did "work across various geographic and cultural sectors." SoLVBL had no evidence, aside from statements by Akbar, that New Foundation had ever done any business or had any customers.

(d) The New Foundation website linked in the news release was only set up on May 12, 2021, the day before the May News Release announcing the NFT Deal. The website contained similar false and/or misleading statements about New Foundation. The website was taken down in May 2022.

Effect of the News Releases

22. The News Releases created the misleading impression that SoLVBL was entering into a deal with an established international company, with multiple offices, previous business activity and established customers.

23. The News Releases created a misleading impression of the so-called RFP process, suggesting that there was a competitive proposal submitted by SoLVBL prepared in order to win this contract.

24. The News Releases did not disclose the relationship between SoLVBL and New Foundation and important facts about the NFT Deal. For example:

(a) Akbar, who was engaged as a consultant by SoLVBL and was a significant shareholder and founder of the company, incorporated New Foundation shortly before the May News Release and was the sole listed director and officer of New Foundation;

(b) SoLVBL and New Foundation shared an office; and

(c) All of New Foundation's investors were shareholders of SoLVBL, were funding SoLVBL's operations with loans to the company and had an interest in SoLVBL successfully raising capital in the upcoming private placements.

Statements in Other Public Filings

25. SoLVBL's Management Discussion & Analyses (**MD&As**) from May 31, 2021 to May 1, 2022 contain the following statement regarding the NFT Deal and repeated some of the same false and/or misleading statements regarding New Foundation and the NFT Deal:

> "On May 13, 2021, [SoLVBL] announced that it won a request for proposal (RFP) from an international private company to develop a non-fungible tokenization product and the associated licensing of Q by SoLVBL. [SoLVBL] also announced that it is currently negotiating the terms of the contract with the private company."

26. The MD&As during this period were primarily drafted by Akbar for SoLVBL.

(iv) SoLVBL Raises $4 Million in Private Placements

27. Following the announcement of the NFT Deal in the News Releases, SoLVBL finalized the terms of two private placements with Research Capital to take place in July 2021 (the **Private Placements**). The term sheet for the Private Placements was adjusted to reflect the decline in SoLVBL's share price.

28. On July 23, 2021, SoLVBL announced that it had raised $3 million in a private placement at $0.06 per unit (which included one SoLVBL share and one warrant with an exercise price at $0.12).

29. Following the July 23, 2021 private placement, SoLVBL paid off significant amounts of debt owed to certain shareholders and insiders of the company, including debt owed to Akbar as the result of loans made to SoLVBL and unpaid salary owed to Pomroy. At this time, SoLVBL also began paying Akbar a regular consultant fee and paid for his business expenses.

30. On July 30, 2021, SoLVBL announced that it had raised an additional $1 million in a private placement at $0.075 per unit (which included one SoLVBL share and one warrant with an exercise price at $0.12).

(v) No Work Done on NFT Deal

31. Other than signing the Licensing Agreement that granted the exclusive license rights, no work was done on the NFT Deal. New Foundation did not develop any NFTs. The New Foundation website was taken down in May 2022 and the company does not appear to have conducted any business outside of the signing of the Licensing Agreement.

(vi) Statements Reasonably Expected to Have Significant Effect Market Price or Value

32. As set out above, SoLVBL shares were listed on the CSE on February 24, 2021 at a publicly listed closing price of $0.60 per share. The market price of SoLVBL shares significantly declined in the months that followed. Since SoLVBL signed the financing proposal with Research Capital on April 23, 2021 at an indicative price of $0.15 per unit, the company had an incentive to either raise the price or keep the price stable until the close of the Private Placements.

33. Although the Licensing Agreement provided that it was effective on April 29, 2021, the Respondents issued two separate news releases in May and June prior to the Private Placements in July 2021. There was a spike in the volume of trading of the SoLVBL stock on the days following both of the News Releases.

34. In the May Press Release, SoLVBL described the NFT Deal as "our very first revenue generating customers" and that it believed this would "bring tremendous value to the Company and our stakeholders." The June News Release contains a quote from Pomroy that "this new segment that we have not looked [into], demonstrates to us, and to the larger entities we are currently speaking with, that this technology is a potential game changer and now verified by an external company and now a client."

35. The June News Release also announced that the NFT Deal came with "an advance six figure payment from New Foundation." Prior to the NFT Deal, the company only had approximately $10,000 in revenue from a consulting contract and had never licensed its proprietary technology.

36. According to SoLVBL, the NFT Deal was the first revenue generating agreement for the company and the first licensing of its flagship product, Q by SoLVBL.

37. On the date of the June News Release, SoLVBL filed a form with the CSE where it described the NFT Deal as follows:

> "Since the Issuer's listing on the CSE, the agreement between the Issuer and New Foundation is the first revenue generating. The Issuer believes that the news related to the licensing of Q by SoLVBL for NFT products and the associated technical work will create substantial interest in the Issuer and its product."

38. In addition, following the publication of the June News Release, Akbar sent the June News Release to Research Capital and, in the same email, asked for an update on the timing of the Private Placements as "we have investors committed to the private placement and have been asking us about the timing of the placement."

C. BREACHES OF ONTARIO SECURITIES LAW

39. Enforcement Staff alleges the following breaches of Ontario securities law and conduct contrary to the public interest:

(a) Pomroy and made and caused SoLVBL to make statements that he knew or reasonably ought to have known knew or reasonably ought to have known, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that is required to be stated or that is necessary to make the statements not misleading, contrary to subsection 126.2(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**). These statements would reasonably be expected to have a significant effect on the market price or value of SoLVBL's securities.

D. ORDERS SOUGHT

40. Enforcement Staff requests that the Capital Markets Tribunal (the **Tribunal**) make an order pursuant to subsection 127(1) and section 127.1 of the Act to approve the settlement agreement entered into by Pomroy with respect to the matters set out herein.

DATED this 28th day of February, 2024.

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

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A.2
Other Notices

A.2.1 Aimia Inc. and Mithaq Capital SPC

FOR IMMEDIATE RELEASE
February 28, 2024

AIMIA INC. AND
MITHAQ CAPITAL SPC,
File No. 2024-2

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

(1) the previously scheduled day of May 3, 2024 will not be used for the hearing; and

(2) the hearing is scheduled to be heard on May 1 and May 2, 2024 at 10:00 a.m. on each day.

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

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For General Inquiries:

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A.2.2 Michael Paul Kraft and Michael Brian Stein

FOR IMMEDIATE RELEASE
March 1, 2024

MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN,
File No. 2021-32

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

A copy of the Order dated March 1, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.3 Raymond Pomroy

FOR IMMEDIATE RELEASE
March 1, 2024

RAYMOND POMROY,
File No. 2024-3

TORONTO – The Tribunal issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve the Settlement Agreement entered into by Staff of the Commission and Raymond Pomroy in the above-named matter.

The hearing will be held on March 8, 2024, at 10:00 a.m.

A copy of the Notice of Hearing dated March 1, 2024, and Statement of Allegations dated February 28, 2024, are available at capitalmarketstribunal.ca.

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

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A.3
Orders

A.3.1 Michael Paul Kraft and Michael Brian Stein – s. 2(2) of Tribunal Adjudicative Records Act, 2019 and Rule 22(4) of CMT Rules of Procedure and Forms

IN THE MATTER OF
MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN

File No. 2021-32

Adjudicators: Andrea Burke (chair of the panel)
M. Cecilia Williams
Sandra Blake

March 1, 2024

ORDER
(Subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019,* SO 2019, c 7, Sch 60 and
Rule 22(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

WHEREAS the Capital Markets Tribunal held a hearing in writing to consider a request from Michael Brian Stein to redact certain portions of his materials filed in support of the sanctions and costs hearing in this matter;

ON READING the materials filed by the parties, including proposed redactions by Stein and Staff of the Commission;

IT IS ORDERED, for reasons to follow, that:

1. pursuant to s 2(2) of the *Tribunal Adjudicative Records Act* and rule 22(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*, the portions of the sanctions and costs materials as attached to this order at "Appendix A" are to be made confidential;

2. Stein shall file revised versions of the sanctions and costs materials, redacted in accordance with "Appendix A" of this order, by 9:30 am on March 4, 2024; and

3. only the redacted versions of the sanctions and costs materials shall be available to the public.

"Andrea Burke"

"M. Cecilia Williams"

"Sandra Blake"

Appendix A

List of Redactions to Stein's Submissions on Sanctions and Costs dated February 2, 2024

- Para 21: Redact the words after "problems" in the last sentence
- Para 23: Redact entire paragraph

List of Redactions to Exhibit A of the Affidavit of Michael Stein sworn February 2, 2024

- Line below "RE: Michael Stein" beginning with "DOB"
- Sentences between "medical conditions he was experiencing" and "It is critical"

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 81-334 (Revised) ESG-Related Investment Fund Disclosure

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA STAFF NOTICE 81-334 (REVISED)
ESG-RELATED INVESTMENT FUND DISCLOSURE

First published January 19, 2022; revised March 7, 2024.

March 7, 2024

A. Introduction

The purpose of this Canadian Securities Administrators (the **CSA**) Staff Notice (the **Notice**) is to provide guidance on the disclosure and sales communication practices of investment funds as they relate to environmental, social and governance (**ESG**) matters. This Notice also provides guidance on the types of investment funds that may market themselves as focusing on ESG or as considering ESG factors as part of their investment process. This Notice aims to bring greater clarity and consistency to ESG-related fund disclosure and sales communications to enable investors to make more informed investment decisions.

This Notice updates and replaces a prior version of this Notice that was issued on January 19, 2022 (the **2022 Notice**).

Following the publication of the 2022 Notice, staff of the CSA (**staff** or **we**) conducted ESG-focused reviews of the disclosure and sales communications of investment funds (the **ESG-Focused Reviews**). The ESG-Focused Reviews indicated that, given the evolving nature of ESG investing, there is a need to update the guidance set out in the 2022 Notice to address developments and issues that have arisen since the publication of the 2022 Notice. The ESG-Focused Reviews also indicated that there is a need to provide guidance for specific types of ESG-Related Funds (as defined below under "Types of funds covered in the Notice") in order to reduce the potential for greenwashing, whereby a fund's disclosure or marketing intentionally or inadvertently misleads investors about the ESG-related aspects of the fund.

The guidance provided in this Notice is based on existing securities regulatory requirements and does not create any new legal requirements or modify existing ones. This Notice clarifies and explains how the current securities regulatory requirements apply to ESG-related investment fund disclosure. It also includes best practices that, while not required, staff strongly encourage investment fund managers (**IFMs**) to adopt in order to help enhance ESG-related disclosure and sales communications. Where this Notice provides best practices, staff have used the language "staff encourage".

Staff encourage investment funds, IFMs, and portfolio advisers to review this Notice.

B. Overview and Updates to the Notice

This Notice

- provides an overview of common ESG-related terms and strategies,
- summarizes the scope and purpose of, and key findings from, the ESG-Focused Reviews, and
- provides updated, relevant and practical guidance for investment funds, particularly ESG-Related Funds, and their IFMs to enhance the ESG-related aspects of the funds' regulatory disclosure documents and ensure that the sales communications of such funds are not untrue or misleading and are consistent with the funds' regulatory offering documents.

This Notice updates the guidance from the 2022 Notice to address developments and issues that have arisen since the publication of the 2022 Notice, as well as to provide guidance for specific types of ESG-Related Funds. The major changes in this Notice compared to the 2022 Notice are as follows:

- Inclusion of an explanation of the different levels of disclosure expectations for funds that do not reference ESG factors in their investment objectives but that use ESG strategies, depending on the degree of significance to which the consideration of ESG factors is given in the fund's investment process, i.e. depending on whether the fund is an ESG Strategy Fund (as defined below) or ESG Limited Consideration Fund (as defined below), as explained below under "Types of funds covered in the Notice"

- Inclusion of specific guidance for certain types of funds and funds in certain circumstances, including, but not limited to: (a) funds that track the performance of an ESG-related index; (b) funds that invest in underlying funds; (c) funds with carbon offset series; (d) funds that are subject to an IFM's general proxy voting or engagement approach that addresses ESG matters; and (e) funds managed by IFMs that apply an ESG strategy to more than one of their funds

- Inclusion of a reminder to IFMs about existing requirements relating to written ESG-related policies and procedures

- Clarification of whether certain ESG-related communications are sales communications, and on the use of disclaimers or explanatory language in sales communications.

Any examples provided in this Notice are for illustrative purposes only and are not meant to be exhaustive of all potential scenarios or approaches.

C. ESG-Related Terms and Strategies

While this Notice uses the term "ESG", there are other related terms that are commonly used by ESG-Related Funds and more broadly throughout the investment fund industry. Those terms include the following:

- sustainable
- responsible investing or RI
- socially responsible investing or SRI
- ethical
- green

ESG-Related Funds generally consider ESG factors in their investment decision-making processes. However, they may focus on only one or two of the three areas of ESG and may even have a concentrated focus on one or a small group of factors in any of the areas of ESG (e.g. a fund that is focused only on improving or promoting board diversity). For illustrative purposes, the following is a non-exhaustive list of ESG factors that may be considered by such funds in their investment decision-making processes:

Environmental	Social	Governance
Air and water pollution	Community relations	Audit committee structure
Biodiversity	Data protection and privacy	Board diversity
Climate change and carbon emissions	Diversity	Bribery and corruption
Deforestation	Employee engagement	Executive compensation
Energy efficiency	Human rights	Lobbying
Waste management	Indigenous inclusion and reconciliation[1]	Political contributions
Water scarcity	Labour standards	Whistleblower schemes

[1] Some stakeholders are of the view that, given the importance of Indigenous inclusion and reconciliation in Canada, the concept of "ESG" should be expanded to "ESGI", with Indigenous inclusion and reconciliation being included as a separate area.

ESG-Related Funds incorporate ESG factors into their investment decision-making processes using one or more ESG strategies. The following are some common ESG strategies used by investment funds:

Name	Definition
Screening	The fund applies rules based on defined ESG-related criteria to determine whether an investment is permissible. There are different types of screening, including *exclusionary* or *negative screening*, *best-in-class* or *positive screening*, and *norms-based screening*, which are explained immediately below.
Exclusionary or *negative screening*	The fund applies rules based on undesirable ESG-related criteria to determine whether an investment is not permitted, including the exclusion of certain types of investments, sectors, or companies from a fund's portfolio based on certain ESG-related criteria.
Best-in-class or *positive screening*	The fund applies rules based on desirable ESG-related criteria that determine whether an investment is permitted. In some cases, "best-in-class screening" and "positive screening" may have slightly different meanings: • Best-in-class screening: The fund invests in companies that perform better than their peers on certain ESG-related criteria. • Positive screening: The fund invests in companies that meet certain desirable ESG-related criteria.
Norms-based screening	The fund applies rules based on compliance with widely recognized ESG-related standards or norms (such as international conventions) that determine whether an investment is or is not permitted.
ESG integration	The fund considers, on an ongoing basis, ESG-related factors within an investment analysis and decision-making process with the aim of improving risk-adjusted returns.
Thematic investing	The fund selects assets to access specified ESG-related trends, such as climate change and the shift to a more circular economy.
Impact investing	The fund invests with the intention of generating a positive, measurable social and/or environmental impact alongside a financial return. The aim is to contribute to, or catalyze, environmental or social improvements.
Stewardship (sometimes also referred to as active ownership)	The fund uses investor rights and influence (such as *proxy voting* and *shareholder* or *issuer engagement*, which are explained immediately below) to protect and enhance overall long-term value for clients and beneficiaries, including the common economic, social and environmental assets on which their interests depend. This includes influencing the activities or behaviour of underlying portfolio companies on ESG-related matters.
Proxy voting	The fund votes on management and/or shareholder resolutions in accordance with certain ESG-related considerations or aims.
Shareholder or *issuer engagement*	The fund interacts with the management of the company through meetings and/or written dialogue in accordance with certain ESG-related considerations or aims. The term *shareholder engagement* is generally used where the fund is a shareholder of the issuer, while the term *issuer engagement* may be used where the fund is not a shareholder of the issuer but is instead a holder of debt securities of the issuer.

The above terms and definitions have been included for illustrative purposes only, and this Notice does not require or endorse the use of the above names and definitions for these ESG strategies, or the use of the ESG strategies themselves.

While many ESG strategies are widely used across the industry, there continues to be a lack of consistency in the ESG-related terminology and definitions used throughout the investment fund industry, especially with regard to ESG strategies, which increases the potential for investor confusion around ESG-Related Funds. Staff note, however, that since the publication of the 2022 Notice, the CFA Institute, Global Sustainable Investment Alliance, and Principles for Responsible Investment published a

set of harmonized definitions for responsible investment approaches.[2] Staff continue to encourage industry participants, including IFMs, to develop and use common ESG-related terms and definitions, particularly with regard to ESG strategies, which would enable investors to better understand ESG-Related Funds and make informed investment decisions about them.

Guidance regarding the use of ESG-related terminology in fund names, regulatory documents, and sales communications is included below under "ESG-related terminology".

D. ESG-Focused Reviews

As discussed in the 2022 Notice, staff originally conducted reviews of the regulatory disclosure documents and sales communications of ESG-Related Funds and other funds that marketed themselves as ESG-Related Funds in 2020 and 2021 (the **2020-2021 ESG-Focused Reviews**). The findings from those reviews informed the guidance set out in the 2022 Notice.

After the publication of the 2022 Notice, staff conducted the ESG-Focused Reviews, which covered a selection of ESG-Related Funds in 2022 and 2023. Staff reviewed the following:

- prospectuses and related offering documents such as annual information forms (each, an **AIF**) and fund facts documents (each, a **Fund Facts**) or ETF facts documents (each, an **ETF Facts**), with a focus on the fund's name, investment objectives, fund type, investment strategies disclosure, summary of proxy voting policies and procedures, risk disclosure, and suitability disclosure,
- continuous disclosure, including management reports of fund performance (each, an **MRFP**),
- portfolio holdings,
- past ESG-related proxy votes, and
- sales communications.

The purpose of the ESG-Focused Reviews was to:

- assess whether the disclosure and sales communications of ESG-Related Funds were consistent with the guidance set out in the 2022 Notice;
- where staff identified issues, work with IFMs to correct such disclosure and sales communications in order to address potential greenwashing concerns; and
- determine whether further policy work is needed to improve the disclosure and sales communications of ESG-Related Funds in order to further reduce the potential for greenwashing.

Staff conducted:

- 112 ESG-focused reviews of the prospectuses, related offering documents, and sales communications of ESG-Related Funds as part of the regular prospectus review process (the **ESG Prospectus Reviews**), covering 57 IFMs;
- 39 ESG-focused reviews of the continuous disclosure, portfolio holdings, past ESG-related proxy votes, and sales communications of ESG-Related Funds as part of the continuous disclosure review process (the **ESG CD Reviews**), involving 35 IFMs and 50 funds;
- separate sales communication reviews on an as-needed basis, involving six IFMs.

In addition, staff also reviewed the disclosure documents and sales communications of three funds that seek exposure to carbon credits or allowances, including through futures, two crypto asset funds that offset their carbon footprint or that are "carbon negative" as compared to their carbon footprint, and two crypto asset funds that have a carbon offset series (collectively, the **Carbon-Related Funds**). Staff's reviews of Carbon-Related Funds involved five IFMs and were focused on identifying and addressing potential greenwashing issues arising from such funds. Specifically, while carbon credits and carbon offsetting are generally perceived to be related to environmental sustainability, not all Carbon-Related Funds consider ESG factors as part of their investment process. As a result, the manner in which Carbon-Related Funds are marketed could potentially raise greenwashing concerns.[3]

[2] CFA Institute, Global Sustainable Investment Alliance and Principles of Responsible Investment, "Definitions for Responsible Investment Approaches" (November 2023), accessible at: https://rpc.cfainstitute.org/-/media/documents/article/industry-research/definitions-for-responsible-investment-approaches.pdf.

[3] See the guidance below on funds that primarily invest in an ESG-related asset class but that do not consider ESG factors under "Are ESG factors considered as part of the fund's investment process?".

E. Key Findings and Guidance

This section

- outlines and explains the types of funds covered in the guidance in this Notice,
- summarizes the key findings from the ESG-Focused Reviews, and
- provides updated guidance on how existing securities regulatory requirements apply to investment funds as they relate to ESG matters, particularly ESG-Related Funds, in a number of areas of disclosure.

The guidance in this section is based on the findings from both the 2020-2021 ESG-Focused Reviews and the ESG-Focused Reviews, staff's observations in relation to ESG-related changes to existing funds, and the recommendations of the IOSCO Sustainable Finance Task Force for regulators and policymakers on sustainability-related practices, policies, procedures, and disclosure in asset management.[4]

Some areas of disclosure addressed in the guidance in the 2022 Notice were reviewed as part of the ESG-Focused Reviews but did not lead to any notable issues. This section therefore does not include any key findings for those areas.

To facilitate ease of reading, key elements of staff's guidance in each area of guidance have been presented in textboxes.

I. Types of funds covered in the Notice

The consideration of ESG factors in the investment process of a fund is a continuum that ranges from funds with an ESG focus to funds that do not consider ESG factors in their investment process.

The guidance in this Notice relating to disclosure and sales communication requirements sets out different disclosure expectations depending on whether a fund considers ESG factors as part of its investment process and the extent to which such factors are considered. Specifically, the guidance in this Notice differs for each of the following four types of funds, listed in descending order of how significant a role ESG factors play in their investment process:

- funds whose investment objectives reference ESG factors (**ESG Objective Funds**)
- funds whose investment objectives do not reference ESG factors but that use ESG strategies, where the consideration of ESG factors plays a significant role in their investment process (**ESG Strategy Funds**)
- funds whose investment objectives do not reference ESG factors but that use ESG strategies, where the consideration of ESG factors plays a limited role in their investment process (**ESG Limited Consideration Funds**, and together with ESG Objective Funds and ESG Strategy Funds, **ESG-Related Funds**)
- funds that do not consider ESG factors in their investment process (**Non-ESG Funds**).

For greater clarity, a fund that considers ESG factors as part of its investment process is considered to be using an ESG strategy.

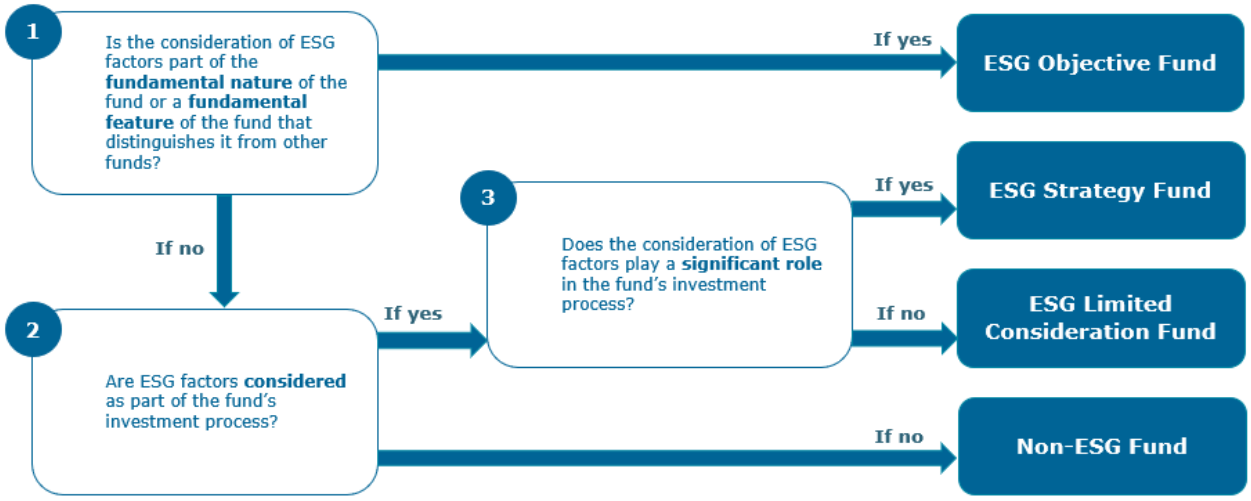
> The names and definitions of the four types of funds are only being used in this Notice to explain the different disclosure and sales communications requirements that apply to each type of fund and are not intended to be used as investor-facing labels or classifications in prospectuses, other disclosure documents, or sales communications.

Generally, the different levels of disclosure expectations set out in this Notice are based on the concept that the more significant a role that ESG factors play in the investment process, the more ESG-related disclosure a fund is expected to provide. Similarly, the guidance in this Notice around sales communications is based on the principle that the more significant a role that ESG factors play in the investment process, the more ESG-related information a fund may include in its sales communications. Conversely, the guidance in this Notice reflects the concept that the more limited a role that ESG factors play in the investment process, the less ESG-related information there should be in both the disclosure documents and sales communications of the fund, so as not to over-emphasize the role of ESG considerations in the fund's investment process.

The general approach to determining whether a fund is an ESG Objective Fund, ESG Strategy Fund, ESG Limited Consideration Fund, or Non-ESG Fund is illustrated in Figure 1.

[4] International Organization of Securities Commissions, "Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management: Final Report" (November 2021), accessible at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD688.pdf.

Figure 1.



The approach to determining whether a fund should reference ESG factors in its investment objectives (i.e. the question in Box 1 of Figure 1) is discussed below under "Investment objectives and fund names".

The below guidance provides information to assist IFMs in determining whether: (a) ESG factors are considered as part of a fund's investment process (i.e. the question in Box 2 of Figure 1); and (b) whether a fund's consideration of ESG factors plays a significant role in its investment process (i.e. the question in Box 3 of Figure 1).

(a) Are ESG factors considered as part of the fund's investment process?

As set out in Figure 1 above, the distinction between an ESG-Related Fund and a Non-ESG Fund is whether a fund considers ESG factors as part of its investment process.

In most cases, it should not be difficult for an IFM to determine whether its fund considers ESG factors as part of its investment process. However, there are some types of funds that may appear to consider ESG factors but that, in staff's view, may not actually consider ESG factors as part of their investment process, including the following:

- **Funds that invest in an ESG-related asset class but that do not consider ESG factors**: Staff's view is that funds that invest in an asset class that is related to an ESG-related segment of the economy solely because of the financial value of the asset class, but that do not consider ESG factors as part of their investment process, are Non-ESG Funds and should therefore not be marketed as ESG-Related Funds. An example would be a fund that invests in carbon credit futures solely due to the financial value of carbon credit futures, not due to ESG-related considerations.

- **Funds that are subject to an exclusionary screen that has no impact on the investment selection process**: In staff's view, a fund that is subject to an exclusionary screening strategy (including a firm-wide exclusionary screen) that has no impact on its investment selection process does not consider ESG factors as part of its investment process and is therefore a Non-ESG Fund. For example, some IFMs have a firm-wide exclusionary screen that excludes all issuers involved in landmines and cluster munitions, which would likely have no impact on the majority of funds, given the limited number of companies involved in these industries, particularly for funds that primarily invest in companies that operate in countries that are signatories to bans on landmines and cluster munitions. Such funds would be Non-ESG Funds, unless they use other ESG strategies as part of their investment process.

- **Funds that are subject to an IFM's general proxy voting or engagement approach that addresses ESG matters**: Some funds are managed by IFMs that have general proxy voting policies and procedures that are applicable to all or most of the IFM's funds, which address how the funds generally vote proxies on various issues, including ESG issues, but the funds do not use ESG-focused proxy voting as a principal investment strategy. Similarly, some funds are managed by IFMs that have a general engagement approach that is applicable to all or most of the IFM's funds, which covers a range of issues, including ESG issues, but the funds do not use ESG-focused engagement as a principal investment strategy. In both cases, the consideration of ESG factors usually plays a limited role, if any, in the investment process.

Where a fund that does not have ESG-related investment objectives is managed by an IFM that has general proxy voting policies and procedures that address ESG matters among other matters or has a general engagement approach that addresses ESG matters among other matters, but the fund does not use any other ESG strategies as part of its investment process, staff's view is that the fund is not an ESG Strategy Fund. Depending on whether the ESG factors addressed in the proxy voting policies and procedures or contemplated in the engagement approach have any impact on the proxy voting or engagement approach of the fund, this type of fund may be either a Non-ESG Fund or ESG Limited Consideration Fund.

(b) Does the consideration of ESG factors play a significant role in the fund's investment process?

The guidance in this Notice relating to funds that do not refer to ESG factors in their investment objectives but that use ESG strategies differs depending on, as set out in Figure 1 above, whether the consideration of ESG factors plays a significant role in the fund's investment process – that is, whether the fund is an ESG Strategy Fund or ESG Limited Consideration Fund. This updated guidance is consistent with the principle from the 2022 Notice that both the prospectus and sales communications of a fund should be clear about the extent to which the fund is focused on ESG.

The need for different guidance for these two types of funds arose because of two key developments that occurred after the publication of the 2022 Notice:

1. Staff observed a considerable increase in the number of IFMs that included disclosure in their fund prospectuses about the consideration of ESG factors, often without being clear about the extent to which ESG factors are considered by the fund.

2. Staff also observed a significant number of statements on the websites of IFMs that suggested that all or most of the IFM's funds consider ESG factors as part of their investment process despite the consideration of ESG factors not being referenced in the investment strategies disclosure in the prospectuses of those funds. Through the ESG-Focused Reviews, staff learned from IFMs that most such funds only consider ESG factors to a limited extent.

These developments raised greenwashing-related concerns about funds that only consider ESG factors to a limited extent being marketed as funds for whom the consideration of ESG factors plays a significant role in the investment process and about inconsistencies between sales communications and prospectuses regarding the role of ESG considerations in the investment process. The differences in disclosure expectations between an ESG Strategy Fund and an ESG Limited Consideration Fund set out later in this Notice are intended to address these greenwashing-related concerns.

While this Notice provides some questions for IFMs to consider when determining whether a specific fund is an ESG Strategy Fund or an ESG Limited Consideration Fund, staff's view is that there is no single factor that can be universally used to make this determination. We believe that the IFM of a fund is best positioned to assess the significance of the role that ESG factors play in the investment process of a fund.

The following questions may assist IFMs in determining whether the consideration of ESG factors plays a significant role in the funds' investment process and therefore, whether the fund is an ESG Strategy Fund or an ESG Limited Consideration Fund:

- **Are ESG factors routinely weighted heavily in the investment process of the fund?** If so, it is more likely that the fund is an ESG Strategy Fund. If ESG factors are considered, but the weight attributed to those factors is relatively low and they are more secondary to other factors in the investment process, the fund is more likely to be an ESG Limited Consideration Fund.

- **Are ESG factors likely to drive or impact an investment decision?** If ESG factors are routinely a driving factor in investment decisions, the fund is more likely to be an ESG Strategy Fund. However, if ESG factors are generally considered to such a limited extent that ESG factors would rarely be driving factors behind an investment decision, the fund would more likely be an ESG Limited Consideration Fund.

- **Are ESG factors always considered as part of the investment process?** If a fund's consideration of ESG factors is discretionary such that ESG factors may or may not be considered at any given time, the fund is more likely to be an ESG Limited Consideration Fund.

- **What purpose does the consideration of ESG factors serve for the fund?** If a fund considers ESG factors with the aim of trying to select issuers that possess certain types of positive ESG characteristics or attributes, is actively seeking to achieve a favourable ESG profile, or is aiming to achieve a specific ESG-related outcome, the fund is more likely to be an ESG Strategy Fund. In contrast, if ESG factors are solely being considered as one of many components in the fund's broader risk assessment process, the fund is more likely to be an ESG Limited Consideration Fund.

The issue of whether a fund is an ESG Strategy Fund or an ESG Limited Consideration Fund most often arises in the context of funds that use an ESG integration strategy as part of their investment selection process. This is because there can be a significant range in the role, impact and weight that ESG factors may have when they are integrated alongside traditional financial factors into the investment process for different funds by different IFMs. However, this issue may also arise for funds that use other types of ESG strategies as part of their investment process.

II. ESG-related terminology

Guidance on ESG-related terminology

Use of plain language: Staff remind IFMs that any description of ESG strategies and ESG factors included in a prospectus must be written using plain language, in accordance with the requirement that the prospectus provide full, true and plain disclosure of all material facts.[5] Similarly, if a fund's prospectus includes other ESG-related terms that may not be commonly understood, such as "circular economy", "ESG headwinds", and "science-based target", it should provide a clear explanation of those terms using plain language.[6]

Plain language or established industry meaning: Staff are of the view that ESG-related terms used in the fund's name, regulatory documents, and sales communications should be used in a way that is consistent with the plain language meaning, or, where applicable, established industry meaning, of such terms.

III. Investment objectives and fund names

Key findings from ESG-Focused Reviews

Staff identified very few issues relating to fund names, while a significant number of the issues raised during the ESG Prospectus Reviews relating to investment objectives involved revising the investment objectives to provide greater clarity around the ESG focus of the fund, including being consistent with the name of the fund. Many of the comments relating to investment objectives involved revising the investment strategies to clarify the meaning of certain ESG-related terms or concepts relating to the ESG focus of the fund as identified in the investment objectives, such as "sustainable issuers", "environmental economy", and "clean energy-related companies".

There were also some specific issues raised in relation to index-tracking funds, funds that invest in underlying funds, and funds with carbon offset series, which are discussed in the guidance below.

Guidance on investment objectives and fund names

An investment fund is required to disclose, in its prospectus, the fundamental investment objectives of the fund, including information that describes the fundamental nature or fundamental features of the fund that distinguish it from other funds.[7] Similarly, an investment fund is required to include, in its Fund Facts or ETF Facts, as applicable, a description of the fundamental nature or fundamental features of the fund that distinguish it from other funds.[8]

A fund's name and investment objectives play key roles in identifying the primary focus of the fund and distinguishing it from other funds. To prevent greenwashing, the name and investment objectives of a fund should accurately reflect the extent to which the fund is focused on ESG, where applicable, including the particular aspect(s) of ESG that the fund is focused on.

5 Subsection 4.1(1) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*; General Instruction (5) to Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**); subsection 3B.2(1) of National Instrument 41-101 *General Prospectus Requirements*. See also, amongst others, subsection 113(1) of the *Securities Act* (Alberta), subsection 63(1) of the *Securities Act* (British Columbia), subsection 56(1) of the *Securities Act* (Ontario) and section 13 of the *Securities Act* (Québec).

6 See also the guidance below on complicated or non-self-explanatory ESG factors under "Investment strategies disclosure".

7 Item 4(1) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**); Item 5.1(1) of Form 41-101F2.

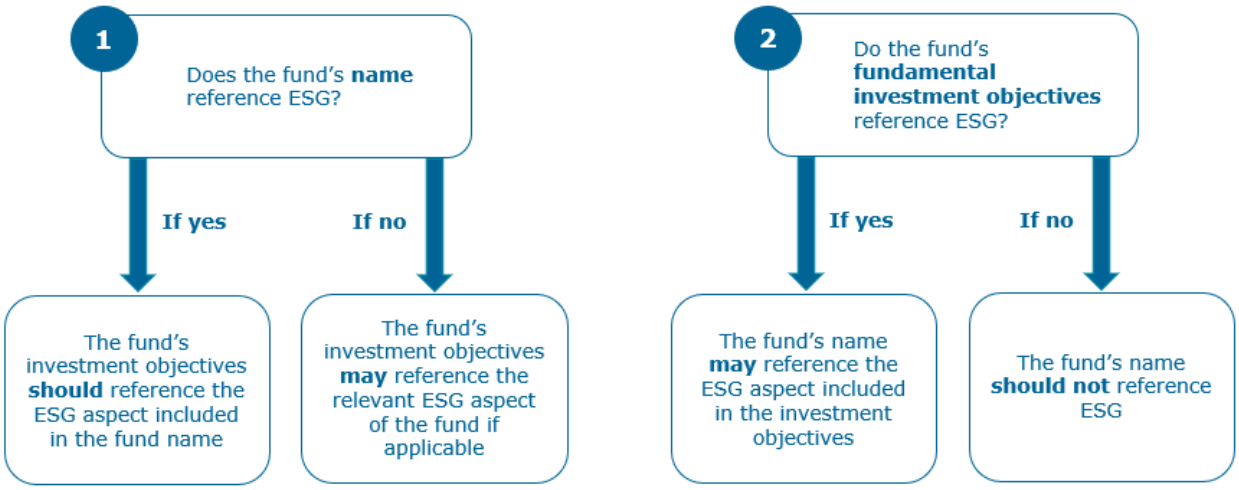
8 Item 3(1) of Part I of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**); Item 3(1) of Part I of Form 41-101F4 *Information Required in an ETF Facts Document* (**Form 41-101F4**).

A fund that uses one or more ESG strategies as a material or essential aspect of the fund, as evidenced by the name of the fund or the manner in which it is marketed, is required to disclose such ESG strategies as an investment objective in its prospectus[9] and in its Fund Facts or ETF Facts, as applicable.[10]

A fund that primarily invests or intends to primarily invest, or whose name implies that it will primarily invest, in a type of issuer or industry segment associated with ESG is required to indicate this in its fundamental investment objectives,[11] as well as in its Fund Facts or ETF Facts, as applicable.[12] For example, this may include a fund that intends to primarily invest in companies that are transitioning to a low-carbon economy or a fund whose name implies that it will primarily invest in the water conservation industry.

Staff note that the existing requirements draw a link between a fund's name and its investment objectives in order to ensure that there is consistency between them, given the importance of a fund's name in distinguishing it from other funds. Accordingly, in staff's view, where a fund's name references ESG or other related terms (e.g. sustainability, social responsibility, impact), the fundamental investment objectives of the fund should reference the aspect of ESG included in the name of the fund. This is illustrated in Figure 2 below.

Figure 2.



In staff's view, a fund that references ESG in its name should primarily invest in assets that meet the fund's ESG-related criteria. If a fund is permitted to primarily invest in assets that do not meet the fund's ESG-related criteria, the fund should not reference ESG in its name or investment objectives, as the name or investment objectives would not accurately reflect the primary focus of the fund and would therefore be misleading.

While the above guidance relating to fund names and investment objectives is intended to apply to all investment funds, the following guidance applies specifically to certain types of funds and funds in certain circumstances.

(a) Funds that track the performance of an ESG-related index

For ESG Objective Funds that reference any aspect of ESG in their name and whose investment objectives indicate that the fund tracks the performance of an ESG-related index, staff's view is that: (a) the ESG focus(es) of the index should be consistent with the ESG focus(es) indicated in the fund's name; and (b) the fund's investment objectives and/or investment strategies disclosure should indicate that the fund's portfolio will be comprised primarily of issuers that reflect the ESG focus(es) identified in the fund's name and investment objectives.

9 Instruction (3) to Item 4 of Part B of Form 81-101F1 states that if a particular investment strategy is a material aspect of the fund, as evidenced by the name of the fund or the manner in which it is marketed, this strategy must be disclosed as an investment objective. Similarly, Instruction (3) to Item 5 of Form 41-101F2 states that if a particular investment strategy is an essential aspect of the fund, as evidenced by the name of the fund or the manner in which it is marketed, this strategy must be disclosed as an investment objective.

10 Instruction (2) to Item 3 of Part I of Form 81-101F3; Instruction (2) to Item 3 of Part I of Form 41-101F4.

11 Instruction (2) to Item 4 of Part B of Form 81-101F1 states that a mutual fund's fundamental investment objectives must indicate if the mutual fund primarily invests, or intends to primarily invest, or if its name implies that it will primarily invest, in a particular type of issuer or industry segment. Similarly, Instruction (2) to Item 5 of Form 41-101F2 states that if a fund primarily invests, or intends to primarily invest, or if its name implies that it will primarily invest, in a particular type of issuer or particular industry segment, the fundamental investment objectives should so indicate.

12 Instruction (1) to Item 3 of Part I of Form 81-101F3; Instruction (1) to Item 3 of Part I of Form 41-101F4.

Unnamed ESG-related index: For ESG Objective Funds whose investment objectives state that the fund will track the performance of an ESG-related index in order to meet its ESG-related investment objectives, but that does not name the specific ESG-related index in the investment objectives, staff's view is that the investment objectives should clearly identify the ESG-related characteristics of any ESG-related index that the fund will track.

Investments in issuers that are not index constituents: Where an ESG Objective Fund's investment objectives indicate that the fund tracks the performance of an ESG-related index but the fund is permitted to track the index by investing in issuers that are not constituents of the index (including by using a sampling strategy), staff's view is that such issuers should have ESG characteristics that are similar to the constituents of the index, particularly in relation to the ESG characteristics that are relevant to the ESG focus of the fund. For example, if a fund whose investment objectives indicate that the fund will be tracking an index that is focused on environmental sustainability invests in issuers that are not index constituents, such issuers should share similar environmental characteristics to the index constituents.

(b) Funds that invest in underlying funds

For ESG Objective Funds that invest in underlying funds in order to meet their investment objectives, the ESG focus(es) of the underlying funds should be consistent with the ESG focus(es) of the fund.

In addition, staff remind IFMs that the holdings of any underlying funds held by a top fund, including any ESG-Related Fund, should be consistent with the investment objectives and strategies of the top fund, including, for example, any exclusionary screening criteria used by the top fund.

(c) Funds that intend to generate a measurable ESG outcome

Where an ESG Objective Fund intends to generate a measurable ESG outcome, staff encourage such funds to clearly state the intended outcome as part of their investment objectives in order to allow investors to identify funds that match their own ESG-related goals. For example, staff encourage funds that aim to reduce carbon emissions to disclose a measurable carbon emissions reduction target in their investment objectives. The inclusion of a measurable ESG outcome in a fund's investment objectives would also allow funds to provide meaningful continuous disclosure that reports on whether the fund is achieving its intended ESG outcome.

(d) Funds with carbon offset series

There are some funds, including crypto asset funds, that have a series whose distinguishing feature is that there is a carbon offsetting feature. These series generally reference carbon offsetting in their name. Staff's view is that, if the name of the series refers to carbon offsetting, the investment objectives of the series should refer to, and explain, the carbon offsetting feature of the series and state that prior approval of securityholders of the series will be obtained before the carbon offset feature of the series is changed.[13]

This is consistent with staff's view on funds that have a currency hedged series, which is that the investment objectives of a fund that has a currency hedged series should disclose that prior approval of securityholders of the currency hedged series will be obtained before the currency hedging strategy of the series is changed.

IV. Fund types

Guidance on fund types

A mutual fund that is not an exchange-traded mutual fund (an **ETF**) is required to identify, in its prospectus, the type of mutual fund that the fund is best characterized as.[14] Examples of types of mutual funds may include money market, equity, bond or balanced funds related, if appropriate, to a geographical region, or any other description that accurately identifies the type of mutual fund.[15]

Similar to fund names and investment objectives, the fund type identified in a fund's prospectus plays a role in identifying the focus of the fund.

> Staff's view is that a fund that is not an ESG Objective Fund should not characterize itself as a fund that is focused on ESG or otherwise reference ESG in its fund type, as such a characterization may inaccurately suggest that the fund has an ESG-related focus.

[13] See the guidance below on the prior securityholder approval requirement for changes to the fundamental investment objectives of a fund under "ESG-related changes to existing funds".
[14] Item 3(a) of Part B of Form 81-101F1.
[15] Instruction (2) to Item 3 of Part B of Form 81-101F1.

V. Suitability

Guidance on suitability

An investment fund must include, in its Fund Facts or ETF Facts, as applicable, a brief statement of the suitability of the fund for particular investors, including describing the characteristics of the investor for whom the fund may or may not be an appropriate investment, and the portfolios for which the fund is and is not suited.[16] If the fund is particularly suitable for investors who have particular investment objectives, this can be disclosed.[17]

Similar to fund names, investment objectives, and fund types, in order to avoid greenwashing, the suitability statement should accurately reflect the extent of the fund's focus on ESG as well as the particular aspect(s) of ESG that the fund is focused on, but only if applicable.

> Where appropriate, an ESG Objective Fund may state that it is particularly suitable for investors who have ESG-related investment objectives or who are interested in ESG-focused investments. However, if the fund is only focused on a particular aspect of ESG, such as gender diversity in leadership or the reduction of carbon emissions, staff's view is that any suitability statement that indicates that the fund is particularly suitable for investors who have ESG-related investment objectives should accurately reflect the particular aspect(s) of ESG that the fund is focused on.
>
> Staff's view is that a fund that is not an ESG Objective Fund should not reference ESG in its suitability statement, as such a statement may inaccurately suggest that the fund has an ESG-related focus.

VI. Investment strategies disclosure

Key findings from ESG-Focused Reviews

Most of the issues raised during the ESG Prospectus Reviews related to investment strategies disclosure. Approximately two-thirds of the comments raised in this area related to unclear or inaccurate investment strategies disclosure, including disclosure relating to: (a) which types of ESG strategies are being used by the fund; (b) which specific ESG factors are considered as part of the ESG strategies; and (c) how such factors are being evaluated and monitored by the portfolio manager.

Staff also observed a trend of IFMs including disclosure about the consideration of ESG factors in the investment process of the IFM's funds that was not clear about the limited extent to which ESG factors are considered by many of the funds in the prospectus.

In addition, staff raised comments in relation to unclear or inadequate disclosure about specific elements of the fund's ESG strategies, including the fund's use of proxy voting and shareholder engagement as ESG strategies, company-level ESG ratings and scores, ESG-related indices and benchmarks, discretionary negative screening, and ESG-related targets. In particular, staff observed that it was not always clear from prospectus disclosure whether ESG-focused proxy voting and shareholder engagement were principal investment strategies of a fund or whether the IFM had a general proxy voting or shareholder or issuer engagement approach that addressed ESG matters among other matters.

There were also some specific issues raised in relation to index-tracking funds, funds that invest in underlying funds, and IFMs that did not have ESG-related policies and procedures for their funds, which are discussed in the guidance below.

Guidance on investment strategies disclosure

An investment fund is required to disclose in its prospectus the principal investment strategies that the fund intends to use in achieving its investment objectives and the process by which the fund's portfolio adviser selects securities for the fund's portfolio, including any investment approach, philosophy, practices and techniques used.[18]

Investment strategies disclosure provides clarity to investors about how the fund will achieve its investment objectives, including the nature and extent of the strategies employed by the fund, the investment universe from which the fund will select its investments, and which countries, industries, sectors or companies the fund may invest in. Full, true and plain ESG-related investment strategies disclosure enables investors to understand the types of investments that the fund may make, the types of ESG strategies used by the fund, the ESG factors considered by the fund, and in the case of an ESG Objective Fund, the ways in which the fund will meet its ESG-related investment objectives.

16 Item 7(1) of Part I of Form 81-101F3; Item 7 of Part I of Form 41-101F4.
17 Instruction to Item 7 of Part I of Form 81-101F3; Instruction (1) to Item 7 of Part I of Form 41-101F4.
18 Item 5(1)(a) and (b) of Part B of Form 81-101F1; Item 6.1(1)(a) and (c) of Form 41-101F2.

ESG Objective Funds and ESG Strategy Funds should provide disclosure about the ESG-related aspects of their investment selection process and investment strategies. All ESG strategies (such as carbon offsetting), not just the most common ones discussed above under "ESG-Related Terms and Strategies", that are used as principal investment strategies or as part of a fund's investment selection process, should be disclosed in the investment strategies section of the prospectus.

In staff's view, the investment strategies disclosure of ESG Objective Funds and ESG Strategy Funds should include identifying any ESG factors used and explaining the meaning of each ESG factor (to the extent that the factor is not self-explanatory, as discussed further below) and how the ESG factors are evaluated and monitored. This should include an explanation of the types of resources and information used and considered by the IFM in evaluating and monitoring the ESG factors (e.g. third-party sustainability reports, discussions with management of the issuer, disclosure documents), including disclosing whether the evaluation of the ESG factor is quantitative or qualitative and whether the evaluation is conducted using third-party data.

Complicated or non-self-explanatory ESG factors: Some ESG factors may not be self-explanatory based on their name or may be more complicated for investors to understand, such as "involvement in severe controversial events" and "clean air". Other ESG factors may have a commonly understood meaning outside of the investment industry but may not be self-explanatory as a factor considered in an investment process, such as "climate change" and "human rights". In all such cases, the ESG factor should be explained clearly.

Investments that may appear to be inconsistent with ESG values: Staff note that ESG Objective Funds may invest in companies that appear to be inconsistent with ESG values. For example, some investors may expect funds that reference the environment or climate transition in their names or investment objectives to exclude investments in companies involved in thermal coal. However, the fund's disclosed ESG-related investment objectives and strategies may permit such holdings. For example, some of these funds may be permitted to invest in such companies up to a certain percentage of their portfolios, so long as proceeds from the investment are earmarked for environmentally friendly projects, or in order to use shareholder engagement to improve the environmental practices of those companies. To provide greater clarity to investors and in line with the principle of full, true and plain disclosure of all material facts, staff encourage ESG Objective Funds, particularly those with more specific ESG focuses (as compared to those with a broad ESG focus), to disclose whether the fund may, at any point in time, hold such investments, what those holdings would include (including examples), any thresholds or parameters around such holdings, and how such holdings meet the fund's investment objectives. If an ESG Objective Fund is not permitted to hold certain investments that appear to be inconsistent with ESG values at any point in time, staff encourage IFMs to disclose this in the fund's investment strategies disclosure along with information about the monitoring process used by the fund to screen out such investments, and the fund should ensure that its portfolio does not include any such investments.

Written policies and procedures: During the ESG CD Reviews, staff observed that while most IFMs that manage ESG-Related Funds have written policies and procedures relating to the fund's consideration of ESG factors and/or use of ESG strategies, or in the case of IFMs that are not the portfolio adviser of their funds, their oversight of the funds' portfolio adviser(s) in relation to the consideration of ESG factors and/or use of ESG strategies, some did not. Staff remind IFMs that an IFM that offers ESG-Related Funds should: (a) establish, maintain and apply written policies and procedures that cover its consideration of ESG factors and/or use of ESG strategies, or in the case of an IFM that is not the portfolio adviser of the funds, its oversight of the funds' portfolio adviser(s) in relation to the consideration of ESG factors and/or use of ESG strategies; and (b) have processes in place to ensure that its written policies and procedures are regularly updated, such as for changes in its business practice, industry practice or securities legislation.[19]

Unless otherwise noted, the above guidance relating to investment strategies disclosure applies to all ESG-Related Funds. The following guidance applies specifically to certain types of funds and funds in certain circumstances.

(a) ESG Limited Consideration Funds

An ESG Limited Consideration Fund is not required to provide disclosure in its prospectus about its use of ESG strategies (including its consideration of ESG factors in its investment process). However, staff's view is that, where an ESG Limited Consideration Fund includes statements about the fund's use of ESG strategies (including its consideration of ESG factors in its investment process) in its sales communications, the prospectus should include disclosure about the fund's use of ESG strategies.[20]

Specifically, if an IFM of an ESG Limited Consideration Fund includes disclosure in the fund's prospectus about its use of ESG strategies, the disclosure should clearly explain:

- the limited role that the consideration of ESG factors and/or use of ESG strategies plays in the fund's investment process, including the specific parts of the investment process during which ESG factors are considered, the

[19] Sections 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and 11.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

[20] See the guidance below on the sales communications of ESG Limited Consideration Funds under "Sales communications relating to a fund's ESG focus, use of ESG strategies, etc.".

weight given to ESG factors as a whole (rather than for each particular ESG factor), and the impact that ESG factors will have on the portfolio selection process; and

- whether this approach is specific to the fund in question or whether it is part of the IFM's general process that is applied across all or a segment of its funds, and if it is applied to only one or a segment of the IFM's funds, clearly identify the fund(s).

If the IFM of an ESG Limited Consideration Fund includes such prospectus disclosure, the disclosure must still meet the standard of full, true and plain disclosure.[21] Specifically, the disclosure should clearly explain the ESG strategies used, and the description of these strategies must be written using plain language[22] in order to ensure that investors are able to understand the fund's investment strategies. However, staff are of the view that an ESG Limited Consideration Fund should avoid including disproportionately extensive disclosure about the consideration of ESG factors in order to avoid misleading investors about the role that ESG factors play in the investment process of the fund.

(b) Funds that use proxy voting or engagement in relation to ESG matters as a principal investment strategy

If a fund uses proxy voting or shareholder or issuer engagement in relation to ESG matters as a principal investment strategy, the fund is required to disclose this in its investment strategies.[23] In staff's view, the disclosure should include the criteria used by the proxy voting or engagement strategy, the goal of the proxy voting or engagement strategy, and the extent of the monitoring process used to assess the success of the proxy voting or engagement strategy.

(c) Funds that are subject to IFM's general proxy voting or engagement approaches that address ESG matters

Some funds are managed by IFMs that have general proxy voting policies and procedures that address ESG matters among other matters or have a general shareholder or issuer engagement approach that addresses ESG matters among other matters, but the funds do not use ESG-focused proxy voting or shareholder or issuer engagement as a principal investment strategy. As discussed above under "Are ESG factors considered as part of the fund's investment process?", depending on the particular circumstances of each IFM's investment process, such a fund may be a Non-ESG Fund or ESG Limited Consideration Fund.

Where such a fund is an ESG Limited Consideration Fund, the investment strategies section of the prospectus may include disclosure about the consideration of ESG issues as part of the fund's proxy voting or engagement approach but should not suggest that ESG-focused proxy voting or engagement is a principal investment strategy of the fund. The investment strategies section should also be clear about the role that the consideration of ESG factors plays in the proxy voting or engagement approach.

Where such a fund is a Non-ESG Fund, staff's view is that the investment strategies section of the prospectus should not include any disclosure about the consideration of ESG issues as part of its proxy voting or engagement approach.

Disclosure relating to a fund's proxy voting policies and procedures is discussed below under "Proxy voting and engagement policies and procedures".

(d) IFMs that apply an ESG strategy to more than one of their funds

In addition to the investment strategies section of a prospectus, ETFs and non-redeemable investment funds are required to provide disclosure in the section of the prospectus relating to the IFM about an overall investment strategy or approach used by the IFM in connection with the funds that it manages,[24] which may include any ESG strategies. Similarly, mutual funds that are not ETFs are also permitted to include such disclosure in their prospectus.[25] Where such disclosure is provided in the section of the prospectus about the IFM, staff's view is that the disclosure should be clear as to which of the funds in the prospectus the ESG strategy applies to, in order to provide transparency to investors as to which specific funds managed by the IFM use the ESG strategy. In addition, if the IFM's approach to considering ESG factors in its investment process varies for different types of funds managed by the IFM (e.g. if the IFM considers ESG factors in its investment process differently for its passive index-tracking funds as compared to its actively managed funds), this should be clearly articulated, and the differences in the IFM's ESG approach should be clearly explained.

For mutual funds that provide disclosure about an ESG strategy that is applied across more than one of its funds in the introduction to Part B of the prospectus rather than in the fund-specific sections for each individual fund,[26] staff's view is that the fund-specific sections of the prospectus should include a cross-reference to such disclosure in the introduction to Part B of the prospectus so

21 See footnote 5 above.
22 See footnote 5 above.
23 See footnote 18 above.
24 Item 19.1(5) of Form 41-101F2.
25 Item 4.1(6) of Part A of Form 81-101F1.
26 For mutual fund prospectuses, the investment strategies disclosure required by Item 5 of Part B of Form 81-101F1 may be disclosed under the heading "What Does the Fund Invest In?" as per Item 5(1)(a) and (b) of Part B of Form 81-101F1 or in the introduction to Part B of the prospectus as per Item 2(3) of Part B of Form 81-101F1.

that it is clear to investors as to which of the funds in the prospectus uses the ESG strategy. In addition, if the IFM's approach to considering ESG factors varies for different types of funds, this should also be clearly explained.

(e) Funds that use targets for specific ESG-related metrics

If a fund's use of one or more ESG strategies includes the use of targets for specific ESG-related metrics, such as carbon emissions, staff encourage such funds to disclose those targets as part of their investment strategies and identify if those targets may evolve or change over time in response to changing circumstances.

(f) Funds that invest in underlying funds

ESG Objective Funds and ESG Strategy Funds that invest in underlying funds that have an ESG-related focus and/or that employ ESG strategies must describe the process or criteria used to select the underlying funds[27] and should disclose any parameters around the types of ESG focus(es) that the underlying funds will have.

In addition, staff's view is that, if the underlying funds are named in the prospectus, the investment strategies disclosure should describe the ESG strategies that are used by the underlying funds. If the underlying funds are not named in the prospectus, the investment strategies disclosure should describe the ESG strategies that are used by the underlying funds, to the extent that such strategies are known.

(g) Funds that use multiple ESG strategies

ESG Objective Funds and ESG Strategy Funds that use multiple ESG strategies should provide disclosure explaining how the different ESG strategies are applied during the investment selection process. In staff's view, this disclosure should include the order in which the strategies are applied if the specific order would have an impact on the securities being selected for the portfolio.

(h) Funds that use ESG ratings, scores, indices or benchmarks

In staff's view, where an ESG Objective Fund or ESG Strategy Fund uses internal or third-party company-level ESG ratings or scores, or ESG-related indices or benchmarks, as part of its principal investment strategies or investment selection process, the fund should explain how those ratings, scores, indices or benchmarks are used.

For greater clarity, an ESG rating or score is an assessment of an organization or product's relative ESG characteristics, effectiveness and performance, including its exposure to ESG risks and/or opportunities. In addition, an index that does not have an ESG-related focus may still be considered to be an ESG-related benchmark if it is used as a benchmark to assess ESG-related performance, e.g. where a fund aims to have lower carbon emissions than a specific broad-based index.

Identification of the index, benchmark, rating or score: Staff's view is that, for ESG Objective Funds and ESG Strategy Funds that use ESG-related indices or benchmarks as part of their principal investment strategies or investment selection process, the fund should identify the index or benchmark used.[28] Similarly, for ESG Objective Funds and ESG Strategy Funds that use third-party, company-level ESG ratings or scores as part of their principal investment strategies or investment selection process, staff's view is that the fund should identify the provider of the ratings or scores.

Methodology: In staff's view, the disclosure should also include a description of the methodology used to create the company-level ESG ratings or scores, or ESG-related indices or benchmarks, including, for example, whether the methodology is based on quantitative or qualitative data and the degree to which subjectivity may be involved in the methodology.

(i) Funds that may not always use ESG strategies or that use them on a discretionary basis

To the extent that a fund's investment strategies indicate that a particular ESG strategy may be used but is not always used, staff's view is that the investment strategies disclosure should explain, where possible, when the ESG strategy will be used, including describing any parameters around when the ESG strategy will or will not be used. Similarly, staff have observed that the prospectuses of some funds state that the fund "may" exclude certain types of investments from their portfolios. If a fund has discretion over whether a type of investment is excluded from its portfolio, the level and scope of this discretion should be clearly disclosed.

(j) ESG index-tracking funds that invest in issuers that are not index constituents

Some ESG Objective Funds disclose in their investment strategies that the fund tracks the performance of an ESG-related index, without disclosing this in their investment objectives. For such funds, if the fund is permitted to track the index by investing in issuers that are not constituents of the index (including by using a sampling strategy), staff's view is that the investment strategies

[27] Item 5(1)(c)(iv) of Part B of Form 81-101F1.

[28] Staff remind IFMs that index mutual funds are required to, as part of their fundamental investment objectives, (a) disclose the name or names of the permitted index or permitted indices on which the investments of the index mutual fund are based and (b) briefly describe the nature of that permitted index or those permitted indices, in accordance with Item 4(5) of Part B of Form 81-101F1.

disclosure should be clear as to whether, in tracking the index, the fund may select issuers that are not index constituents. The investment strategies should also be clear as to whether the fund will select issuers with ESG characteristics that are similar to the constituents of the index, including identifying which specific ESG characteristics would be similar, such as, whether the ESG characteristics that would be similar are only those that are relevant to the particular ESG focus(es) of the fund.

(k) Funds that obtain exposure to ESG-related investments indirectly

Where an ESG Objective Fund's investment objectives state that the fund will primarily invest in investments that are ESG-related (as determined by the ESG focus(es) of the fund) or that meet certain ESG-related criteria, but also state that the fund may meet this objective through indirect investments or by investing in companies with indirect exposure to such investments, the investment strategies should explain the nature of the indirect investments or exposure and how such indirect investments or exposure help the fund meet its ESG-related investment objectives.

(l) Funds whose names and/or investment objectives include the term "impact"

In order to avoid greenwashing, staff's view is that if a fund's name and/or investment objectives include the term "impact", the investment strategies disclosure should explain what type of impact the fund is aiming to achieve, since the term "impact", when used in the context of ESG investing, is generally understood to be a reference to impact investing.

VII. ESG-related changes to existing funds

Guidance on ESG-related changes to existing funds

Changes to fundamental investment objectives: Since the fundamental investment objectives of the fund should reference the aspect of ESG included in the name of the fund, [29] where a fund intends to change its name to add or remove a reference to ESG, the fund should consider whether it should also change its fundamental investment objectives in accordance with Figure 3. The guidance in Figure 3 is also applicable to a fund that intends to change the reference to ESG in its name in such a way as to change the ESG focus of the fund to a different ESG focus, such as changing a fund's name from "XYZ ESG Fund" to "XYZ Carbon-Neutral Fund" or "ABC Clean Water Fund" to "ABC Sharia Fund".

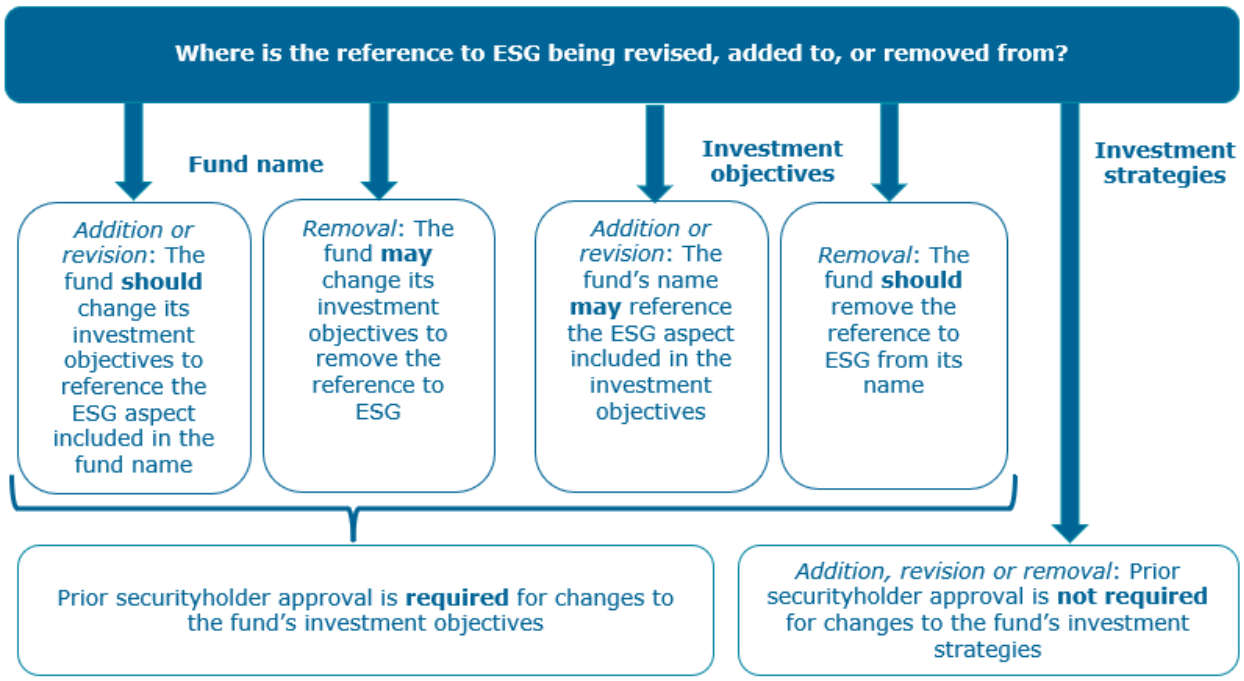
Prior securityholder approval: Staff remind IFMs that the addition or removal of references to ESG, or a change to the type of ESG focus of the fund, in the fundamental investment objectives of a fund requires prior securityholder approval, as illustrated in Figure 3.[30]

Changes to underlying fund: Some ESG Objective Funds have investment objectives that indicate that it invests in a single, named underlying fund. For such funds, if the ESG focus of the underlying fund, as identified in the investment objectives of the underlying fund, is changed or removed altogether, staff's view is that there has been a change to the fundamental investment objectives of the top fund.

Changes to investment strategies: Staff note that a fund that does not have ESG-related investment objectives may still use ESG strategies and may therefore reference ESG in its investment strategies disclosure without referencing ESG in its name or indicating that the fund is focused on ESG in its sales communications. Where an ESG strategy is not a material or essential aspect of a fund and is therefore not included in the fund's fundamental investment objectives, a fund that adds, revises or removes disclosure about the ESG strategy in its investment strategies disclosure is not subject to the requirement to obtain prior securityholder approval requirement, as illustrated in Figure 3.

[29] See the guidance above under "Investment objectives and fund names".
[30] Paragraph 5.1(1)(c) of National Instrument 81-102 *Investment Funds* (**NI 81-102**).

Figure 3.



VIII. Proxy voting and engagement policies and procedures

Key findings from ESG-Focused Reviews

Most of the comments raised in the ESG Prospectus Reviews in relation to the summary of the fund's proxy voting policies and procedures in the prospectus or AIF involved requesting that the summary of the proxy voting policies and procedures be revised to explain the ESG-related aspects of the policies and procedures, since the prospectus identified ESG-related proxy voting as an investment strategy of the fund.

Comments were also raised in a few circumstances in which there were inconsistencies in how the proxy voting strategy was described in the investment strategies section as compared to the summary of the proxy voting policies and procedures.

Guidance on proxy voting and engagement policies and procedures

(a) Proxy voting policies and procedures that address ESG matters

An investment fund must include in its prospectus and/or AIF,[31] as applicable, a summary of the policies and procedures that the fund follows when voting proxies relating to portfolio securities.[32]

Further, an investment fund is also required to promptly send the most recent copy of its proxy voting policies and procedures to any securityholder upon request.[33]

Disclosure of a fund's proxy voting policies and procedures can provide clarity to investors about the ways in which proxy voting is used by ESG Objective Funds to achieve their ESG-related investment objectives, including the scope and limits of their use, and by ESG Strategy Funds as a principal investment strategy.

[31] A fund that has not obtained a receipt for a prospectus during the last 12 months preceding its financial year end must file an AIF in accordance with Part 9 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).
[32] Item 30.1 of Form 41-101F2; Item 4.15(5) of Part A of Form 81-101F1; Item 12(7) of Form 81-101F2.
[33] Subsection 10.4(3) of NI 81-106.

If an ESG Objective Fund or ESG Strategy Fund uses ESG-focused proxy voting as a principal investment strategy, the prospectus and/or AIF, as applicable, should include a summary of the ESG aspects of the fund's proxy voting policies and procedures. This summary would provide clarity about how the voting rights attached to the fund's portfolio securities will be used to further the ESG Objective Fund's ESG-related investment objectives, or in the case of an ESG Strategy Fund, how the ESG-related proxy voting strategy is implemented.

General proxy voting or engagement approaches that address ESG matters: As discussed above under "Are ESG factors considered as part of the fund's investment process?", a fund that does not use ESG-focused proxy voting as a principal investment strategy but that is managed by an IFM that has general proxy voting policies and procedures that address ESG matters among other matters may, depending on the nature of the IFM's investment process, be a Non-ESG Fund or ESG Limited Consideration Fund. If the fund is an ESG Limited Consideration Fund, the prospectus and/or AIF, as applicable, should not suggest that ESG-focused proxy voting is a principal investment strategy of the fund, and where the summary of the fund's proxy voting policies and procedures refers to ESG matters, it should be clear about the role that the consideration of ESG factors plays in the proxy voting approach.

Website availability of proxy voting policies and procedures: In order to provide investors with greater transparency, staff also encourage all investment funds to make the most recent copy of their proxy voting policies and procedures available on their designated websites.

(b) Engagement policies and procedures that address ESG matters

Staff encourage all ESG Objective Funds and ESG Strategy Funds that use ESG-focused shareholder or issuer engagement as a principal investment strategy to make their shareholder or issuer engagement policies and procedures publicly available in order to provide investors with greater transparency into the scope and nature of the fund's use of engagement as an ESG strategy.

IX. Risk disclosure

Guidance on risk disclosure

An investment fund is required to describe, in its prospectus, any material risks associated with an investment in the fund,[34] including any risks associated with any particular aspect of the fundamental investment objectives and investment strategies.[35]

Risk disclosure enables investors to better understand the potential material risks associated with investing in the fund, including the impact of those risks on a fund's performance.

(a) Risk disclosure by ESG-Related Funds

The risk disclosure of ESG-Related Funds enables investors to better understand the challenges faced by the fund in meeting its ESG-related investment objectives, if applicable, or using its ESG strategies.

An ESG-Related Fund should consider whether there are any material risk factors that are applicable to the fund as a result of the fund's ESG-related investment objectives and/or its use of ESG strategies and disclose any such risk factors. Examples may include concentration risk, risk of underperformance due to the fund's ESG-related focus, and risk arising from potential over-reliance on third-party ESG ratings in assessing the ESG performance of underlying holdings.

(b) ESG-related risk disclosure by all funds

The disclosure of material ESG-related risks by all types of funds, regardless of whether they are ESG-Related Funds, may assist investors with making informed investment decisions about how ESG-related issues can impact their investments.

All investment funds, regardless of whether they are ESG-Related Funds, should consider whether there are any material ESG-related risk factors that are applicable to the fund and disclose such risk factors where applicable. Examples of such risk factors may include climate change risk and bribery and corruption risks.

In order to be able to provide useful ESG-related risk disclosure, staff remind IFMs to ensure that their risk management framework takes ESG-related risks into account.

[34] Item 9 of Part B of Form 81-101F1; Item 12 of Form 41-101F2.
[35] Instruction (2) to Item 9 of Part B of Form 81-101F1; Item 12.1(1) of Form 41-101F2.

X. Continuous disclosure

Key findings from ESG-Focused Reviews

Most of the funds that were reviewed as part of the ESG-Focused Reviews met the continuous disclosure expectations set out in the 2022 Notice. However, there were two notable observations from the ESG-Focused Reviews pertaining to best practices and portfolio holdings.

Firstly, most funds did not follow the best practices relating to continuous disclosure that were set out in the 2022 Notice, including those related to MRFP disclosure about the fund's progress or status with regard to meeting the fund's ESG-related investment objectives and disclosure about past proxy voting records and shareholder engagements.

Secondly, during the course of the ESG-Focused Reviews, staff became aware of instances in which a fund had inadvertently held investments that should have been screened out based on the negative screens set out in the investment strategies of the fund.

Guidance on continuous disclosure

An investment fund must include, in its MRFP, a summary of the results of operations of the investment fund for the financial year to which the MRFP pertains, including a discussion of how the composition and changes to the composition of the investment portfolio relate to the fund's fundamental investment objective and strategies.[36] Staff note, however, that funds are only required to disclose information that is material.[37]

Continuous disclosure, including the MRFP, enables investors to monitor a fund's performance and evaluate its ability to meet its objectives on an ongoing basis. For funds that have ESG-related investment objectives, continuous disclosure can help prevent greenwashing by allowing investors to monitor the fund's ESG performance and therefore evaluate the fund's progress in terms of meeting its ESG-related investment objectives.

(a) Reporting on composition and changes to the composition of the investment portfolio

An ESG-Related Fund is required to disclose in its MRFP how the composition and changes to the composition of the investment portfolio relate to the fund's ESG-related investment objectives and/or strategies where such information is material.[38] For example, if a fund that excludes companies that are involved in gambling divests its holdings in a company because it has recently become involved in the gambling industry, the fund must disclose its divestment and the reason for the divestment in the MRFP, where such information is material.

ESG Limited Consideration Funds: While an ESG Limited Consideration Fund is less likely than an ESG Objective Fund and ESG Strategy Fund to change the composition of its investment portfolio due to its ESG investment strategies, there may be circumstances in which an ESG Limited Consideration Fund changes the composition of its investment portfolio due to its consideration of ESG factors. Where such information is material, an ESG Limited Consideration Fund is required to disclose this in its MRFP.[39]

Prohibited portfolio holdings: For an ESG-Related Fund whose investment strategies include negative screens, staff's view is that if the fund, at any point, holds any investments that should have been screened out in accordance with the negative screens set out in the prospectus, the fund should disclose the holding and information about the fund's divestment of the holding in its MRFP.

(b) Reporting on ESG-related outcomes

In order to provide investors with meaningful disclosure about the ESG-related outcomes of a fund, staff encourage ESG Objective Funds to disclose, as part of the summary of the results of the fund's operations in the MRFP, the ESG-related aspects of those operations, including the fund's progress or status with regard to meeting its ESG-related investment objectives. For example, in the case of a fund whose investment objectives state that the fund will invest in companies that contribute to the fight against climate change, staff are of the view that investors would benefit from continuous disclosure that explains which companies the fund has invested in during the relevant period and how they have contributed to the fight against climate change.

Staff are of the view that all ESG Objective Funds, not just impact funds, funds with a measurable ESG-related outcome, or funds that use certain ESG-related metrics or key performance indicators, should be able to report on whether they're achieving

36 Items 2.3(1) of Part B and 2.1 of Part C of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**).
37 Item 1(d) of Part A of Form 81-106F1.
38 See footnote 36 above.
39 See footnote 36 above.

their ESG-related investment objectives. An ESG Objective Fund that uses any ESG strategies as part of its investment selection process in order to meet its ESG-related investment objectives, including a best-in-class strategy or negative screening strategy, can report on whether its portfolio composition is meeting its ESG-related investment objectives and whether the ESG strategies have been successfully applied during the time period covered by the MRFP.

As part of the summary of the results of the fund's operations in the MRFP, staff encourage both ESG Objective Funds and ESG Strategy Funds to disclose any key quantitative metrics used by the IFM to assess whether the fund has satisfied any ESG considerations included in its investment objectives and/or investment strategies.

Reporting for funds that generate a measurable ESG outcome: Staff encourage ESG Objective Funds that intend to generate a measurable ESG outcome to report in their MRFPs on whether the fund is achieving that outcome. For example, where a fund's investment objectives refer to the reduction of carbon emissions, staff are of the view that investors would benefit from disclosure in the fund's MRFP that includes the quantitative key performance indicators for carbon emissions.

Reporting outside of the MRFP: In addition to the required disclosure in the MRFP, staff encourage ESG Objective Funds to provide investors with additional periodic information on how they are meeting their ESG-related investment objectives. We remind IFMs that websites and such non-regulatory documents are considered to be sales communications under NI 81-102, which is discussed further below under "Definition of sales communication".

Assessment, measurement and monitoring: In order to be able to provide useful disclosure about the fund's progress or status with regard to meeting its ESG-related investment objectives, staff encourage IFMs to regularly assess, measure and monitor the ESG performance of the ESG-Related Funds that they manage.

Unless otherwise noted, the above guidance relating to continuous disclosure applies to all ESG-Related Funds. The following guidance applies specifically to funds that use certain types of ESG strategies.

(a) Funds that use proxy voting as an ESG strategy

Past proxy voting records on websites: An investment fund is required to maintain a proxy voting record[40] and make its most recent annual proxy voting record available on its designated website, as well as promptly send it to any securityholder upon request.[41] While these requirements only apply to a fund's most recent annual proxy voting record, staff encourage all funds, particularly ESG Objective Funds and ESG Strategy Funds that use proxy voting in relation to ESG matters as a principal investment strategy, to make all of their annual proxy voting records, including historical records from previous years, available on their designated websites. In staff's view, such disclosure would provide greater transparency into how the fund's ESG-focused proxy voting strategy has historically been implemented, and in the case of an ESG Objective Fund, how the fund has historically used proxy voting to meet its ESG-related investment objectives.

MRFP disclosure: Staff encourage all ESG Objective Funds and ESG Strategy Funds that use proxy voting in relation to ESG matters as a principal investment strategy to include, as part of the summary of the results of the fund's operations in the MRFP, disclosure about how the past proxy voting records during that period align with the ESG-related investment objectives and/or strategies of the fund.

(b) Funds that use engagement as an ESG strategy

Staff encourage all ESG Objective Funds and ESG Strategy Funds that use engagement in relation to ESG matters as a principal investment strategy to provide disclosure about: (a) past engagement activities on their designated websites; and (b) how the fund's past engagement activities align with the ESG-related investment objectives and/or strategies of the fund as part of the summary of the results of the fund's operations in the MRFP.

XI. Sales communications

Key findings from ESG-Focused Reviews

As part of the ESG-Focused Reviews, staff identified a number of sales communication issues relating to misleading or inaccurate ESG-related statements, or statements that otherwise conflicted with prospectus disclosure.

The most common types of sales communication issues identified in the ESG-Focused Reviews are described below:

- **Statements about ESG-related investment objectives and strategies**: One of the most common issues raised by staff in relation to sales communications involved statements regarding the fund's ESG-related investment objectives or strategies that were misleading or inconsistent with the fund's prospectus disclosure. Some of the sales communications indicated that the fund's ESG focus was broader than the ESG focus

[40] Section 10.3 of NI 81-106.
[41] Section 10.4 of NI 81-106.

identified in the prospectus, such as referring to "ESG" or "social responsibility" where the focus of the fund was only one aspect of ESG, such as environmental factors or an even narrower focus, such as screening out fossil fuels. There were also inconsistencies between the description of specific ESG strategies or factors in the prospectus as compared to the sales communication.

- **Statements regarding applicability of IFM's ESG approach to its fund line-up**: Another common sales communication issue involved statements on the websites of IFMs that suggested that all or most of the IFM's funds consider ESG factors as part of their investment process when in reality, only a smaller subset of the IFM's funds consider ESG factors. This discrepancy was often identified where there were statements on the websites of an IFM that suggested that all or most of the IFM's funds consider ESG factors as part of their investment process despite ESG factors not being referenced in the investment strategies disclosure in the prospectuses of those funds. In some cases, these statements did not accurately reflect that only a subset of the IFM's funds consider ESG factors while in other cases, these statements did not accurately reflect the limited extent to which ESG factors are considered in the investment process of most of the IFM's funds.

- **Statements regarding consideration of ESG factors throughout the investment process**: A related sales communication issue that staff identified in the ESG-Focused Reviews involved statements on the websites of IFMs that suggested that the IFM considered ESG factors as part of their broader investment process when in reality, for some of the IFM's funds, ESG factors were only considered as part of the IFM's stewardship activities (e.g. proxy voting and shareholder engagement), but not as part of the investment selection process.

- **Statements regarding ESG-related outcomes**: Staff identified several instances of sales communications that included inaccurate claims about the fund's ESG-related outcomes. For example, some of the sales communications indicated that the fund was aiming to produce specific ESG-related outcomes or impacts, despite the fund only using a best-in-class approach. Other sales communications inaccurately indicated that certain outcomes or impacts achieved by the underlying companies were outcomes or impacts of the fund itself, while others made claims about certain outcomes or impacts without substantiating those claims.

- **Inclusion of fund-level ESG ratings, scores, or rankings**: Staff identified a few websites and sales communications that included fund-level ESG ratings, scores or rankings in a manner that was not consistent with the applicable guidance in the 2022 Notice. In particular, staff identified the following issues: (a) disclosing fund-level ESG ratings, scores or rankings developed by the IFM of the fund; (b) where a fund-level ESG rating was disclosed for a fund that does not have ESG-related investment objectives, not disclosing the same type of fund-level ESG rating for all of the other funds that it manages where such ratings are available; and (c) not including all of the accompanying disclosure set out in the 2022 Notice that staff believe IFMs should include in order to make the inclusion of fund-level ESG ratings in the sales communication not misleading, including, in particular, not providing a link to the fund's website containing the same type of fund-level ESG ratings, scores or rankings for the fund on the same periodic basis as updated by the provider over the past 12 months.

Guidance on sales communications

A sales communication pertaining to an investment fund is prohibited from including a statement that conflicts with information that is contained in the fund's regulatory offering documents.[42] In addition, a sales communication pertaining to an investment fund is also prohibited from being untrue or misleading.[43]

The Companion Policy to NI 81-102 (**81-102CP**) lists some of the circumstances in which a sales communication would be misleading. One such circumstance is if the sales communication contains a statement that lacks explanations, qualifications, limitations or other statements necessary or appropriate to make the statement in the sales communication not misleading.[44] Another circumstance is if the sales communication contains a statement about the characteristics or attributes of an investment fund that makes exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment fund or an investment in securities issued by the fund.[45]

In addition, staff are of the view that sales communications should not contain statements that are vague or exaggerated, or that cannot otherwise be verified.[46]

Sales communications, including websites, play a key role in providing information about the investment objectives, investment strategies, and performance of funds that investors may consider investing in. Therefore, sales communications relating to ESG that are true, not misleading, and consistent with a fund's regulatory offering documents are important in order to prevent greenwashing.

42 Paragraph 15.2(1)(b) of NI 81-102.
43 Paragraph 15.2(1)(a) of NI 81-102.
44 Paragraph 13.1(1)1 of 81-102CP.
45 Subparagraph 13.1(1)3(b) of 81-102CP.
46 OSC Staff Notice 81-720 *Report on Staff's Continuous Disclosure Review of Sales Communications by Investment Funds.*

(a) Definition of sales communication

Staff's view is that webpages on an IFM's website and other communications that discuss the IFM's ESG investing approach are sales communications, with the exception of Required ESG-Related Initiative Communications (as defined below), for the following reasons:

- **Promoting a particular investment strategy**: 81-102CP states that an advertisement or other communication that promotes any particular investment strategy would be a sales communication.[47] In staff's view, the consideration of ESG factors as part of a fund's investment process is an investment strategy.

- **Not an image advertisement**: Staff are of the view that an advertisement or other communication that discusses an investment strategy used by the IFM's funds, including an ESG investing approach, is not merely promoting the corporate entity or the expertise of the IFM,[48] as the communication is promoting an investment strategy used by funds managed by the IFM, which would make it a sales communication. For greater clarity, staff's view is that an advertisement or other communication that references ESG but that does not discuss the IFM's ESG investing approach and only promotes the IFM's corporate entity or the expertise of the IFM is not a sales communication.

- **Inducing the purchase of securities**: Staff are of the view that an advertisement or other communication that discusses an investment strategy used by the IFM's funds, including an ESG approach, is made to induce the purchase of securities of the funds managed by the IFM,[49] since investors can only obtain exposure to the investment strategy being promoted through investing in the funds.

Required ESG-Related Initiative Communications: In staff's view, there is one circumstance in which public communications that include information about an IFM's ESG investing approach are not sales communications. Where such communications are explicitly required to be made public as part of the IFM's commitment to a voluntary ESG-related initiative that is: (a) administered by an organization that is not affiliated with the fund or its IFM, portfolio adviser or principal distributor; and (b) widely recognized (**Required ESG-Related Initiative Communications**), staff's view is that they are not sales communications, as they do not promote the IFM's ESG investing approach and are instead intended to fulfill the IFM's requirements under the initiative. However, staff are of the view that any such communications made purely on a voluntary basis by the IFM are sales communications, as they are promotional in nature. Examples of voluntary ESG-related initiatives are included below under "Commitments to ESG-related initiatives".

Applicability of sales communication to all of an IFM's funds: Where a sales communication includes statements about the IFM's ESG investing approach but does not identify a specific fund or group of funds to which the statements apply or do not apply, staff's view is such a sales communication pertains to all of the funds managed by the IFM.

(b) Use of disclaimers or explanatory language

As part of the ESG-Focused Reviews, staff identified a number of sales communications that required disclaimers or other explanatory language to make the sales communication not misleading. Where disclaimers or any other explanations, qualifications, limitations or other statements are necessary or appropriate to make a sales communication not misleading, staff's view is that such language should be included in the sales communication itself, unless there are physical or technical limitations that would prevent the sales communication from including such language.

If there are such limitations, staff's view is that the disclaimer or explanatory language should be accessible in a different document or webpage within "one click" of the sales communication. In staff's view, the sales communication should specifically indicate that the disclaimer or explanatory language can be accessed on the other document or webpage, and where technologically possible, the link should directly lead to the disclaimer or explanatory language on that other document or webpage. In staff's view, it is not sufficient for the sales communication to simply include a link to another document or webpage which contains the disclaimer or explanatory language if it would not be apparent from the sales communication that the disclaimer or explanatory language is contained on the other document or webpage.

Where it is not possible to include a disclaimer or explanatory language in the sales communication itself or on a different document or webpage within "one click" of the sales communication (which may be the case with billboards, television advertising, or certain forms of social media, for example) staff's view is that the sales communication should be created or written in such a way as to not need any disclaimers or explanatory language to make it not misleading.

[47] Subsection 2.15(3) of 81-102CP.

[48] Subsection 2.15(3) of 81-102CP states the following: "The Canadian securities regulatory authorities are of the view that image advertisements that are intended to promote a corporate identity or the expertise of an investment fund manager fall outside the definition of 'sales communication'."

[49] The definition of "sales communication" in section 1.1 of NI 81-102 includes communications that are made "to a person or company that is not a securityholder of the investment fund … to induce the purchase of securities of the investment fund".

(c) Sales communications relating to a fund's ESG focus, use of ESG strategies, etc.

A sales communication pertaining to an investment fund should accurately reflect the extent to which the fund is focused on ESG, as well as the particular aspect(s) of ESG that the fund is focused on. In staff's view, a fund should not include statements in its sales communications that indicate that it is focused on ESG unless the fund is an ESG Objective Fund.

In general, staff's view is that a sales communication that does not accurately reflect the extent and nature of a fund's focus on ESG, or lack thereof, would both be misleading and conflict with the information in the fund's regulatory offering documents.

Examples of such sales communications may include those that do any of the following:

- suggest that a fund is focused on ESG when it is not
- suggest that a fund is focused on all three components of ESG when it is only focused on one component, such as governance
- suggest that ESG factors are considered as part of the investment process of, or that ESG strategies are used by, all or most of an IFM's fund line-up when ESG factors are only considered, or ESG strategies are only used, by a smaller subset of the IFM's funds
- misrepresent the extent and nature of the use of ESG strategies by the fund (or by all or most of an IFM's fund line-up), including:
    - in the case of an ESG Limited Consideration Fund, suggesting that the consideration of ESG factors plays a more significant role in the investment process than it actually does or being unclear about the limited role that the consideration of ESG factors plays in the investment process
    - in the case of a fund where the use of an ESG strategy is discretionary, stating that the fund uses the ESG strategy without clearly disclosing that the use of the strategy is discretionary
    - suggesting that ESG factors are considered as part of the investment process as a whole where ESG factors are only considered in a specific part of the investment process (e.g. suggesting that ESG factors are considered as part of the investment selection process when they are only considered as part of the IFM's stewardship activities)
    - failing to:
        - disclose that there is a maximum limit to the fund's use of those strategies;
        - actually use the advertised ESG strategies, including using different types of ESG strategies altogether; or
        - prominently disclose material aspects of the ESG strategies.

Staff's views on the types of ESG-related statements that may and may not be included in the sales communications of each of the different types of funds covered in this Notice are as follows:

- **ESG Objective Funds**: An ESG Objective Fund may include statements in its sales communications that accurately reflect the extent to which the fund is focused on ESG, as well as the particular aspect(s) of ESG that the fund is focused on.
- **ESG Strategy Funds**: An ESG Strategy Fund may include statements in its sales communications that accurately reflect the types of ESG strategies used by the fund and the extent to which the fund uses ESG strategies. However, such funds should not exaggerate the extent of the fund's focus on ESG in their sales communications.
- **ESG Limited Consideration Funds:** An ESG Limited Consideration Fund may include statements in its sales communications regarding the fund's use of ESG strategies as part of its investment process (including its consideration of ESG factors), but such statements should: (a) be clear about the limited role that the consideration of ESG factors plays in the fund's investment process, including identifying the specific parts of the investment process in which ESG factors are considered, the weight given to ESG factors, and the impact that ESG factors will have on the portfolio selection process; and (b) only be included if disclosure relating to the limited role that the consideration of ESG factors plays in the funds' investment process (including identifying the specific parts of the investment process

in which ESG factors are considered) is included in the prospectus.[50] For greater clarity, this includes sales communications relating to the IFM's ESG investing approach where the consideration of ESG factors plays a limited role in the investment process.

- **Non-ESG Funds**: A Non-ESG Fund should not refer to ESG in its sales communications, with the exception of factual information about the ESG characteristics of its portfolio (such as fund-level ESG ratings, scores or rankings, or ESG metrics). However, the factual information about the ESG characteristics of its portfolio should not be framed in a way that suggests that the Non-ESG Fund is aiming to achieve any ESG-related goals or is trying to create a portfolio that meets certain ESG-related criteria.

In staff's view, sales communications that promote an IFM's ESG approach to managing its funds should be clear about how the IFM's ESG approach applies to all of its funds, to the extent that the application of the ESG approach or use of different strategies varies across different funds.

Staff have noticed that some ESG-Related Funds provide more detail about the fund's ESG strategies in their sales communications than they do in their prospectuses. Staff remind IFMs that a prospectus must provide full, true and plain disclosure of all material facts, including the investment strategies of the fund.

(d) Sales communications that reference a fund's ESG performance

A fund must not include misleading statements in its sales communications about the ESG performance or ESG-related outcomes of the fund.[51]

Examples of such sales communications may include those that do any of the following:

- make inaccurate claims about the fund's ESG performance or results
- make inaccurate claims about the existence of a direct causal link between the fund's investment strategies and ESG performance or results
- manipulate elements of disclosure to present the fund's ESG performance or results in a positive light, such as cherry-picking data.

(e) Sales communications that include fund-level ESG ratings, scores or rankings

Staff understand that some IFMs may wish to include fund-level ESG ratings, scores or rankings on their websites or other sales communications. These would include, but are not limited to, fund-level ESG ratings or scores that are primarily weighted averages of the company-level ESG ratings or scores of the underlying portfolio holdings of the fund (**Portfolio-Based ESG Ratings**), and fund-level ESG rankings based solely on Portfolio-Based ESG Ratings (**Portfolio-Based ESG Rankings**).

While staff are of the view that the Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings that staff have observed to date are not "performance data" and "performance ratings or rankings" within the context of Part 15 of NI 81-102 (**Part 15**), other types of fund-level ESG ratings, scores and rankings that are not Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings may be considered "performance data" or "performance ratings or rankings". Similarly, while staff are of the view that the comparison of Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings that staff have observed to date are not comparisons of performance within the context of Part 15,[52] the comparison of other types of fund-level ESG ratings, scores and rankings that are not Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings may be considered to be comparisons of performance.

If a type of fund-level ESG rating, score or ranking is considered "performance data" or a "performance rating or ranking", or a comparison of that type of fund-level ESG rating, score or ranking is considered to be a comparison of performance, sales communications that include this type of fund-level ESG rating, score or ranking, or a comparison thereof, may not be able to comply with some of the provisions of Part 15 that relate to "performance data", "performance ratings or rankings" and comparisons of performance (the **Performance Requirements**). Staff remind IFMs to review and consider the Performance Requirements to determine whether such sales communications are in compliance with Part 15 and encourage IFMs that wish to include other types of fund-level ESG ratings, scores and rankings in their sales communications to contact staff of their principal regulator as needed.

[50] See the guidance above on investment strategies disclosure for ESG Limited Consideration Funds under "ESG Limited Consideration Funds".
[51] See footnote 43.
[52] See, for example, subsection 15.3(1) and sections 15.7 and 15.7.1 of NI 81-102.

Any sales communication that includes fund-level ESG ratings, scores or rankings, including Portfolio-Based ESG Ratings and Portfolio-Based ESG Rankings, must not be misleading. In staff's view, a sales communication that includes fund-level ESG ratings, scores or rankings may be misleading for a number of reasons, including any of the following:

- there are conflicts of interest involving the provider that prepares the fund-level ESG rating, score or ranking;
- the selection of the specific fund-level ESG rating, score or ranking is the result of cherry-picking fund-level ESG ratings, scores or rankings in order to present the fund's ESG characteristics or performance in a positive light;
- the selected fund-level ESG rating, score or ranking is not representative of the ESG characteristics or performance of the fund;
- the sales communication does not include explanations, qualifications, limitations or other statements necessary or appropriate to make the inclusion of the fund-level ESG ratings, scores or rankings in the sales communication not misleading.

Guidance on how to avoid these four issues is provided below.

Staff note, however, that a sales communication that includes fund-level ESG ratings, scores or rankings may also be misleading for reasons that have not been identified in this Notice and remind IFMs to review and consider the requirements under Part 15 when preparing sales communications.

Conflicts of interest

To address conflicts of interest, staff's view is that the fund-level ESG rating, ranking or score that is included in the sales communication should be prepared by a provider that:

(a) rates, scores or ranks the ESG characteristics or performance of the fund through an objective methodology that is (i) applied consistently to all funds rated, scored or ranked by it, and (ii) disclosed on the provider's website;

(b) is not a member of the organization of the fund;[53] and

(c) is not paid to assign a fund-level ESG rating, score or ranking to the fund by the promoter, manager, portfolio adviser, principal distributor or participating dealer of any fund or any of their affiliates.

In addition, for a fund-level ESG ranking, the ranking should be based on a published category of funds, such as Canadian equity funds, that is not established or maintained by a member of the organization of the fund.

Selection of fund-level ESG rating, score or ranking

To help ensure that the selection of the fund-level ESG rating, score or ranking is not the result of cherry-picking, staff are of the view that the selection of the rating, score or ranking should be consistent with the following parameters:

(a) the IFM should consider whether the selected fund-level ESG rating, score or ranking is an accurate representation of the fund (and its portfolio, if the fund-level ESG rating, score or ranking is based on the fund's portfolio) during the time period that the sales communication appears or is in use and therefore, whether the inclusion of the selected fund-level ESG rating, score or ranking in a sales communication may be misleading;

(b) for a fund-level ESG ranking, the ranking should be based on a published category of funds, such as, for example, Canadian fixed income funds, that provides a reasonable basis for evaluating the ESG characteristics or performance of the fund;

(c) if a fund-level ESG rating, score or ranking is disclosed on the website of an ESG Objective Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the ESG Objective Funds that it manages;

(d) if a fund-level ESG rating, score or ranking is disclosed on the website of an ESG Strategy Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the ESG Objective Funds and ESG Strategy Funds that it manages;

[53] See the definition of "member of the organization" in section 1.1 of National Instrument 81-105 *Mutual Fund Sales Practices*.

(e) if a fund-level ESG rating, score or ranking is disclosed on the website of an ESG Limited Consideration Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the ESG Objective Funds, ESG Strategy Funds, and ESG Limited Consideration Funds that it manages; and

(f) if a fund-level ESG rating, score or ranking is disclosed on the website of a fund that is a Non-ESG Fund, the IFM should disclose the same type of fund-level ESG rating, score or ranking from the same provider, if available, for all of the funds that it manages.

However, staff do not view paragraph (c) as applicable to an ESG Objective Fund that has a specialized ESG focus, such as a fund focused on climate change, if the fund-level ESG rating, score or ranking that is being disclosed is specific to the specialized ESG focus of the fund, such as a rating relating to carbon emissions.

Staff note that the principles from paragraphs (c), (d), (e) and (f) would also apply to sales communications that cover more than one fund and sales communications for which different versions of the same sales communication are produced for most or all of the IFM's funds. An example of the latter type of sales communication is a "fund profile", which is typically a short overview document that covers one fund. IFMs generally produce and make publicly available a fund profile document for most or all of the IFM's funds, and each fund profile document usually uses the same format and includes the same type of content. For both types of sales communications, staff would have concerns about cherry-picking fund-level ESG ratings, scores or rankings to present a particular fund's ESG characteristics or performance in a positive light if the rating, score or ranking was not included in the sales communication(s) for all such applicable funds in accordance with paragraphs (c), (d), (e) and (f). For greater clarity, staff do not consider the principles from paragraphs (c), (d), (e) and (f) to be applicable to sales communications that only cover one fund and for which different versions of the same sales communication are not produced for most or all of the IFM's funds.

In addition, staff encourage funds that wish to disclose fund-level ESG ratings, scores or rankings in their sales communications to disclose fund-level ESG ratings, scores or rankings from at least 2 different providers.

Representativeness of fund's ESG characteristics or performance

Furthermore, for a Portfolio-Based ESG Rating, if only a certain percentage of a fund's underlying portfolio is covered by the Portfolio-Based ESG Rating (i.e. if less than 100% of the fund's underlying portfolio has been rated), staff's view is that the IFM should consider whether the portion of the portfolio that has not been rated has substantially similar ESG characteristics to the rest of the portfolio and therefore, whether the Portfolio-Based ESG Rating is an accurate representation of the ESG characteristics or performance of the entire portfolio. If the portion of the portfolio that has not been rated does not have substantially similar ESG characteristics as compared to the rest of the portfolio, the Portfolio-Based ESG Rating may not be an accurate representation of the entire portfolio and therefore, the inclusion of the Portfolio-Based ESG Rating in a sales communication may be misleading.

The above guidance also applies to Portfolio-Based ESG Rankings that are based on Portfolio-Based ESG Ratings where less than 100% of the fund's underlying portfolio has been rated.

Accompanying disclosure

Finally, to avoid being misleading, staff are of the view that a sales communication that includes fund-level ESG ratings, scores or rankings should include the following disclosure:

(a) the name of the provider that prepared the fund-level ESG rating, score or ranking;

(b) the date or time period covered by the fund-level ESG rating, score or ranking:

  (i) if the fund-level ESG rating, score or ranking is as of a specific point in time, the date of the specific point in time;

  (ii) if the fund-level ESG rating, score or ranking covers a time period:

    (A) the period of time; and

    (B) a brief explanation of how the fund-level ESG rating, score or ranking was determined for the specified time period (e.g. if the fund-level ESG rating, score or ranking is based on an average of the monthly fund-level ESG ratings, scores or rankings from the past 12 months);

(c) how often the fund-level ESG rating, score or ranking is updated by the provider (e.g. on a monthly basis);

(d) cautionary language stating that the fund's ESG characteristics and performance may differ from time to time;

(e) for Portfolio-Based ESG Ratings, the percentage of the fund's underlying portfolio holdings that has been rated;

(f) for Portfolio-Based ESG Rankings, the percentage of the fund's underlying portfolio holdings that has been rated for the purpose of the Portfolio-Based ESG Rating on which the Portfolio-Based ESG Ranking is based;

(g) for fund-level ESG ratings or scores, the range of the fund-level ESG rating or score (e.g. AAA to CCC);

(h) for fund-level ESG rankings:

(i) the classification of the peer group used for the ranking (e.g. Canadian equity);

(ii) the number of funds in the peer group; and

(iii) the fund-level ESG rating or score of the fund that was used to determine the fund's fund-level ESG ranking;

(i) if the fund is not an ESG Objective Fund, cautionary language that states that the fund does not have ESG-related investment objectives;

(j) if applicable, cautionary language that states that the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based) does not evaluate the ESG-related investment objectives of, or any ESG strategies used by, the fund and is not indicative of how well ESG factors are integrated by the fund;

(k) a one- or two-sentence summary explaining what the fund-level ESG rating, score, or ranking measures or assesses, including:

(i) for a fund-level ESG ranking, language identifying the fund-level ESG rating or score that the ranking is based on;

(ii) for a Portfolio-Based ESG Rating or Portfolio-Based ESG Ranking, language that states that the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based) is a weighted average ESG rating or score of the company-level ESG ratings or scores of the underlying portfolio holdings of the fund; and

(iii) for a fund-level ESG rating, score or ranking that is not a Portfolio-Based ESG Rating or Portfolio-Based ESG Ranking, an explanation of what the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based) measures or assesses;

(l) if the sales communication is online, a link to the full methodology of the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based);

(m) if the sales communication is not an online sales communication, language explaining how to easily access, free of charge, the full methodology of the fund-level ESG rating or score (or in the case of a fund-level ESG ranking, the fund-level ESG rating or score on which the ranking is based);

(n) if applicable, a statement indicating that other providers may also prepare fund-level ESG ratings or scores (or in the case of fund-level ESG rankings, the fund-level ESG ratings or scores on which the rankings are based) using their own methodologies, which may differ from the methodology used by the provider;

(o) if the sales communication is online, a link to the fund's website containing the same type of fund-level ESG ratings, scores or rankings for the fund on the same periodic basis as updated by the provider over the past 12 months;

(p) if the sales communication is not an online sales communication, language explaining how to easily access, free of charge, the same type of fund-level ESG ratings, scores or rankings for the fund on the same periodic basis as updated by the provider over the past 12 months; and

(q) a cross-reference to the fund's prospectus for further information about the fund's investment objectives and strategies.

In addition, staff encourage funds to disclose separate fund-level ratings, scores or rankings, as applicable, for each of the three components of ESG.

The above accompanying disclosure should be clear and not buried within fine print.

Staff note that while the above list of accompanying disclosure has been provided to assist IFMs in the preparation of sales communications for their funds, the list is non-exhaustive and a sales communication that includes fund-level ESG ratings, scores or rankings and the above accompanying disclosure may still be misleading for other reasons.

XII. Commitments to ESG-related initiatives

Guidance on commitments to ESG-related initiatives

Staff recognize that some IFMs are signatories to, or participants in, voluntary ESG-related initiatives, such as the Principles for Responsible Investment, Task Force on Climate-related Financial Disclosures, and the Net Zero Asset Managers Initiative, and publicly disclose this information on websites and in other communications.

For IFMs that are signatories to, or participants in, ESG-related initiatives that are at the entity-level and that do not relate to the investment strategies of the funds managed by the IFM (including the IFM's ESG investing approach), staff's view is that any disclosure of their signatory status or commitment to these initiatives should be clear that the commitment is at the entity-level rather than at the fund-level, and where applicable, that the funds managed by the IFM may not be focused on ESG.

Staff's views on public communications that include information about an IFM's ESG investing approach in relation to its commitment to a voluntary ESG-related initiative are discussed above under "Definition of sales communication".

F. Conclusion

Full, true and plain disclosure is essential to maintaining and strengthening investor confidence and efficient capital markets. In addition, it is important that investment funds be marketed to investors using sales communications that are not untrue or misleading, and that are consistent with a fund's regulatory offering documents. Staff will continue to monitor the regulatory disclosure documents and sales communications of ESG-Related Funds and any other funds that market themselves as being ESG-Related Funds and consider future policy initiatives as needed.

We encourage IFMs to consider the guidance in this Notice when preparing the regulatory disclosure documents and sales communications of investment funds, particularly ESG-Related Funds.

Questions

Please refer your questions to any of the following:

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B.1.2 Multilateral CSA Staff Notice 96-305 Derivatives Data Reporting Guidance For CDOR Transition

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

MULTILATERAL CSA STAFF NOTICE 96-305
DERIVATIVES DATA REPORTING GUIDANCE FOR CDOR TRANSITION

March 7, 2024

Introduction

Staff of the Alberta Securities Commission and Ontario Securities Commission (**Staff** or **we**) are publishing this notice to provide guidance to market participants with respect to over-the-counter (**OTC**) derivatives data reporting requirements in connection with life-cycle events that occur for OTC derivatives that reference certain interest rate benchmarks.

Background and Purpose

In response to concerns regarding interbank offered rates (**IBORs**), the Financial Stability Board has called for the cessation of the IBORs and the implementation of alternative reference rates. In order to ensure that OTC derivatives that reference IBORs will continue to function following the transition to alternative reference rates, parties to these OTC derivatives have implemented "fallback provisions", which provide for alternative reference rates upon cessation or non-representativeness of certain IBORs.

Certain OTC derivatives incorporate or reference certain tenors of the Canadian dollar offered rate (**CDOR**).[1] As all tenors of CDOR will cease to be published following a final publication on June 28, 2024, these OTC derivatives are required to transition under fallback provisions to appropriate alternative reference rates by July 2, 2024 (the **CDOR transition**). The CDOR transition is a life-cycle event for the purposes of derivatives data reporting requirements under section 32 of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (collectively, the **Trade Reporting Rules**).

Section 32 of the Trade Reporting Rules requires a reporting counterparty to report life-cycle events to a designated or recognized trade repository by the end of the business day on which the life-cycle event occurs, but if that is not technologically practicable, no later than the end of the business day following the day on which the life-cycle event occurs.

However, due to the large number of OTC derivatives that are expected to transition under fallback provisions on or before July 2, 2024, Staff recognize that this deadline may result in operational burden to reporting counterparties in this situation.

Guidance

Staff are of the view that there is no public interest in recommending or pursuing an enforcement action against reporting counterparties in respect of late reporting of life-cycle event data under section 32 of the Trade Reporting Rules where both:

- the CDOR transition life-cycle event occurs on or before July 2, 2024, and
- life-cycle event data relating to the CDOR transition life-cycle event is reported on or before the end of the fifth business day after the day on which the CDOR transition life-cycle event occurs.

Staff provided similar guidance last year in relation to the U.S. dollar London interbank offered rate under Multilateral CSA Staff Notice 96-304 *Derivatives Data Reporting Guidance for USD LIBOR Transition*.

We understand that other Canadian Securities Administrators jurisdictions are considering requests for blanket orders to address this matter.

[1] CDOR may be defined or described differently in OTC derivatives.

Questions

Please refer any questions to:

Kevin Fine
Co-Chair, CSA Derivatives Committee
Director, Derivatives Branch
Ontario Securities Commission
416-593-8109
kfine@osc.gov.on.ca

Janice Cherniak
Senior Legal Counsel
Alberta Securities Commission
403-355-4864
janice.cherniak@asc.ca

B.2
Orders

B.2.1 Forza Petroleum Limited

Headnote

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

Applicable Legislative Provisions

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

Citation: *Re Forza Petroleum Limited*, 2024 ABASC 33

February 27, 2024

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

AND

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

AND

IN THE MATTER OF
FORZA PETROLEUM LIMITED
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2024/0087

B.2.2 Woodbine Resources Corp.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Securities Act s. 88 – Cease to be a reporting issuer in BC – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market; issuer became a reporting issuer by filing a prospectus, but the offering under the prospectus did not close; the issuer does not intend to do a public offering of its securities; the issuer's securities do not trade on any marketplace; the issuer's securityholders are aware of the issuer's intention to cease to be a reporting issuer.

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Securities Act s. 1(10)(a)(ii) – Cease to be a reporting issuer in Ontario – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market; issuer became a reporting issuer by filing a prospectus, but the offering under the prospectus did not close; the issuer does not intend to do a public offering of its securities; the issuer's securities do not trade on any marketplace; the issuer's securityholders are aware of the issuer's intention to cease to be a reporting issuer.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

Citation: 2024 BCSECCOM 67

February 9, 2024

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

AND

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

AND

IN THE MATTER OF
WOODBINE RESOURCES CORP.
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and

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

Interpretation

¶ 2 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

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

1. the Filer's head office is located in Vancouver, British Columbia;
2. the Filer is a reporting issuer in British Columbia, Alberta and Ontario;
3. the Filer is governed under the *Business Corporations Act* (British Columbia);
4. the Filer filed a preliminary prospectus dated April 19, 2022 for its proposed initial public offering (IPO) and a receipt was issued on April 22, 2022;
5. the Filer filed a final prospectus dated June 30, 2022, and became a reporting issuer when a receipt was issued on July 7, 2022;
6. the Filer applied to the Canadian Securities Exchange (CSE) on May 26, 2022 to list its common shares (Common Shares) for trading in connection with its IPO and received conditional approval on June 20, 2022;
7. the Filer filed an amended and restated final prospectus dated September 30, 2022 and a receipt was issued on October 11, 2022;
8. due to adverse market conditions, the Filer was unable to close the IPO;
9. all of the Filer's previously filed prospectuses have lapsed, and on March 31, 2023 the CSE notified the Filer that its listing application has expired;
10. the Filer has no current intention to seek public financing by way of an offering of securities;
11. the Filer has Common Shares, common shares purchase warrants (Warrants) and stock options (Options) issued and outstanding;
12. the Common Shares are held by 21 beneficial holders,18 of which have addresses in British Columbia and 3 have addresses outside of Canada;
13. the Warrants are held by 6 beneficial holders, all of which have addresses in British Columbia;
14. the Options are held by 4 beneficial holders, all of which have addresses in British Columbia;
15. the Filer is not eligible to use the simplified procedure in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because the securities of the Filer are not beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada;
16. the Filer disseminated a news release dated January 18, 2024 that it has applied for an exemptive relief to cease to be a reporting issuer in all jurisdictions of Canada, and it did not receive any complaints from its securityholders;
17. 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;
18. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
19. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
20. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2023-0652

B.2.3 West Island Brands Inc.

Headnote

Section 144 of the Securities Act (Ontario) – application for a partial revocation of a cease trade order – issuer cease traded due to failure to file audited annual financial statements – issuer has applied for a partial revocation of the cease trade order to permit the issuer to proceed with a private placement to accredited investors – issuer will use proceeds from the private placement to bring itself into compliance with its continuous disclosure obligations, pay outstanding filing fees and for working capital purposes – partial revocation granted subject to conditions.

Applicable Legislative Provisions

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

WEST ISLAND BRANDS INC.

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

Background

1. West Island Brands Inc. (the "**Issuer**") is subject to a failure-to-file cease trade order (the "**FFCTO**") issued by the Ontario Securities Commission (the "**Principal Regulator**") on May 5, 2023.

2. The Issuer applied to the Principal Regulator for a partial revocation order of the FFCTO which was granted on November 30, 2023 ("**November 2023 Order**"). The November 2023 Order permitted the Issuer to complete the Financing (as defined below) in Ontario, British Columbia and Alberta.

3. The November 2023 Order did not contemplate that the Financing would also take place in Quebec and accordingly the Issuer applied for a variation to the November 2023 Order allowing for the Financing to also be effected in Quebec, which was granted by the Principal Regulator dated December 22, 2023 ("**Variation of November 2023 Order**" and with the November 2023 Order, the "**First Order**").

4. The First Order required the Financing to be completed by the Issuer within 60 days of November 30, 2023. However, the Issuer was unable to find sufficient subscribers for the Financing within the 60-day period.

5. The First Order expired on January 29, 2024 before the Issuer was able to complete the Financing. The Issuer has applied to the Principal Regulator for another partial revocation order ("**Order**") of the FFCTO to complete the Financing.

6. The Issuer is seeking a partial revocation of the FFCTO to permit the Issuer to complete a private placement (the "**Financing**") of an amount up to $200,000 by way of the issuance of up to 2,051,282 units ("**Units**") at a price of $0.0975 per Unit. Each such Unit shall be composed of one (1) Common Share (as defined below) and one (1) Common Share purchase warrant ("**Warrant**"), and each such Warrant shall be exercisable into a Common Share at an exercise price of $0.13 for a period of two (2) years.

Interpretation

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

Representation

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

   a. The Issuer was incorporated under the *Business Corporations Act* (British Columbia) on November 13, 2007.

   b. The Issuer's head office is located at 44 Victoria St., Suite #1102, Toronto, Ontario, M5C 1Y2, Canada.

   c. The Issuer is a reporting issuer in the provinces of Ontario, British Columbia and Alberta.

   d. The Issuer's authorized share capital consists of an unlimited number of common shares without par value (the "**Common Shares**"), of which a total of 15,109,030 Common Shares are issued and outstanding. The Issuer also has 2,792,184 warrants and 683,332 options outstanding.

e. The Common Shares are listed for trading on the Canadian Securities Exchange (the "**CSE**") with the trading symbol "WIB". Pursuant to the FFCTO, the Common Shares have been suspended from trading on the CSE.

f. The FFCTO was issued as a result of the Issuer's failure to file the following documents:

i. audited annual financial statements for the year ended December 31, 2022;

ii. management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2022; and

iii. certification of the foregoing filings as required by National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings,

(collectively, the "**Unfiled Documents**").

g. The Unfiled Documents were not filed in a timely manner as a result of unanticipated delays in securing a new Chief Financial Officer as well as a lack of sufficient funds.

h. In addition to the failure to file the Unfiled Documents, the Issuer also failed to file the following documents:

i. interim unaudited financial statements for the interim periods ended March 31, 2023, June 30, 2023 and September 30, 2023;

ii. management's discussion and analysis relating to the financial statements referred to in subparagraph i above;

iii. Certificates required to be filed in respect of the financial statements referred to in subparagraph i above under National Instrument 52-109 *Certification of Disclosure in Filing Annual and Interim Filings*;

(together, with the Unfiled Documents, the "Unfiled Continuous Disclosure").

i. Due to adverse market conditions, the Issuer was unable to find sufficient subscribers for the Financing within the 60-day period allowed by the First Order. During the period in which the First Order was in effect, no money was raised by the Issuer.

j. Each distribution made in respect of the Financing will comply with the accredited investor prospectus exemption contained in section 73.3 of the *Securities Act* (Ontario) (the "**Act**") and section 2.3 of National Instrument 45-106 *Prospectus Exemptions*.

k. The Financing is intended to take place in Ontario, British Columbia, Quebec and Alberta.

l. The Issuer intends to use the proceeds of the Financing to resolve any outstanding fees, prepare audited financial statements and pay all other costs associated with applying for a full revocation of the FFCTO.

m. The Issuer intends to prepare and file the Unfiled Continuous Disclosure and pay all outstanding fees within a reasonable period of time following the completion of the Financing. The Issuer also intends to apply to the applicable securities regulators to have the FFCTO fully revoked.

n. Other than the failure to file the Unfiled Continuous Disclosure, the Issuer is not in default of any of the requirements of the Act or the rules and regulations made pursuant thereto, or the requirements of the FFCTO. The Issuer's SEDAR+ and SEDI profiles are up to date.

o. The Issuer intends to allocate the proceeds from the Financing as follows:

Description	**Estimated Amounts (CA$)**
Legal Fees	25,000
Accounting and Audit Fees	90,000
Late, Filing, Participation Fees and other Charges	50,000
Transfer Agent and Registrar Fees	5,000
General Unallocated Working Capital	30,000
Total	200,000

p. The Issuer reasonably believes that the Financing will be sufficient to bring its continuous disclosure obligations up to date and pay all related outstanding fees.

q. As the Financing would involve a trade of securities and acts in furtherance of trades, the Financing cannot be completed without a partial revocation of the FFCTO.

r. The Financing will be completed in accordance with all applicable laws.

s. Prior to completion of the Financing, the Issuer will:

i. provide any subscriber to the Financing with a copy of the FFCTO,

ii. provide any subscriber to the Financing with a copy of the Order for which the application has been made, and

iii. obtain from each subscriber to the Financing a signed and dated acknowledgment which clearly states that all of the Issuer's securities, including the securities issued in connection with the Financing, will remain subject to the FFCTO, and that the issuance of the Order does not guarantee the issuance of a full revocation order in the future.

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

Order

8. The Principal Regulator is satisfied that the Order of the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

9. The decision of the Principal Regulator under the Legislation is that the FFCTO is partially revoked as it applies to the Issuer solely to permit the Financing, provided that:

a. prior to completing the Financing, the Issuer will:

i. provide each subscriber to the Financing with a copy of the FFCTO;

ii. provide each subscriber to the Financing with a copy of this Order; and

iii. obtain a signed and dated acknowledgement from each subscriber to the Financing that clearly states that the securities of the Issuer acquired by the subscribers under the Financing will remain subject to the FFCTO until a full revocation order is granted, and that a partial revocation of the FFCTO does not guarantee the issuance of a full revocation order in the future.

b. The Issuer will make available a copy of the written acknowledgement referred to in paragraph (a)(iii) to the Principal Regulator on request; and

c. This order will terminate on the earlier of the closing of the Financing and 60 days from the date hereof.

DATED this 28th day of February, 2024.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0069

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B.3
Reasons and Decisions

B.3.1 Horizons ETFs Management (Canada) Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act (Ontario) to permit the extension of a prospectus lapse date by 122 days to facilitate the consolidation of the funds' prospectus with the prospectus of other funds under common management – no conditions.

Applicable Legislative Provisions

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

February 28, 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
HORIZONS ETFS MANAGEMENT (CANADA) INC.
(the Filer)

AND

HORIZONS 0-3 MONTH T-BILL ETF
HORIZONS 0-3 MONTH U.S. T-BILL ETF
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the respective time limits for the renewal of the long form prospectus of the Funds dated April 4, 2023 (the **April Prospectus**) be extended to those time limits that would apply if the lapse date of the April Prospectus was August 4, 2024 (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of Canada. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as a portfolio manager in Alberta, British Columbia, Ontario and Québec, an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan, a commodity trading manager and a commodity trading adviser in Ontario and an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador.

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

4. Each of the Funds is an exchange-traded mutual fund (**ETF**) established under the laws of Ontario, and is a reporting issuer as defined in the securities legislation of each of the Canadian Jurisdictions.

5. Neither the Filer nor any of the Funds are in default of securities legislation in any of the Canadian Jurisdictions.

6. The Funds currently distribute securities in the Canadian Jurisdictions under the April Prospectus. Securities of each of the Funds trade on the Toronto Stock Exchange.

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date of the April Prospectus is April 4, 2024 (the **Lapse Date**).

Accordingly, under subsection 62(2) of the Act, the distribution of securities of each of the Funds would have to cease on the Lapse Date unless: (i) each of the Funds files a pro forma prospectus at least 30 days prior to the Lapse Date; (ii) the final prospectus is filed no later than 10 days after the Lapse Date; and (iii) a receipt for the final prospectus is obtained within 20 days of the Lapse Date.

8. The Filer is the investment fund manager of certain other ETFs (the **August Funds**) that currently distribute their securities to the public under a prospectus that has a lapse date of August 4, 2024 (the **August Prospectus**).

9. The Filer wishes to combine the April Prospectus with the August Prospectus in order to reduce renewal, printing and related costs of the Funds and the August Funds.

10. Offering the Funds and the August Funds under one prospectus would facilitate the distribution of the Funds in the Canadian Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. As the Funds and the August Funds are all managed by the Filer, offering them under one prospectus (as opposed to two) will allow investors to more easily compare their features.

11. It would be unreasonable to incur the costs and expenses associated with preparing two separate renewal prospectuses given how close in proximity the Lapse Date of the Funds and the lapse date of the August Funds are to one another.

12. There have been no material changes in the affairs of each Fund since the date of the April Prospectus, other than those for which amendments have been filed, if/as applicable. Accordingly, the April Prospectus and current ETF facts document of each Fund represent current information regarding the Funds.

13. Given the disclosure obligations of the Funds, should a material change in the affairs of any of the Funds occur, the prospectus of the Funds and current ETF facts document(s) of the applicable Fund(s) will be amended as required under the Legislation.

14. New investors in the Funds will receive the most recently filed ETF facts document(s) of the applicable Fund(s). The prospectus of the Funds will still be available upon request.

15. The Exemption Sought will not affect the accuracy of the information contained in the prospectus of the April Funds or the August Funds and will therefore not be prejudicial to the public interest.

Decision

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

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

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

Application File #: 2024/0088
SEDAR+ File #: 06086064

B.3.2 Aurinia Pharmaceuticals Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the issuer bid requirements set out in Part 2 of NI 62-104 in connection with purchases by the issuer of up to 15% of its outstanding shares through the facilities of the NASDAQ under repurchase programs that the issuer may implement from time to time – the shares are not listed on any Canadian exchange and are only listed and posted for trading on the NASDAQ – the issuer bid will affect a limited number of Canadian shareholders – requested relief granted, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

Citation: *Re Aurinia Pharmaceuticals Inc.*, 2024 ABASC 36

February 29, 2024

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

AND

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

AND

IN THE MATTER OF
AURINIA PHARMACEUTICALS INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirements applicable to issuer bids (the **Issuer Bid Requirements**) in Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**). The Exemption Sought would permit the purchase by the Filer of up to 15% of the Filer's outstanding common shares (the **Shares**) made through the facilities of the NASDAQ Global Market (the **NASDAQ**) within a 12-month period under repurchase programs that the Filer may implement from time to time (the **Repurchase Programs**)

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each province of Canada, other than the Jurisdictions, and

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

Interpretation

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

Representations

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

1. The Filer is a corporation amalgamated under, and governed by, the *Business Corporations Act* (Alberta). The head office of the Filer is located in Edmonton, Alberta. The Filer's other principal office is located in Rockville, Maryland.

2. The Filer is a reporting issuer in each province of Canada (the **Reporting Jurisdictions**) and is not in default of any requirements of the securities legislation of the Reporting Jurisdictions.

3. The Filer is also a registrant with the SEC and is subject to the requirements of the 1933 Act and the 1934 Act.

4. The Shares were voluntarily delisted from the Toronto Stock Exchange (the **TSX**) effective as of the close of trading on July 30, 2021. The Shares are no longer listed and posted for trading on any exchange in Canada. The Shares have been quoted on the NASDAQ since September 2, 2014 and trade under the symbol "AUPH".

5. The authorized capital of the Filer consists of an unlimited number of Shares. As at the close of business on February 9, 2024, the Filer had 143,840,262 Shares issued and outstanding.

6. The exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the **Other Published Markets Exemption**) provides that an issuer bid that is made in the normal course on a published market, other than a designated exchange, is exempt from the Issuer Bid Requirements if, among other things, the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer and the aggregate number of securities acquired in reliance on the Other Published Markets Exemption by the issuer and any person acting jointly or in concert with the issuer within any period of 12 months does not exceed 5% of the outstanding securities of that class at the beginning of the 12-month period.

7. On February 14, 2024, the Filer approved a Repurchase Program of up to US$150 million which was publicly announced on February 15, 2024 (the **Current Bid**). Repurchases pursuant to the Current Bid may be made either in the open market or through private transactions, subject to market conditions, applicable legal requirements and other relevant factors. The Filer wishes to be able to continue to make repurchases under the Current Bid and any further Repurchase Programs that may be implemented by the Filer on the facilities of the NASDAQ in excess of the maximum allowable in reliance on the Other Published Markets Exemption (such repurchases, the **Proposed Bids**).

8. The Filer believes that the Proposed Bids are in the best interests of the Filer and its shareholders.

9. Based on information provided by the Filer's transfer agent, as at February 9, 2024

    (a) the Filer had 143,840,262 Shares issued and outstanding,

    (b) 122,637,004 Shares (or approximately 85.259% of the issued and outstanding Shares) were registered to shareholders in the United States,

    (c) 21,201,465 Shares (or approximately 14.740% of the issued and outstanding Shares) were registered to shareholders in Canada (the **Registered Canadian Shares**),

    (d) of the Registered Canadian Shares, 20,974,366 Shares were registered to The Canadian Depositary for Securities (the **CDS Position**), and 227,099 Shares (or approximately 0.158% of the issued and outstanding Shares) were held among 86 registered shareholders in Canada, and

    (e) of the CDS Position, 16,131,693 Shares were held by American intermediaries (the **U.S. Intermediary Shares**), and 4,842,673 Shares (or approximately 3.367% of the issued and outstanding Shares) were held by Canadian intermediaries.

10. Based on reports obtained from Broadridge Investor Communication Solutions, the Filer reasonably believes that

    (a) a total of 8,543,832 Shares, representing approximately 5.94% of the total number of Shares issued and outstanding, are beneficially owned by shareholders resident in Canada, and

    (b) the size of the CDS Position, and the fact that the U.S. Intermediary Shares form part of the CDS Position, is likely a result of the Shares having been listed on Canadian exchanges for over 20 years.

11. The Proposed Bids will be effected in accordance with the 1933 Act, the 1934 Act, the rules of the SEC made pursuant thereto, including the safe harbour provided by Rule 10b-18 under the 1934 Act (collectively, the **Applicable U.S. Securities Laws**) and any applicable rules, regulations or policies of the NASDAQ (the **Exchange Rules**).

12. In order to have the benefit of the safe harbour provided by Rule 10b-18 under the 1934 Act

    (a) all purchases made during a single trading day must be conducted through a single broker or dealer,

    (b) purchases cannot be effected during the last 10 minutes before the scheduled close of market or be the opening purchase,

    (c) purchases must be made at a price that does not exceed the highest independent bid or the last transaction price quoted, and

    (d) in any given day, the issuer cannot purchase more than 25% of its average daily trading volume on the NASDAQ over the past four weeks.

13. Applicable U.S. Securities Laws also require that the Filer report any repurchases conducted pursuant to the Proposed Bids in its quarterly and annual reports.

14. The Proposed Bids would be permitted under the Exchange Rules and Applicable U.S. Securities Laws.

15. The purchase of Shares under the Proposed Bids will not adversely affect the Filer or the rights of any of the Filer's security holders and they will not materially affect control of the Filer.

Decision

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

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

(a) the Proposed Bids are permitted under the Exchange Rules and Applicable U.S. Securities Laws, and are established and conducted in accordance and compliance with the Exchange Rules and Applicable U.S. Securities Laws,

(b) the aggregate number of Shares acquired in reliance on this decision and the Other Published Markets Exemption by the Filer and any person acting jointly or in concert with the Filer within any period of 12 months does not exceed 15% of the outstanding Shares at the beginning of the 12-month period,

(c) the Shares are not listed and posted for trading on an exchange in Canada,

(d) the Exemption Sought applies only to the acquisition of Shares by the Filer occurring within 36 months of the date of this decision pursuant to a Proposed Bid,

(e) at least five days prior to purchasing Shares in reliance on this decision, the Filer discloses the terms of the Exemption Sought and the conditions applicable thereto in a press release that is issued and filed on SEDAR+ and includes such information as part of the news release required to be issued in accordance with the Other Published Markets Exemption in respect any Repurchase Program that may be implemented by the Filer, and

(f) the Filer does not acquire Shares in reliance on the Other Published Markets Exemption if the aggregate number of Shares purchased by the Filer and any person or company acting jointly or in concert with the Filer in reliance on this decision and the Other Published Markets Exemption within any period of 12 months exceeds 5% of the outstanding Shares at the beginning of the 12-month period.

"Timothy Robson"
Manager, Legal
Corporate Finance

Alberta Securities Commission

B.3.3 CI Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from section 2.9.1 of NI 81-102 to permit fund to use Absolute Value at Risk (Absolute VaR) measurement for leverage exposure – relief granted from sections 15.3, 15.6 and 15.8 of NI 81-102 to permit use of performance data from prior to becoming a reporting issuer in sales communications – relief granted from section 15.1.1 to permit use of similar performance data for use in calculating risk rating – relief also granted from section 2.1 of NI 81-101 to disclose this risk rating in the prospectus and fund facts and relief granted from section 4.4 of NI 81-106 to use this past performance data in MRFPs – relief needed to facilitate top fund's strategy to clone the performance of underlying fund which was previously granted the same relief – relief will permit top fund to use and disclose underlying fund's Absolute VaR and past performance data in its own disclosure documents.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.9.1, 15.3(2), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and (3)(a.1), 15.1.1(a) and 19.1.
National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1 and 6.1.
Form 81-101F1 Contents of Simplified Prospectus, Item 10(b).
Form 81-101F3 Contents of Fund Facts Document, Item 4.2(a).
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.
Form 81-106F1 Contents of Annual and Interim Management Report on Fund Performance, Items 3.7(1), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B, Items 3(1) and 4 of Part C.

January 30, 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
CI INVESTMENTS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) to grant the Filer, and the CI Auspice Alternative Diversified Corporate Class (the **Top Fund**), exemptive relief from:

Leverage Relief

(a) the requirements of:

(i) section 2.9.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), which limits an alternative mutual fund's aggregate exposure to cash borrowing, short selling and specified derivatives transactions to 300% of the fund's net asset value; and

(ii) Item 4 and Instruction (4) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and Item 3 of Part I of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), which all require an alternative mutual fund to disclose its maximum aggregate exposure to leverage as calculated pursuant to Section 2.9.1 of NI 81-102

(collectively, the **Leverage Relief**); and

Performance Relief

(b) the requirements of:

(i) subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i), and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102, to permit the Top Fund to include the past performance data of the Auspice Diversified Trust (the **Underlying Fund**) in its sales communications notwithstanding that the past performance data will relate to a period prior to the Underlying Fund offering its units under a simplified prospectus (the **past performance data**);

(ii) paragraph 15.1.1(a) of NI 81-102 and items 2 and 4 of Appendix F *Investment Risk Classification Methodology* to NI 81-102 (the **Risk Classification Methodology**) to permit the Top Fund to include the past performance data of the Underlying Fund in determining the Top Fund's investment risk level in accordance with the Risk Classification Methodology;

(iii) paragraph 15.1.1(b) of NI 81-102, and item 4(2)(a) and instruction (1) of item 4 of Form 81-101F3, to permit the Top Fund to disclose its investment risk level as determined by including the past performance data of the Underlying Fund in accordance with the Risk Classification Methodology;

(iv) Item 10(b) of Part B of Form 81-101F1, to permit the Top Fund to use the past performance data of the Underlying Fund to calculate its investment risk rating in the Top Fund's simplified prospectus;

(v) Items 5(2), 5(3) and 5(4) and instruction (1) of Part I of Form 81-101F3 in respect of the requirement to comply with subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i), and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102, to permit the Top Fund to include in its fund facts document the past performance data of the Underlying Fund notwithstanding that such performance data relates to a period prior to the Underlying Fund offering its units under a simplified prospectus, and that the Underlying Fund has not distributed its units under a simplified prospectus for 12 consecutive months;

(vi) section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for the purposes of the relief requested from Form 81-101F1 and Form 81-101F3;

(vii) Items 3.1(7), 4.1(1) (in respect of the requirement to comply with subsection 15.3(2)) and paragraph 15.3(4)(c) of NI 81-102, items 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**), and items 3(1) and 4 of Part C of Form 81-106F1 to permit the Top Fund to include in its annual and interim management reports of fund performance (**MRFP**) the past performance data and financial highlights of the Underlying Fund notwithstanding that such performance data and financial highlights relate to a period prior to the Underlying Fund offering its units under a simplified prospectus; and

(viii) section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for the purposes of relief requested herein from Form 81-106F1

(collectively, the **Performance Relief** and together with the Leverage Relief, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions,

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other jurisdictions of Canada, (collectively with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 81-101, NI 81-102, and NI 81-106 have the same meaning if used in this decision, unless otherwise defined.

Facts

The following information has been provided to us by the Filer:

The Filer

1. The Filer is a corporation amalgamated under the laws of the Province of Ontario with its head office located in Toronto, Ontario.

2. The Filer is registered as

   (a) an investment fund manager in Ontario, Québec and Newfoundland and Labrador;

   (b) a portfolio manager and exempt market dealer in all of the Jurisdictions; and

   (c) a commodity trading counsel and commodity trading manager in Ontario.

3. The Filer will be the investment fund manager and portfolio manager of the Top Fund.

4. The Filer has also retained the services of Auspice Capital Advisors Ltd. (the **Sub-Adviser**) as the sub-adviser to the Top Fund.

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

Top Fund

6. The Top Fund will be an "alternative mutual fund" as defined in NI 81-102. The Top Fund's securities will be distributed pursuant to a simplified prospectus and Fund Facts (the **Disclosure Documents**) prepared in accordance with NI 81-101 and will be a reporting issuer subject to NI 81-102.

7. The Top Fund will be established as classes of shares of a mutual fund corporation and will be governed by the laws of Ontario.

8. The investment objective of the Top Fund is to generate returns on investment in, trading in or exposure to commodity and financial interests. Using a disciplined rules-based investment process, the Top Fund intends on capturing dominant trends both long and short, and that are agnostic to market direction and popular consensus. Risk management and capital allocation will be systematic to preserve capital as part of the Top Fund's investment strategy in addition to its core objective of providing returns that are non-correlated to traditional equity, fixed income and most alternative strategies. A core goal of the Top Fund is to provide performance and crisis alpha in times of significant equity correction.

9. To achieve its investment objective, the Top Fund will invest substantially all of its assets in units of the Underlying Fund. The remainder of the Top Fund's portfolio will be liquid, comprised of cash and cash equivalents.

The Underlying Fund

10. The Underlying Fund is a mutual fund that was established under the laws of Alberta in June 2009.

11. The Underlying Fund became a reporting issuer distributing its securities under a simplified prospectus dated February 28, 2023 and prepared in accordance with NI 81-101. The Underlying Fund operates as an "alternative mutual fund" as defined in NI 81-102 and is subject to that Instrument.

12. The Sub-Advisor is the investment fund manager and portfolio manager of the Underlying Fund.

13. The investment objective of the Underlying Fund is to generate returns on investment in, trading in or exposure to commodity and financial interests. Using a disciplined rules-based investment process, the Underlying Fund captures dominant trends long and short, agnostic to market direction and popular consensus. Risk management and capital allocation is systematic to preserve capital as the strategy's core objective along with providing returns that are non-correlated to traditional equity, fixed income and most alternative strategies. A core goal of the Underlying Fund is to provide performance and crisis alpha in times of significant equity correction.

Leverage Relief

14. The Sub-Adviser uses a rules-based investment process to allocate capital and provide disciplined risk management to the Underlying Fund. Sector allocation parameters ensure risk diversification and all positions held by the Underlying Fund have stringent risk management parameters. The strategy employed by the Sub-Adviser for the Underlying Fund is indiscriminately long or short, and able to capture trends in both up and down markets. This typically results in returns that have a low correlation to traditional equity, fixed income, and real estate investments.

15. The Sub-Adviser uses multiple strategies over multiple timeframes to participate in and capture trends. These strategies derive returns by adapting organically to changes in volatility resulting in a greater efficiency in capturing the trends in

each individual market. The result is a more efficient use of capital and a low margin to equity ratio. Robustness, capital preservation and risk management are the highest priorities.

16. The Sub-Adviser and the Underlying Fund were granted exemptive relief similar to the Leverage Relief under a decision dated February 23, 2023 (the **Auspice Decision**) under which the Underlying Fund may use leverage through the use of cash borrowings, short sales and derivatives that does not have to comply with Section 2.9.1 of NI 81-102. The Leverage Relief under the Auspice Decision permits the Underlying Fund to instead manage its portfolio risk in such a manner as to keep the absolute value-at-risk (**Absolute VaR**) of the Underlying Fund under 20% of its net asset value, as set out in Appendix A.

17. The current regulatory framework in Section 2.9.1 of NI 81-102 does not appropriately or adequately address the uniqueness of the investment strategies that the Filer indirectly wants to use for the Top Fund by investing substantially all of the assets of the Top Fund in the Underlying Fund.

18. When dealing with a fund that is managed using a multi-asset approach like the Sub-Adviser does for the Underlying Fund, an Absolute VaR based approach is a better means of managing risk because, unlike notional amounts which do not measure risk or volatility, Absolute VaR enables risk to be measured in a reasonably comparable and consistent manner.

19. The Sub-Adviser has employed an Absolute VaR based risk management for its funds, including the Underlying Fund, for several years that are consistent with both the U.S. Securities and Exchange Commission Rule 18f-4 under the *Investment Company Act of 1940*, and the new regulation of mutual funds that the European Union adopted in 2010 which introduced an Absolute VaR based approach to regulatory risk management for investment funds that extensively use derivatives. Since the Sub-Adviser's inception, it has been using volatility-based risk measures as its primary risk metric.

20. The Leverage Relief will also allow the Top Fund to invest in the Underlying Fund and to effectively track the investment strategy that is being implemented by the Underlying Fund.

21. With minor exceptions, the Underlying Fund has consistently operated well below a 20% Absolute VaR limit since its inception.

Performance Relief

22. Upon the issuance of a final receipt for the Disclosure Documents of the Top Fund, the Top Fund will become a reporting issuer in the Jurisdictions and will become subject to the requirements of NI 81-102 that relate to alternative mutual funds and the requirements of NI 81-106 that apply to investment funds that are reporting issuers.

23. The Underlying Fund is managed on the same basis as it was during the period before it became a reporting issuer. The investment objective, fees and day-to-day administration of the Underlying Fund did not change when the Underlying Fund became a reporting issuer.

24. Except as set out herein, the Underlying Fund has complied with the investment restrictions and practices contained in NI 81-102 since inception.

25. The Filer proposes to use the Underlying Fund's past performance data to determine its investment risk level and to disclose that investment risk level in the Disclosure Documents for each class of shares of the Top Fund. Without the Performance Relief, the Filer, in determining and disclosing the Top Fund's investment risk level in the Disclosure Documents for each class of shares of the Top Fund, cannot use performance data of the Underlying Fund that relates to a period prior to and after the Underlying Fund became a reporting issuer.

26. The Filer proposes to include in the fund facts documents for each class of shares of the Top Fund past performance data in the charts required by items 5(2), 5(3) and 5(4) of Form 81-101F3 under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to periods prior to and after the Underlying Fund became a reporting issuer in the Jurisdictions. Without the Exemption Sought, the fund facts document of the Top Fund cannot include performance data of the Underlying Fund that relates to a period prior to and after the Underlying Fund became a reporting issuer.

27. As a reporting issuer, the Top Fund is required under NI 81-106 to prepare and send MRFPs to all holders of its securities on an annual and interim basis. Without the Exemption Sought, the MRFPs of the Top Fund cannot include financial highlights and performance data of the Underlying Fund that relates to a period prior to and after the Underlying Fund became a reporting issuer.

28. It is important from a marketing and administrative perspective for the Top Fund to be able to refer to the performance of the Underlying Fund before and after the Underlying Fund became a reporting issuer so that the Top Fund can use such performance data in calculating its risk rating, in its sales communications, and in its MRFPs.

29. The Underlying Fund also obtained performance relief under the Auspice Decision that is similar to the Performance Relief being sought by the Top Fund.

30. The Filer believes that allowing the Top Fund to invest in the Underlying Fund is a more efficient and cost effective means of allowing the Top Fund to achieve its investment objective and to gain exposure to the investment strategy that it wants to offer to its investors.

31. Except for the Exemption Sought, the Top Fund will otherwise comply with the requirements for alternative mutual funds under NI 81-102.

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.

Leverage Relief

1. The decision of the principal regulator under the Legislation is that the Leverage Relief is granted, provided that:

    (a) Both the Filer and the Top Fund will indirectly comply with the Absolute VaR test, as defined in Appendix A;

    (b) the Filer discloses in the Top Fund's simplified prospectus and fund facts document the maximum Absolute VaR that the Top Fund is indirectly permitted to incur, and the Filer discloses in the annual and interim MRFPs of the Top Fund the maximum amount of Absolute VaR indirectly incurred by the Top Fund over the applicable period;

    (c) the Filer does not change the Absolute VaR model that it is using with respect to the Top Fund;

    (d) the Filer notifies the OSC within one business day of being advised by the Sub-Adviser that the Underlying Fund is offside the 20% Absolute VaR test for more than five consecutive business days, as required by its sub-advisory agreement with the Sub-Adviser (the **Sub-Advisory Agreement**); and

    (e) the Filer promptly (e.g., within 24 hours) provides the OSC with any other information that the OSC may request regarding the Top Fund's investment in the Underlying Fund and the inter-month calculations and risk metrics that the Underlying Fund is using, which the Sub-Adviser has agreed to provide to the Filer pursuant to the terms of the Sub-Advisory Agreement; and

    (f) the Filer appropriately documents its risk methodology for the Top Fund in accordance with the requirements of the Risk Classification Methodology.

Performance Relief

2. The decision of the principal regulator under the Legislation is that the Performance Relief is granted, provided that

    (a) any sales communication, fund facts documents and MRFP of the Top Fund that contains performance data of the units of the Underlying Fund relating to a period of time prior to and after the Underlying Fund became a reporting issuer discloses that:

        (i) the performance data provided relates to the past performance of the Underlying Fund;

        (ii) the Underlying Fund was not a reporting issuer during such period;

        (iii) the expenses of the Underlying Fund would have been higher during such period had the Underlying Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

        (iv) the Filer obtained exemptive relief on behalf of the Top Fund to permit the disclosure of performance data of the units of the Underlying Fund relating to a period prior to and after the Underlying Fund became a reporting issuer; and

        (v) with respect to any MRFP, the financial statements of the Top Fund for such period are posted on the Filer's website and are available to investors upon request; and

(b) the Filer posts the financial statements of the Top Fund on the Filer's designated website and delivers those financial statements to investors upon request.

Expiration

3. This decision expires on February 22, 2027.

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

Application File #: 2023/0604
SEDAR File #: #6059831

APPENDIX A

ADDITIONAL LEVERAGE CONDITIONS

In these conditions,

"absolute VaR test" means that the VaR of a fund's portfolio does not exceed 20% of the value of the fund's net assets;

"board", with respect to a fund, means the fund manager's board of directors;

"derivatives risk manager" means an officer or officers of the fund's investment adviser responsible for administering the program and policies and procedures required by condition 1 below, provided that the derivatives risk manager:

(1) may not be a portfolio manager of the fund, or if multiple officers serve as derivatives risk manager, a majority of the derivatives risk managers must not be portfolio managers of the fund; and

(2) must have relevant experience regarding the management of derivatives risk;

"derivatives risks" means the risks associated with a fund's derivatives transactions or its use of derivatives transactions, including leverage, market, counterparty, liquidity, operational, and legal risks and any other risks the derivatives risk manager deems material;

"derivatives transaction" means

(1) any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument, under which a fund is or may be required to make any payment or delivery of cash or other assets during the life of the instrument or at maturity or early termination, whether as margin or settlement payment or otherwise; and

(2) any short sale borrowing.

"designated index" means an unleveraged index that is approved by the derivatives risk manager for purposes of the relative VaR test and that reflects the markets or asset classes in which the fund invests and is not administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used. In the case of a blended index, none of the indexes that compose the blended index may be administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used;

"designated reference portfolio" means a designated index or the fund's securities portfolio. Notwithstanding the first sentence of the definition of designated index in these conditions, if the fund's investment objective is to track the performance (including a leverage multiple or inverse multiple) of an unleveraged index, the fund must use that index as its designated reference portfolio;

"independent director" means a director who would be independent within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*;

"relative VaR test" means that the VaR of the fund's portfolio does not exceed 200% of the VaR of the designated reference portfolio;

"securities portfolio" means the fund's portfolio of securities and other investments, excluding any derivatives transactions, that is approved by the derivatives risk manager for purposes of the relative VaR test, provided that the fund's securities portfolio reflects the markets or asset classes in which the fund invests (i.e., the markets or asset classes in which the fund invests directly through securities and other investments and indirectly through derivatives transactions);

"value-at-risk" or "VaR" means an estimate of potential losses on an instrument or portfolio, expressed as a percentage of the value of the portfolio's assets (or net assets when computing a fund's VaR), over a specified time horizon and at a given confidence level, provided that any VaR model used by a fund for purposes of determining the fund's compliance with the relative VaR test or the absolute VaR test must:

(1) take into account and incorporate all significant, identifiable market risk factors associated with a fund's investments, including, as applicable:

(i) equity price risk, interest rate risk, credit spread risk, foreign currency risk and commodity price risk;

(ii) material risks arising from the nonlinear price characteristics of a fund's investments, including options and positions with embedded optionality; and

(iii) the sensitivity of the market value of the fund's investments to changes in volatility;

(2) use a 99% confidence level and a time horizon of 20 trading days; and

(3) be based on at least three years of historical market data.

Conditions

1. ***Derivatives risk management program.*** The fund must adopt and implement a written derivatives risk management program (**program**), which must include policies and procedures that are reasonably designed to manage the fund's derivatives risks and to reasonably segregate the functions associated with the program from the portfolio management of the fund. The program must include the following elements:

   i. ***Risk identification and assessment.*** The program must provide for the identification and assessment of the fund's derivatives risks. This assessment must take into account the fund's derivatives transactions and other investments.

   ii. ***Risk guidelines.*** The program must provide for the establishment, maintenance, and enforcement of investment, risk management, or related guidelines that provide for quantitative or otherwise measurable criteria, metrics, or thresholds of the fund's derivatives risks. These guidelines must specify levels of the given criterion, metric, or threshold that the fund does not normally expect to exceed, and measures to be taken if they are exceeded.

   iii. ***Stress testing.*** The program must provide for stress testing to evaluate potential losses to the fund's portfolio in response to extreme but plausible market changes or changes in market risk factors that would have a significant adverse effect on the fund's portfolio, taking into account correlations of market risk factors and resulting payments to derivatives counterparties. The frequency with which the stress testing under this paragraph is conducted must take into account the fund's strategy and investments and current market conditions, provided that these stress tests must be conducted no less frequently than weekly.

   iv. **Backtesting.** The program must provide for backtesting to be conducted no less frequently than weekly, of the results of the VaR calculation model used by the fund in connection with the relative VaR test or the absolute VaR test by comparing the fund's gain or loss that occurred on each business day during the backtesting period with the corresponding VaR calculation for that day, estimated over a one-trading day time horizon, and identifying as an exception any instance in which the fund experiences a loss exceeding the corresponding VaR calculation's estimated loss.

   v. ***Internal reporting and escalation –***

      A. ***Internal reporting.*** The program must identify the circumstances under which persons responsible for portfolio management will be informed regarding the operation of the program, including exceedances of the guidelines specified in paragraph 1.ii. of these conditions and the results of the stress tests specified in paragraph 1.iii. of these conditions.

      B. ***Escalation of material risks.*** The derivatives risk manager must inform in a timely manner persons responsible for portfolio management of the fund, and also directly inform the board as appropriate, of material risks arising from the fund's derivatives transactions, including risks identified by the fund's exceedance of a criterion, metric, or threshold provided for in the fund's risk guidelines established under paragraph 1.ii. of these conditions or by the stress testing described in paragraph 1.iii. of these conditions.

   vi. ***Periodic review of the program.*** The derivatives risk manager must review the program at least annually to evaluate the program's effectiveness and to reflect changes in risk over time. The periodic review must include a review of the VaR calculation model used by the fund under condition 2 below (including the backtesting required by paragraph 1.iv. of these conditions) and any designated reference portfolio to evaluate whether it remains appropriate.

2. ***Limit on fund leverage risk.***

   i. The fund must comply with the relative VaR test unless the derivatives risk manager reasonably determines that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test, taking into account the fund's investments, investment objectives, and strategy. A fund that does not apply the relative VaR test must comply with the absolute VaR test.

ii. The fund must determine its compliance with the applicable VaR test at least once each business day. If the fund determines that it is not in compliance with the applicable VaR test, the fund must come back into compliance promptly after such determination, in a manner that is in the best interests of the fund and its securityholders.

iii. If the fund is not in compliance with the applicable VaR test within five business days,

A. The derivatives risk manager must provide a written report to the board and explain how and by when (i.e., number of business days) the derivatives risk manager reasonably expects that the fund will come back into compliance;

B. The derivatives risk manager must analyze the circumstances that caused the fund to be out of compliance for more than five business days and update any program elements as appropriate to address those circumstances; and

C. The derivatives risk manager must provide a written report within thirty calendar days of the exceedance to the board explaining how the fund came back into compliance and the results of the analysis and updates required under paragraph 2.iii.B. of these conditions. If the fund remains out of compliance with the applicable VaR test at that time, the derivatives risk manager's written report must update the report previously provided under paragraph 2.iii.A. of these conditions and the derivatives risk manager must update the board on the fund's progress in coming back into compliance at regularly scheduled intervals at a frequency determined by the board.

3. ***Board oversight and reporting –***

i. ***Approval of the derivatives risk manager.*** The board, including a majority of independent directors of the fund manager, if any, must approve the designation of the derivatives risk manager.

ii. ***Reporting on program implementation and effectiveness.*** On or before the implementation of the program, and at least annually thereafter, the derivatives risk manager must provide to the board a written report providing a representation that the program is reasonably designed to manage the fund's derivatives risks and to incorporate the elements provided in paragraphs 1.i. through vi. of these conditions. The representation may be based on the derivatives risk manager's reasonable belief after due inquiry. The written report must include the basis for the representation along with such information as may be reasonably necessary to evaluate the adequacy of the fund's program and, for reports following the program's initial implementation, the effectiveness of its implementation. The written report also must include, as applicable, the derivatives risk manager's basis for the approval of any designated reference portfolio or any change in the designated reference portfolio during the period covered by the report; or an explanation of the basis for the derivatives risk manager's determination that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test.

iii. ***Regular board reporting.*** The derivatives risk manager must provide to the board, annually or at such other frequency determined by the board, a written report regarding the derivatives risk manager's analysis of exceedances described in paragraph 1.ii. of these conditions, the results of the stress testing conducted under paragraph 1.iii of these conditions, and the results of the backtesting conducted under paragraph 1.iv of these conditions since the last report to the board. Each report under this paragraph must include such information as may be reasonably necessary for the board to evaluate the fund's response to exceedances and the results of the fund's stress testing.

4. [Not applicable]

5. [Not applicable]

6. ***Recordkeeping –***

i. **Records to be maintained.** A fund must maintain a written record documenting the following, as applicable:

A. The fund's written policies and procedures required by paragraph c.1. of these conditions, along with

1. The results of the fund's stress tests under paragraph 1.iii. of these conditions;

2. The results of the backtesting conducted under paragraph 1.iv. of these conditions;

3. Records documenting any internal reporting or escalation of material risks under paragraph 1.v.B. of these conditions; and

4. Records documenting the reviews conducted under paragraph 1.vi of these conditions.

B. Copies of any materials provided to the board in connection with its approval of the designation of the derivatives risk manager, any written reports provided to the board relating to the program, and any written reports provided to the board under paragraphs 2.iii.A. and C. of these conditions.

C. Any determination and/or action the fund made under paragraphs 2.i. and ii. of these conditions, including a fund's determination of: The VaR of its portfolio; the VaR of the fund's designated reference portfolio, as applicable; the fund's VaR ratio (the value of the VaR of the fund's portfolio divided by the VaR of the designated reference portfolio), as applicable; and any updates to any VaR calculation models used by the fund and the basis for any material changes thereto.

ii. ***Retention periods.***

A. A fund must maintain a copy of the written policies and procedures that the fund adopted under condition 1. that are in effect, or at any time within the past seven years were in effect, in an easily accessible place.

B. A fund must maintain all records and materials that paragraphs 6.i.A.1. through 4. and 6.i.B. through D. of these conditions describe for a period of not less than seven years (the first two years in an easily accessible place) following each determination, action, or review that these paragraphs describe.

B.3.4 Agrifoods International Cooperative Ltd.

Headnote

Application for relief from the prospectus and registration requirements in connection with the issuance, from time to time, of membership and investment shares of a federally incorporated co-operative. The purpose of the co-operative is to assist members in the collection and delivery of milk to dairies for processing through a co-operative organized under the Canada Cooperatives Act – relief granted subject to conditions.

Statutes Cited

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

February 27, 2024

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

AND

IN THE MATTER OF
AGRIFOODS INTERNATIONAL COOPERATIVE LTD.
(the Filer)

DECISION

Background

The Ontario Securities Commission (the **Commission**) has received an application from the Filer for a decision under the securities legislation of Ontario (the **Legislation**) for exemptive relief from the dealer registration requirement, the prospectus requirement and any resale restrictions of the Legislation applicable to distributions of Membership Shares and Investment Shares (each as defined in the *Canada Cooperatives Act* (the **Federal Co-Op Act**)) of the Filer and trades of Investment Shares on a private facility operated by the Filer (collectively, the **Requested Exemptive Relief**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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 cooperative organized under the Federal Co-Op Act. The members of the Filer are dairy producers located in British Columbia, Alberta, Manitoba, Saskatchewan and Ontario (the **Jurisdictions**). The Filer offers its members the service of picking up milk from their farms and delivering the milk to dairies for processing. The ability of some members to use this service is limited by Provincial milk board regulations or policies.

2. The Filer is not a reporting issuer in any jurisdiction and has no intention of becoming a reporting issuer.

3. The Filer's capital structure consists of an unlimited number of Membership Shares with a par value of $1.00 per Membership Share and an unlimited number of Investment Shares without par value.

4. There are currently approximately 4,015 Membership Shares and 19,462,422 Investment Shares issued and outstanding.

5. The Filer currently has:

    (a) approximately 806 members (the **Members**) who are actively involved in dairy farming;

    (b) approximately 1,692 auxiliary members (the **Auxiliary Members**) who either

        (i) were previously, but are no longer, active in dairy farming, but have a continuing interest in the Filer in the form of Investment Shares, or

        (ii) are shareholders of active or formerly active corporate Members or partners of or participants in active or formerly active unincorporated Members.

6. Under the Federal Co-Op Act and the Articles and By-laws of the Filer,

   (a) only Members are able to hold Membership Shares;

   (b) only Members, Auxiliary Members and employees of the Filer (in accordance with the terms of an employee share ownership, stock option or similar plan for employees of the Filer (an **Employee Plan**)) are able to hold Investment Shares;

   (c) membership is limited to active dairy producers licensed by the Provincial milk board in one of the Jurisdictions who are: (i) capable of using the services of the Filer; (ii) use the Filer's services unless prevented from doing so by Provincial milk board regulations, orders or policies; and (iii) are admitted to membership in the Filer; and

   (d) auxiliary membership is limited to former Members who have ceased dairy farming but continue to hold Investment Shares, and shareholders, partners or other owners of Members and Auxiliary Members who are admitted to auxiliary membership in the Filer.

7. There are currently Members and Auxiliary Members resident in each of the Jurisdictions. Members in Ontario have been admitted since December 2017. Prior to that time, there were only Members resident in British Columbia, Alberta and Saskatchewan. There is also one Auxiliary Member resident in Nova Scotia. Auxiliary Members all became so while resident in British Columbia, Alberta or Saskatchewan, and those now resident in Manitoba, Ontario or Nova Scotia moved to those provinces subsequent to becoming Auxiliary Members.

8. Originally, Auxiliary Members were individuals, companies or organizations who were: (a) no longer active in dairy farming; and (b) owed member loans by the Filer that were converted to Investment Shares (the **Original Auxiliary Members**). The Original Auxiliary Members make up the majority of the Auxiliary Members. Now, shareholders of active or formerly active corporate Members, or partners of or participants in active or formerly active unincorporated Members, are allowed to apply to be Auxiliary Members for the purpose of holding Investment Shares as individuals rather than through their interest in corporate Members or unincorporated Members (the **New Auxiliary Members**). New Auxiliary Members must meet the Auxiliary Member criteria set out in the bylaws of the Filer and apply for admittance as an Auxiliary Member, which is subject to approval by the Board of the Filer.

9. The Articles of the Filer provide that its Investment Shares may be issued and transferred only to:

   (a) Members or Auxiliary Members;

   (b) the executor or administrator of the estate of a Member or Auxiliary Member, provided that the executor or administrator may only hold and sell the Investment Shares owned by the deceased person at the time of his or her death and any additional Investment Shares issued to the deceased's estate as a result of the mandatory investment of patronage returns to the deceased or the deceased's estate for the purchase of Investment Shares, but the executor or administrator may not otherwise acquire additional Investment Shares; and

   (c) employees of the Filer, pursuant to and in accordance with the terms of, an Employee Plan,

   and, in addition, no person or shareholder group can hold more than five percent of the issued and outstanding Investment Shares. Previously issued Investment Shares can be transferred only to a person who has been a Member or Auxiliary Member for at least 12 months before the date of transfer.

10. No securities of the Filer, including debt securities, are traded 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.

11. Pursuant to exemptive relief granted by the securities regulators in British Columbia, Alberta and Saskatchewan dated February 28, 2006, the Filer operates a private facility in these jurisdictions whereby Members and Auxiliary Members are able to trade the Investment Shares. The Filer is seeking separate marketplace relief to operate the private facility in Ontario and Manitoba.

12. The relief granted by the securities regulators in British Columbia, Alberta and Saskatchewan for Filer's private facility did not include clearing agency relief, which is required to operate the facility. Consequently, the Filer is also seeking separate clearing agency relief to operate the private facility in the Jurisdictions.

13. Other than having operated the private facility without the required clearing agency relief, the Filer is not in default of applicable securities legislation.

14. The Filer does not have an Employee Plan and no employees of the Filer hold Investment Shares.

15. Section 247 of the Federal Co-Op Act requires that each Member and Auxiliary Member be provided with the Filer's annual financial statements for the most recently completed year and each part year ending not more than six months before every annual meeting of members.

16. Pursuant to section 3.4 of Ontario Securities Commission Rule 45-501 – *Ontario Prospectus and Registration Exemptions*, the issuance of Membership Shares to new Members or Investment Shares to new Members or Auxiliary Members, as applicable, from time to time would, if the Filer were a corporation to which the *Co-operative Corporations Act* (Ontario) (the **Provincial Co-op Act**) applied, be exempt from Subsection 25(1) of the *Securities Act* (Ontario) (the **Act**).

17. Pursuant to Subsection 73.1(6) of the Act, the distribution of Membership Shares to new Members or Investment Shares to new Members or Auxiliary Members, as applicable, from time to time and any subsequent trades of Investment Shares by the holders thereof would, if the Filer were a corporation to which the Provincial Co-op Act applied, be exempt from Subsection 53(1) of the Act.

18. Pursuant to Subsection 34(1) of the Provincial Co-op Act and the applicable regulation, a co-operative subject to that act must file and obtain a receipt for an offering statement from the Financial Services Regulatory Authority of Ontario in order to sell, dispose of or accept directly or indirectly any consideration for securities of the co-operative where the co-operative has more than 35 security holders, or where the sale or disposition of or acceptance of consideration for the securities would have the effect of increasing the number of security holders in the co-operative to more than 35. Subsection 34(2) of the Provincial Co-op Act and paragraph 6 of section 12.6 of the applicable regulation, provide an exception to the offering statement requirement where the value of each issue of shares to a member does not: (i) exceed $1,000 per member in a year; (ii) does not exceed an aggregate value of $10,000 per member; and (iii) result in the co-operative having more than $200,000 of issued and outstanding securities.

19. The Federal Co-Op Act incorporates the fundamental cooperative principles which are also contained in the Provincial Co-op Act. Accordingly, the policy rationale for permitting distributions and trades of securities of provincial cooperative associations applies equally to securities of cooperative associations incorporated under the Federal Co-Op Act.

20. The Filer does not and will not be providing recommendations or advice to Members, Auxiliary Members or potential Members or Auxiliary Members regarding the decision to purchase, sell or hold Membership Shares or Investment Shares.

21. Before each annual general meeting, the Filer will send to each Member and Auxiliary Member, and make available on its website, its financial statements for the most recently completed year and each part year ending not more than six months before that meeting.

22. The Investment Shares are uncertificated and the register of Investment Shares is maintained by the Filer. As such, all trades of Investment Shares must be facilitated by the Filer and the Filer reviews and is able to prevent any trades of Investment Shares that are: (i) non-compliant with the terms of the Requested Exemptive Relief; (ii) non-compliant with the terms of an available prospectus exemption; and (iii) made from outside of the Jurisdictions.

Decision

The Decision Maker 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 Maker under the Legislation is that the Requested Exemptive Relief is granted, provided that the following conditions are satisfied:

(a) the Filer continues to be a co-operative to which the Federal Co-op Act applies;

(b) the Filer only issues Membership Shares to Members and only issues Investment Shares to Members, Auxiliary Members, and employees of the Filer, pursuant to and in accordance with the terms of, an Employee Plan;

(c) before the Filer issues Membership Shares or Investment Shares, the Filer confirms that each issue of Membership Shares or Investment Shares to a member does not:

  (i) exceed $1,000 per Member or Auxiliary Member, as applicable, in a year;

  (ii) exceed an aggregate value of $10,000 per Member or Auxiliary Member, as applicable; and

  (iii) result in the Filer having more than $200,000 of issued and outstanding securities in Ontario.

(d) if the Filer issues Investment Shares as, or by the application of, a dividend or interest, no commission or other remuneration is paid or given to others in respect of the trade except for administrative or professional services or for services performed by a registered dealer;

(e) the Filer only facilitates trades of Investment Shares on its private facility and in accordance with the representations and terms and conditions of the exemptive relief granted by securities regulators of the Jurisdictions as described in representations 11 and 12;

(f) a Member or Auxiliary Member may trade an Investment Share if the purchaser of the security is a Member or Auxiliary Member and has been a Member or Auxiliary Member for at least 12 months, or is an employee of the Filer and the trade is conducted in accordance with an applicable Employee Plan;

(g) the first trade in Membership Shares to a person other than a Member or the Filer will be deemed to be a distribution;

(h) the first trade in Investment Shares to a person other than the Filer or a person specified in paragraph (f) hereof or representation 9 above will be deemed to be a distribution;

(i) the exemptions in this decision cease to be effective if any of the provisions of the articles or by-laws of the Filer relevant to the exemptions granted are amended in any material way unless staff of the Ontario Securities Commission consents to that amendment;

(j) the Filer deals fairly, honestly and in good faith with Members, Auxiliary Members, and employees;

(k) the Filer will not recommend or advise Members, Auxiliary Members, employees or potential Members or Auxiliary Members regarding the decision to purchase, sell or hold Membership Shares or Investment Shares; and

(l) Investment Shares will not be transferred to persons identified at representation 9 above, unless the Filer obtains relief to operate its private facility in the Jurisdictions.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2018/0684

B.3.5 Agrifoods International Cooperative Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for relief from the requirement to be recognized as a clearing agency; National Instruments 21-101 Marketplace Operation, 23-101 Trading Rules, 24-102 Clearing Agency Requirements – relief to allow the Filer to operate a platform that facilitates the buying and selling of shares of a cooperative organized under the Canada Cooperatives Act – relief granted subject to certain conditions set out in the decision – relief granted based on the particular facts and circumstances of the application – decision should not be viewed as precedent for other filers.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 21.2(0.1), & 147.
National Instrument 21-101 Marketplace Operation, s. 15.1.
National Instrument 23-101 Trading Rules, s. 12.1.
National Instrument 24-102 Clearing Agency Requirements, s. 6.1.

February 26, 2024

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

AND

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

AND

IN THE MATTER OF
AGRIFOODS INTERNATIONAL COOPERATIVE LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions, as applicable (the **Coordinated Review Decision Makers**), has received an application from the Filer (the **Coordinated Review Application**) for a decision under the securities legislation of the Jurisdictions (collectively, the **Legislation**), exempting the Filer from the following:

(a) in Ontario, Manitoba, Saskatchewan, and Alberta:

  (i) the Clearing Recognition Requirement (as defined in Appendix A) (the **Clearing Recognition Relief**); and

  (ii) the requirements of National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**); and

(b) in Ontario and Manitoba, the requirements of:

  (i) National Instrument 21-101 *Marketplace Operation* (**NI 21-101**); and

  (ii) National Instrument 23-101 *Trading Rules* (**NI 23-101**),

each as applicable to the operation of a private trading facility operated by the Filer (the **Trading System**), which facilitates the trading of Investment Shares (as defined in the *Canada Cooperatives Act* (the **Federal Co-Op Act**)) of the Filer (collectively, the **Requested Relief**).

Under the 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 Coordinated Review Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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 cooperative organized under the Federal Co-Op Act; the members of the Filer are dairy producers located in each of the Jurisdictions; the Filer offers its members the service of picking up milk from their farms and delivering the milk to dairies for processing; the ability of some members to use this service is limited by Provincial milk board regulations or policies.

2. The Filer is not a reporting issuer in any jurisdiction and has no intention of becoming a reporting issuer.

3. The Filer's capital structure consists of an unlimited number of Membership Shares (as defined in the Federal Co-Op Act) with a par value of $1.00 per Membership Share, and an unlimited number of Investment Shares without par value.

4. There are currently approximately 4,015 Membership Shares and 19,462,422 Investment Shares issued and outstanding.

5. The Filer currently has:

   (a) approximately 806 members (the **Members**) who are actively involved in dairy farming;

   (b) approximately 1,692 auxiliary members (the **Auxiliary Members**) who either:

      (i) were previously, but are no longer, active in dairy farming, but have a continuing interest in the Filer in the form of Investment Shares; or

      (ii) are shareholders of active or formerly active corporate Members or partners of or participants in active or formerly active unincorporated Members.

6. Under the Federal Co-Op Act and the Articles and By-laws of the Filer:

   (a) only Members are able to hold Membership Shares;

   (b) only Members, Auxiliary Members, and employees of the Filer (in accordance with the terms of an employee share ownership, stock option or similar plan for employees of the Filer (an **Employee Plan**)) are able to hold Investment Shares;

   (c) membership is limited to active dairy producers licensed by the Provincial milk board in one of the Jurisdictions who are (i) capable of using the services of the Filer; (ii) use the Filer's services unless prevented from doing so by Provincial milk board regulations, orders, or policies; and (iii) are admitted to membership in the Filer; and

   (d) auxiliary membership is limited to former Members who have ceased dairy farming but continue to hold Investment Shares, and shareholders, partners or other owners of Members and Auxiliary Members who are admitted to auxiliary membership in the Filer.

7. There are currently Members and Auxiliary Members resident in each of the Jurisdictions. Members in Ontario have been admitted since December 2017. Prior to that time, there were only Members resident in British Columbia, Alberta, and Saskatchewan. There is also one Auxiliary Member resident in Nova Scotia. Auxiliary Members all became so while resident in British Columbia, Alberta, or Saskatchewan, and those now resident in Manitoba, Ontario or Nova Scotia moved to those provinces subsequent to becoming Auxiliary Members.

8. Originally, Auxiliary Members were individuals, companies or organizations who were: (a) no longer active in dairy farming; and (b) owed member loans by the Filer that were converted to Investment Shares (the **Original Auxiliary Members**). The Original Auxiliary Members make up the majority of the Auxiliary Members. Now, shareholders of active or formerly active corporate Members or partners of or participants in active or formerly active unincorporated Members are allowed to apply to be Auxiliary Members for the purpose of holding Investment Shares as individuals rather than

through their interest in corporate Members or unincorporated Members (the **New Auxiliary Members**). New Auxiliary Members must meet the Auxiliary Member criteria set out in the bylaws of the Filer and apply for admittance as an Auxiliary Member, which is subject to approval by the Board of the Filer.

9. The Articles of the Filer provide that its Investment Shares may be issued and transferred only to:

   (a) Members or Auxiliary Members;

   (b) the executor or administrator of the estate of a Member or Auxiliary Member, provided that the executor or administrator may only hold and sell the Investment Shares owned by the deceased person at the time of his or her death and any additional Investment Shares issued to the deceased's estate as a result of the mandatory investment of patronage returns to the deceased or the deceased's estate for the purchase of Investment Shares, but the executor or administrator may not otherwise acquire additional Investment Shares; and

   (c) employees of the Filer, pursuant to and in accordance with the terms of, an Employee Plan, (collectively, **Participants**)

   and in addition, no person or shareholder group can hold more than five percent of the issued and outstanding Investment Shares. Previously issued Investment Shares can be transferred only to a person who has been a Member or Auxiliary Member for at least 12 months before the date of transfer.

10. Many Participants reside in remote geographical locations. Therefore, in order to facilitate trading of Investment Shares among the Participants, the board of directors of the Filer established a system and procedure by which parties entitled to hold Investment Shares may buy and sell such shares.

11. The Trading System is governed by a specific set of rules (the **Trading Rules**) established by the Filer and distributed to its Members and Auxiliary Members.

12. The Trading Rules provide a method by which:

   (a) interested sellers may give notice to the Filer of their desire to sell Investment Shares;

   (b) interested buyers may give notice to the Filer of their desire to buy Investment Shares; and

   (c) such interested buyers and sellers are "matched" together in order to complete such sales.

13. The Filer holds any funds received in connection with the trading of Investment Shares in a segregated trust account for the benefit of the relevant Participants. The fact that such funds are held in trust is disclosed on the website, in the Trading Rules and on any other materials relating to the Trading System that are prepared by the Filer.

14. The Filer maintains records of all trades conducted and will use an independent third party to conduct an audit of the share transfer register at least once per year. Records of all trades are kept for a minimum of seven years.

15. The Filer charges a flat fee to Participants for the purchase and sale of Investment Shares under the Trading System. The amount of the fee is disclosed in the Trading Rules and partially offsets the costs to the Filer of operating the Trading System.

16. The Filer keeps the identity of the buyers and sellers confidential unless the buyers and sellers consent to the release of that information.

17. In order for any members to purchase or sell Investment Shares using the Trading System, pursuant to the Trading Rules, members are required to provide the Filer with a current address. As part of the settlement process under the Trading System, the Filer reviews the jurisdiction of residence of parties to each trade and is able to ensure only trades in the Jurisdictions are accepted.

18. The Filer was granted relief in British Columbia, Alberta, and Saskatchewan from the requirements of NI 21-101 and NI 23-101, in connection with the operation of its Trading System, pursuant to a decision granted under the Mutual Reliance Review System for Exemptive Relief Applications on February 28, 2006, which is still in effect, where the Alberta Securities Commission acted as principal regulator.

19. The Filer is separately seeking relief in British Columbia from the requirement to be recognized as a clearing agency under section 25 of the *Securities Act* (British Columbia) and the requirements of NI 24-102.

Decision

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

The decision of the Coordinated Review Decisions Makers under the Legislation is that the Requested Relief is granted provided that:

1. The Filer does not engage in any clearing agency or marketplace activity in respect of the Trading System that is not described in the Coordinated Review Application without obtaining prior approval of the Coordinated Review Decision Makers;

2. The Filer makes the Trading System available only to Participants;

3. New Auxiliary Members meet the Auxiliary Member criteria set out in the Filer's bylaws and apply for admittance as an Auxiliary Member, which is subject to approval by the Filer's board of directors;

4. The Filer maintains a website on which Participants may access the Filer's annual financial statements and other disclosure documents, the Trading Rules, current and historical trading information, contact information, appropriate cautions regarding compliance with applicable securities laws and the need to obtain independent professional advice;

5. The Filer's participation in the Trading System is purely administrative in nature and no director, officer, employee, or agent of the Filer will solicit Participants to use the Trading System or provide investment advice to Participants;

6. The Filer holds any funds received in connection with the trading of Investment Shares in a segregated account in trust for the benefit of the relevant Participants, and discloses such fact on its website, in the Trading Rules and on any other materials relating to the Trading System that are prepared by the Filer;

7. The Filer does not extend margin or offer credit to Participants in connection with the Trading System;

8. The Filer maintains records of all trades conducted and uses an independent third-party accountant to conduct an audit of the share transfer register at least once per year; and

9. The Filer retains records of all trades for a minimum of seven years, which will be kept in a readily accessible location for the first two years.

"Susan Greenglass"
Director, Market Regulation
Ontario Securities Commission

Application File #: 2023-0095

APPENDIX A

CLEARING RECOGNITION REQUIREMENT

In this Decision,

a) the "**Clearing Recognition Requirement**" means each of the following:

(i) the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the *Securities Act* (Ontario);

(ii) the requirement to be recognized as a clearing agency in section 31.7(1) of the *Securities Act* (Manitoba);

(iii) the requirement to be recognized as a clearing agency in section 21.2 of the *Securities Act* (Saskatchewan); and

(iv) the requirement to be recognized as a clearing agency in section 67 of the *Securities Act* (Alberta).

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
Orea Mining Corp.	February 28, 2024	
Alerio Gold Corp.	February 28, 2024	
Infinity Stone Ventures Corp.	February 28, 2024	
Stem Holdings, Inc.	February 29, 2024	

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

Company Name	Date of Order	Date of Lapse
Biovaxys Technology Corp.	February 29, 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	
PlantFuel Life Inc.	January 30, 2024	
Odd Burger Corporation	January 30, 2024	
Biovaxys Technology Corp.	February 29, 2024	

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B.7
Insider Reporting

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

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

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

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Bristol Gate Concentrated Canadian Equity ETF
Bristol Gate Concentrated US Equity ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Feb 27, 2024
NP 11-202 Final Receipt dated Feb 27, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06076352

Issuer Name:
TD Active Global Enhanced Dividend ETF
TD Active Global Equity Growth ETF
TD Active Global Infrastructure Equity ETF
TD Active Preferred Share ETF
TD Active U.S. Enhanced Dividend CAD Hedged ETF
TD Active U.S. Enhanced Dividend ETF
TD Balanced ETF Portfolio (formerly, TD One-Click Moderate ETF Portfolio)
TD Canadian Aggregate Bond Index ETF
TD Canadian Bank Dividend Index ETF
TD Canadian Equity Index ETF
TD Conservative ETF Portfolio (formerly, TD One-Click Conservative ETF Portfolio)
TD Global Carbon Credit Index ETF
TD Global Healthcare Leaders Index ETF
TD Global Technology Leaders CAD Hedged Index ETF
TD Global Technology Leaders Index ETF
TD Growth ETF Portfolio (formerly, TD One-Click Aggressive ETF Portfolio)
TD International Equity CAD Hedged Index ETF
TD International Equity Index ETF
TD Q Canadian Low Volatility ETF
TD Q International Low Volatility ETF
TD Q U.S. Low Volatility ETF
TD Select Short Term Corporate Bond Ladder ETF
TD Select U.S. Short Term Corporate Bond Ladder ETF
TD Target 2025 Investment Grade Bond ETF
TD Target 2025 U.S. Investment Grade Bond ETF
TD Target 2026 Investment Grade Bond ETF
TD Target 2026 U.S. Investment Grade Bond ETF
TD Target 2027 Investment Grade Bond ETF
TD Target 2027 U.S. Investment Grade Bond ETF
TD U.S. Equity CAD Hedged Index ETF
TD U.S. Equity Index ETF
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Feb 29, 2024
NP 11-202 Final Receipt dated Mar 4, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06072760

Issuer Name:
Kingwest Avenue Portfolio
Kingwest Canadian Equity Portfolio
Kingwest U.S. Equity Portfolio
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Feb 26, 2024
NP 11-202 Preliminary Receipt dated Feb 27, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06088660

Issuer Name:
TD Active Global Enhanced Dividend ETF
TD Active Global Equity Growth ETF
TD Active Global Infrastructure Equity ETF
TD Active Preferred Share ETF
TD Active U.S. Enhanced Dividend CAD Hedged ETF
TD Active U.S. Enhanced Dividend ETF
TD Balanced ETF Portfolio (formerly, TD One-Click Moderate ETF Portfolio)
TD Canadian Aggregate Bond Index ETF
TD Canadian Bank Dividend Index ETF
TD Canadian Equity Index ETF
TD Conservative ETF Portfolio (formerly, TD One-Click Conservative ETF Portfolio)
TD Global Carbon Credit Index ETF
TD Global Healthcare Leaders Index ETF
TD Global Technology Leaders CAD Hedged Index ETF
TD Global Technology Leaders Index ETF
TD Growth ETF Portfolio (formerly, TD One-Click Aggressive ETF Portfolio)
TD International Equity CAD Hedged Index ETF
TD International Equity Index ETF
TD Q Canadian Low Volatility ETF
TD Q International Low Volatility ETF
TD Q U.S. Low Volatility ETF
TD Select Short Term Corporate Bond Ladder ETF
TD Select U.S. Short Term Corporate Bond Ladder ETF
TD Target 2025 Investment Grade Bond ETF
TD Target 2025 U.S. Investment Grade Bond ETF
TD Target 2026 Investment Grade Bond ETF
TD Target 2026 U.S. Investment Grade Bond ETF
TD Target 2027 Investment Grade Bond ETF
TD Target 2027 U.S. Investment Grade Bond ETF
TD U.S. Equity CAD Hedged Index ETF
TD U.S. Equity Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Feb 29, 2024
NP 11-202 Final Receipt dated Mar 4, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06072760

Issuer Name:
Evovest Global Equity ETF
Principal Regulator – Quebec
Type and Date:
Final Long Form Prospectus dated Feb 27, 2024
NP 11-202 Final Receipt dated Feb 28, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06049678

Issuer Name:
Fidelity Canadian Low Volatility ETF
Fidelity Canadian Momentum ETF
Fidelity Canadian Short Term Corporate Bond ETF
Fidelity Global Core Plus Bond ETF
Fidelity Global Investment Grade Bond ETF
Fidelity International Low Volatility ETF
Fidelity International Momentum ETF
Fidelity Systematic Canadian Bond Index ETF
Fidelity U.S. Low Volatility Currency Neutral ETF
Fidelity U.S. Low Volatility ETF
Fidelity U.S. Momentum Currency Neutral ETF
Fidelity U.S. Momentum ETF
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Long Form Prospectus dated February 28, 2024
NP 11-202 Final Receipt dated Mar 1, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03560996

Issuer Name:
Invesco Canadian Fund
Invesco Global Companies Fund
Invesco Income Growth Fund
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated February 26, 2024
NP 11-202 Final Receipt dated Feb 27, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03547885

Issuer Name:
Counsel Global Real Estate
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated February 28, 2024
NP 11-202 Final Receipt dated Mar 4, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06025881

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NON-INVESTMENT FUNDS

Issuer Name:
Reconnaissance Energy Africa Ltd.
Principal Regulator – British Columbia
Type and Date:
Amendment to Preliminary Shelf Prospectus dated Feb 28, 2024
NP 11-202 Amendment to Preliminary Receipt dated Feb 29, 2024
Offering Price and Description:
$120,000,000.00 - COMMON SHARES, WARRANTS, SUBSCRIPTION RECEIPTS, UNITS, DEBT SECURITIES
Filing # 06078445

Issuer Name:
Reconnaissance Energy Africa Ltd.
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated Feb 29, 2024
NP 11-202 Final Receipt dated Feb 29, 2024
Offering Price and Description:
$120,000,000.00 - COMMON SHARES, WARRANTS, SUBSCRIPTION RECEIPTS, UNITS, DEBT SECURITIES
Filing # 06078445

Issuer Name:
HEALWELL AI Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Feb 28, 2024
NP 11-202 Final Receipt dated Feb 29, 2024
Offering Price and Description:
$150,000,000.00 - Class A Subordinate Voting Shares, Debt Securities, Warrants, Units, Subscription Receipts
Filing #06073652

Issuer Name:
Hydro One Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Feb 28, 2024
NP 11-202 Final Receipt dated Feb 29, 2024
Offering Price and Description:
Medium Term Notes (unsecured)
Filing # 06090536

Issuer Name:
1429798 B.C. Ltd.
Principal Regulator – British Columbia
Type and Date:
Amendment to Preliminary Long Form Prospectus dated Feb 28, 2024
NP 11-202 Amendment Receipt dated Feb 29, 2024
Offering Price and Description:
Minimum Offering: $3,000,000.00 or 6,000,000 Units
Maximum Offering: $5,000,000.00 or 10,000,000 Units
Over-Allotment Option: Up to $750,000.00 Up to 1,500,000 Units
Price: $0.50 per Unit
Filing # 06058366

Issuer Name:
Mogotes Metals Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Feb 27, 2024
NP 11-202 Preliminary Receipt dated Feb 29, 2024
Offering Price and Description:
72,962,170 Common Shares and 36,481,085 Common Share Purchase Warrants Issuable upon Exercise of 72,962,170 Special Warrants
Filing # 06090218

Issuer Name:
Chesapeake Gold Corp.
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated Feb 23, 2024
NP 11-202 Final Receipt dated Feb 28, 2024
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Filing #06061813

Issuer Name:
Cameo Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Amendment to Final Long Form Prospectus dated Feb 26, 2024
NP 11-202 Amendment Receipt dated Feb 26, 2024
Offering Price and Description:
7,500,000 Common Shares
$0.10 per Security
Filing #03559643

Issuer Name:
Pineapple Financial Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Feb 23, 2024
NP 11-202 Preliminary Receipt dated Feb 26, 2024
Offering Price and Description:
No securities are being offered pursuant to this prospectus
Filing # 06087892

Issuer Name:
Magna International Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Feb 26, 2024
Final Receipt dated Feb 27, 2024
Offering Price and Description:
Senior Debt Securities
Filing # 06088678

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
THERE IS NOTHING TO REPORT THIS WEEK.			

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

B.11.2 Marketplaces

B.11.2.1 360 Trading Networks UK Limited – Application for Exemption from Recognition as Exchange – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION BY
360T UK
FOR EXEMPTION FROM RECOGNITION AS EXCHANGE

A. Background

360 Trading Networks UK Limited (**360T UK**) has applied to the Commission for an exemption from the requirement to be recognized as an exchange pursuant to subsection 21(1) of the *Securities Act* (Ontario) (**OSA**).

On December 22, 2023, 360T UK was granted an interim order exempting it from the requirement to be recognized as an exchange (**Interim Exemption Order**). The Interim Exemption Order terminates on the earlier of (i) June 30, 2024 and (ii) the effective date of a subsequent exemption order.

360T UK is a marketplace for trading FX derivatives that are regulated by the U.K. Financial Conduct Authority (**FCA**).

360T UK intends to provide direct access to trading on its marketplace to eligible participants located in Ontario and therefore is considered to be carrying on business in Ontario.

As 360T UK will be carrying on business in Ontario, it is required to be recognized as an exchange under the OSA or apply for an exemption from this requirement. 360T UK has applied for an exemption from the recognition requirement on the basis that it is already subject to regulatory oversight by the FCA.

B. Application and Draft Exemption Order

In the application, 360T UK has outlined how it meets the criteria for exemption from recognition. The specific criteria can be found in Appendix I of the draft exemption order. Subject to comments received, Staff intends to recommend that the Commission grant an exemption order with terms and conditions based on the draft exemption order. The application and draft exemption order are available on our website at www.osc.ca.

C. Comment Process

The Commission is publishing for public comment the 360T UK application and the draft exemption order. We are seeking comment on all aspects of the application and draft exemption order.

Please provide your comments in writing, via e-mail, on or before April 8, 2024, to the attention of:

Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

Niels Bouwman
Trading Specialist, Market Regulation
Email: nbouwman@osc.gov.on.ca

Mark Delloro
Senior Accountant, Market Regulation
Email: mdelloro@osc.gov.on.ca

23 November, 2023

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

Dear Sirs and Mesdames:

360 Trading Networks UK Limited – Application

360 Trading Networks UK Limited (the "**Applicant**" or "**360T UK**") hereby applies to the Ontario Securities Commission (the "**OSC**" or the "**Commission**") for an order granting the following relief (collectively, the "**Requested Relief**") relating to the operation by 360T UK of a marketplace (the "360T UK MTF") for trading FX derivative instruments which is regulated by the U.K. Financial Conduct Authority (the "**FCA**") - in the Province of Ontario:

(i) Exempting the Applicant from the requirement to be recognized under subsection 21(1) of the Securities Act (Ontario) (the "**Act**") pursuant to Section 147 of the Act; and

(ii) Exempting the Applicant from the requirements in National Instrument 21-101 Marketplace Operation ("NI 21-101") pursuant to section 15.1(1) of NI 21-101, the requirements of National Instrument 23-101 Trading Rules ("NI 23-101") pursuant to section 12.1 of NI 23-101, and the requirements of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces ("NI 23-103") pursuant to section 10 of NI 23-103.

The Applicant is currently offered to participate in Ontario pursuant to an Interim Order dated December 22, 2023 (the "**Interim Order**").

Exemption Criteria

OSC Staff has prescribed criteria that it will apply when considering applications for exemption of a foreign platform that facilitates the trading of OTC derivatives from recognition as an exchange. These criteria are substantially similar to those prescribed in OSC Staff Notice 21-702 Regulatory Approach for Foreign Based Stock Exchanges in relation to applications for recognition (or exemption from recognition) by foreign stock exchanges by the Ontario Securities Commission.

For convenience, this Application is divided into the following Parts:

Part I Application for Exemption from Recognition as an Exchange

1. Regulation of the Exchange
2. Governance
3. Regulation of Products
4. Access
5. Regulation of Participants on the Exchange
6. Rulemaking
7. Due Process
8. Clearing and Settlement
9. Systems and Technology
10. Financial Viability
11. Trading Practices
12. Compliance, Surveillance and Enforcement
13. Record Keeping
14. Outsourcing

Part I – Application for Exemption from Recognition as an Exchange

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

360T UK, as an operator of an Multilateral Trading Facility ("**MTF**"), is subject to rigorous and appropriate regulation under the oversight of the Financial Conduct Authority ("**FCA**") in the United Kingdom ("**UK**").

Historically, 360T has been providing services to the participants in the UK by 360T AG pursuant under the MIFID II services passport regime in the European Union ("**EU**"). However, the landscape changed significantly since the UK's departure from the EU, commonly referred to as Brexit, in 2020.

Following the impact of Brexit, 360T AG received temporary permission by the FCA, allowing us to continue to offer our services within the UK Market. Recognizing the importance of securing a long-term presence in the UK, 360 Trading Networks UK Limited was strategically incorporated in 2022 under the Companies Act in the UK. Subsequently, 360T UK diligently pursued and successfully obtained approval from the FCA to operate an MTF on November 22, 2023, showcasing our commitment to regulatory compliance (FCA Reference number: 989320). We are duly registered with the FCA, adhering to the Financial Services and Markets Act (FSMA), UK MIFIR and the rules made by the FCA governing the operating conditions of investment firms as far as they apply to MTFs.

The parent company, 360 Treasury Systems AG (360T AG), is regulated and supervised by the German Federal Supervisory Authority (BaFin) (Please see **Annexure 10 - Group Structure Chart**). In the Provence of Ontario, 360T AG MTF operates under the terms of an exemption order granted by the OSC on 14 June 2019.

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

The FCA serves as the regulatory body responsible for overseeing financial markets and ensuring their integrity within the United Kingdom. The Financial Services Act 2012 enacted the FCA to regulates conduct issues across the entire spectrum of financial services. The FCA exercise its regulatory authority and implements robust oversight procedures for registered business like 360T in the UK to ensure that the financial markets are honest, competitive and fair. Here are the key components of the FCA's oversight framework for MTFs:

(i) Authorization process:

The FCA employs a stringent authorization process for firms like 360T UK seeking registration to operate an MTF in the UK. This process involves in-depth assessments of the various aspects, including the operator's business model, financial soundness, technology infrastructure, and operational capabilities. This evaluation ensures that only entities meeting stringent standards are permitted to operate with the UK's financial markets.

(ii) Threshold conditions:

When the FCA authorises a firm, the FCA assess whether it meets a set of minimum standards that apply to all firms. These are known as the Threshold Conditions and are set out in Schedule 6 to the Financial Services and Markets Act 2000 (FSMA). Once authorised, firms need at all times to meet threshold conditions to remain authorised. Assessing whether firms continue to meet threshold conditions is an important role of FCA's supervision. Furthermore, the FCA seeks to identify potential risks in a firm's business model or culture and works closely with the firm to mitigate the risks.

(iii) Ongoing Monitoring:

The FCA adopted a proactive approach to require registered entities, such as 360T UK, to submit regular reports and data to the FCA. This enables the FCA to monitor the operations of the firms closely. Additionally, the FCA also analyse the data on complaints about firms and notifications of conduct rule breaches, allowing them to identify and address potential issues promptly.

360T UK is also subject to FCA's risk-based supervision approach and is required to submit relevant notifications in accordance with the FCA Handbook. The FCA may initiate contact with 360T UK when necessary to address any queries or concerns.

(iv) Enforcement Actions

The FCA takes swift and decisive enforcement actions against any breaches of regulatory requirements by the participants it supervised. These actions may include investigations into a firm's conduct, alteration or supplements to a firm's rules, suspension or revocation of registration, impose fines for violations of the FCA Regulations and the issuance of directives to ensure orderly trading in the event of an emergency.

As an authorised operator under the oversight of the FCA, 360T UK is required to maintain full compliance with a comprehensive set of rules and regulations. This includes the transparency rules, non-discretionary rules, Integrity standards, fair and non-discriminatory rules, among various other rules outlined in the applicable Laws and Regulations.

2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

360T UK is incorporated on 12th December 2022 in accordance with the Companies Act 2006 UK (Please see **Annexure 1 - Certificate of Incorporation**). To ensure effective oversight, 360T UK has established a robust organizational and governance framework. The ultimate responsibility for the day-to-day business and overall affairs of 360T UK lies with the Board. The Board comprises a Chief Executive, two executive Directors and 2 Non-Executive Directors and this composition has been approved by the FCA. Please find the **Board Information in Annexure 2**.

The Board operates on a quarterly meeting schedule to evaluate ongoing business performance and to ensure oversight of both the strategic direction of 360T UK and its compliance with ongoing regulatory obligations. Additional meetings may be called at any time upon proper notice, for example, to address specific needs of 360T UK. Board meetings will be run in accordance with an agenda that is circulated in advance. Any Director may propose the inclusion of items to the agenda or at any Board meeting raise subjects that are not on the agenda for that meeting. The Non-Executive Directors may attend each Board meeting in person at the London office or by video conference, whereas the Executive Directors will aim to attend in person.

In addition, each of the Directors is committed to upholding the FCA's Principles for Businesses and adhering to the Conduct Rules in their actions and decisions. They have also pledged to dedicate sufficient time and capacity to effectively fulfil their roles as Directors and Senior Management Functions ("**SMF**") of 360T UK, even considering their other responsibilities within the Group[1], to which 360T UK belongs.

Furthermore, the UK Board members also sit on a number of committees organized by the 360T Group at a global level, in respect of key second line and wider control arrangements as listed below:

(i) Change Advisory Board ("**CAB**"), where the CAB meets at least once before every release of technical updates to the MTF and to discuss and decide and agree on changes to be implemented. The CAB process brings all planned business initiatives into a transparent competition that is driven by business cases. The goal is to select those business initiatives that have the highest business benefit, which is measured by urgency and revenue potential. Additionally, all indirect initiatives, such as those requirements that emanate from regulation or system stability are considered here as well;

(ii) Compliance Management Committee ("**CMC**"), which is responsible for monitoring the sufficiency, effectiveness and independence of 360T Group's regulatory program and overseeing all aspects of 360T Group's regulatory program;

(iii) Global Risk Committee ("**GRC**"). which is a challenge and decision forum that is responsible for risk aspects within the 360T Group business. It is an advisory body that supports the 360T AG Management Board in discharging its obligations in the context of risk management and internal control;

(iv) Outsourcing Committee, which is the central checkpoint, at Group level, to validate that all risks that arise in relation to the Group's outsourcing arrangements are sufficiently identified and that respective mitigation measures are in place to manage each such risk.

These committees are designed to promote a broad and global viewpoint, ensuring effective oversight and controls over the operation of 360T entities, including those of 360T UK. As a result of UK's management body in the above Group

[1] The 360T Group comprises various entities including 360T UK, and it specifically refers to the overarching organizational structure that includes 360T UK and other affiliates entities at a global level.

committees, 360T UK considers that its interests will be well represented at Group level and it will be part of Group decision making that could impact it.

(b) that business and regulatory decisions are in keeping with its public interest mandate,

360T UK is committed to operate an MTF in accordance with industry best practices and in accordance with public interest. 360T UK's Rulebook (please see **Annexure 3 – 360T UK MTF Rulebook**), policies and procedures and activities are designed to fulfil its public interest mandate and provide a reliable trade execution platform for market participants.

360T UK's public interest mandate is derived from laws and regulations to which it is subject, including UK MiFIR, the FCA Handbook, and other applicable laws and regulations. Any business or regulatory actions that 360T UK takes must conform to such laws and regulations.

In addition, 360T UK operates within the framework of the Senior Managers and Certification Regime (SM&CR). This legislation has been designed to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence. As noted in Section 2.1 (a), 360T UK's Board composition has been approved by the FCA, ensuring that these individuals are suitably qualified and capable of effectively fulfilling their roles.

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

Please find below our responses for the above two items:

(i) Appropriate representation of independent directors

As previously mentioned, 360T UK has implemented a governance structure that emphasizes the importance of fair, meaningful and diverse representation on its Board of Directors. This commitment includes the appropriate representation of Non-Executive Directors ('**NED**') within the Board. 360T UK designated 2 NEDs, each of whom is mandated to allocate sufficient time and capacity to fulfil their board responsibilities. NEDs should devote time to developing and refreshing their knowledge and skills, including those of communication, to ensure that they continue to make a positive contribution to the board. NEDs must, at a minimum, take reasonable steps to place themselves in a position to guide and monitor the management of the company. All NEDs have to be assessed as fit and proper in accordance with the 360T UK's Fit and Proper Policy (please see **Annexure 4 – 360T UK Fit and Proper Policy and Certification Procedures**), designed to align with the expectation of the FCA.

(ii) Proper Balance Among the Interests of Different Users:

In addition to the composition of the Board, it is important to note that the UK Board members also sit on a number of Group organised committees in respect of key second line and wider control arrangements, as described in Section 2.1 (a). These committees are structured to ensure proper balance among the interest of the different participants using the MTF through the diversity of the region and functional work areas.

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

360T has implemented robust mechanisms to effectively identify and manage conflicts of interest that may arise within the organisation. These efforts are strict adherence to the Conflicts of Interest rules (SYSC 10 rules) outlined in the FCA Handbook, which requires entities to take effective measures to prevent conflicts of interest. 360T has adopted the Deutsche Borse Code of Business Conduct and the Group Policy on Conflicts of Interest (Please see **Annexure 5 – 360T UK Group Policy on Conflicts of Interest**) that applies to all employees, including the executive officers. The provisions of the Business Code of Conduct and Policy on Conflicts of Interest address potential and actual conflicts of interest, and all employees are instructed to comply with the rules set out in those policies at all times. In case of a suspicion of a conflict of interest, employees are required to escalate these to compliance to record, manage and potentially escalate. In addition, a market abuse policy (Please see **Annexure 11 – Market Abuse Policy**) and the UK Compliance Handbook (Please see **Annexure 12 – UK Compliance Handbook**) have been designed to address and mitigate conflict of interest.

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

Qualifications

Directors, officers and employees of 360T UK are recruited for their particular positions based upon their skills and expertise. All members of the Board and 360T officers and employees are over the age of majority and are of sound mind.

Of particular note, all members of the Board and Senior Managers are subject to a rigorous evaluation process as per our "Fit and Proper Policy" to ensure they possess the requisite qualities and ethical standing necessary to perform their roles.

Furthermore, 360T also conducts yearly performance reviews as part of our continual evaluation process to support continuous employee development. These assessments help us to identify opportunities for ongoing training and improvements.

Remuneration

As a MIFIDPRU Investment Firm, 360T UK is subject to the basic remuneration requirements which focus on ensuring that firms have remuneration policies and practices that meet minimum standards and are subject to sound governance, rather than being subject to the detailed Remuneration Code requirements. After commencing its operations, 360T UK will establish remuneration policies and practices that align with sound and effective risk management. These policies will be in line with the company's business strategy, objectives and long-term interests.

Consequently, the compensation plan (the Compensation Plan) of all 360T UK employees will consist of a fixed salary component as well as a performance-based bonus component. Building on 360T's business philosophy, the purpose of the Compensation Plan is to encourage employees to exceed job expectations in supporting departmental and company goals.

Different bonus schemes reflect different roles within the organisation to align the interest of the individual with overall company goals, e.g., sales bonus, account management bonus, non-sales bonus, discretionary bonus. Group Compliance staff received discretionary bonuses linked solely to their own performance objectives.

Management will regularly align the Compensation Plan (or at least specific schemes) in line with the future development and requirements of 360T UK, subject to the approval of the Board. Furthermore, 360T UK will take into account the statutory and in particular regulatory specifications and requirements as applicable in the UK from time to time.

In this context and according to the regulatory requirements, all bonus components are subject to a comprehensive risk assessment to consider risks inherent with top line growth and cost of capital incurred. The total of the bonus components per annum may range to a maximum of 200% of the annual fixed salary. The final determination and payment of the yearly bonus amount shall be made after expiration of the business year at the earliest and following employee annual appraisals.

Limitation of liability

360T UK is incorporated under the Companies Act 2006 ("the **Act**") and no Director will be personally liable to 360T UK or its stockholders for monetary damages for breach of fiduciary duty as a director. This provision, however, does not eliminate or limit the liability of a Director from (i) any breach of the Director's duty of loyalty to 360T UK or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (iii) any transaction from which the Director derived an improper personal benefit.

Indemnity provision

360T purchases and maintains insurance to protect directors from liabilities in accordance with the provisions set out by the Act. It's important to note that the company is not able to provide insurance or indemnities in relation to criminal activity, in line with the rules and requirements set out by the Act.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

As noted in Section 2.1 (e), all directors and officers possess the ability to contribute to the effective oversight and management of 360T UK, considering the needs of 360T UK and such factors as the individual's experience, perspective,

skills and knowledge of the markets in which 360T UK operates. This includes sufficient expertise, where applicable, in financial services and trading platform operations.

In addition, each of the directors and officers undergoes a rigorous assessment to ensure they meet the criteria set out in the Fit and Proper Policy, in alignment with the SM&CR requirements. All directors are approved by the FCA and are subject to 360T UK's annual review to assess their ongoing fitness and propriety.

Each of the Directors will conduct their affairs in accordance with the FCA's principles for Businesses and Conduct Rules. When viewed against their other responsibilities within the Group, the Directors are confident that they will have sufficient time to discharge their role as Directors and Senior Managers of 360T UK.

3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

As an authorised firm under the oversight of the FCA, 360T UK conducts its activities strictly within the scope of its granted permission. Should there arise new business opportunities or changes in the regulatory landscape that prompt us to consider introducing additional financial instruments in the MTF, we will undertake a comprehensive review process. This includes a review of the current permission to determine whether an application for a variation of permission is required or to amend the scope of activities.

Products Listed on the UK MTF

Upon the sole discretion of 360T UK, the following Instrument types can be made available for trading on the 360T UK MTF:

- FX Forward
- FX Swap
- FX Strategy
- FX Options
- Non-Deliverable Forward
- Non-Deliverable Swap
- Non-Deliverable Strategy

It is noteworthy that, given the nature of the product range of 360T UK which is primarily FX, 360T UK does not foresee a scenario in the near future where it will introduce additional financial instrument types. However, in the unlikely event that such a decision is made, 360T UK will conduct a thorough risk assessment process. This process includes various factors, including but not limited to, considerations for business development and ongoing business support. In addition, prior to any new product launch, the UK MTF Rulebook may be adjusted accordingly and distributed to Members via email. The UK MTF Rulebook amendments will also be available and downloadable via the 360T homepage.

In instances where the suspension and removal of financial instruments becomes necessary, in accordance with Section 5.6A of Market Abuse Regulation ("**MAR**"), 360T UK commits to comply with the following requirements:

(i) not exercise any power under its rules to suspend or remove from trading any financial instrument which no longer complies with its rules, where such a step would be likely to cause significant damage to the interest of investors or the orderly functioning of trading venue;

(ii) where it does suspend or remove from trading a financial instrument, also suspend or remove derivatives that relate, or are referenced, to that financial instrument, where necessary to support the objectives of the suspension or removal of the underlying; and

(iii) make public any decision in (ii) and notify the FCA of it.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

360T UK has drafted the terms and conditions governing the trading of the products in line with regulatory guidelines and industry best practices.

Regulatory Compliance: in drafting the terms and conditions, we have adhered to the requirements set out in the FCA Handbook. This includes but is not limited to, adherence to Principle 6[2] "Customers' interests", Principle 7 "Communications" and the Conduct of Business Sourcebook.

FX Global Code: 360T acts in compliance with the FX Global Code (the "Code") as a market participant as defined by the Code and is committed to conducting its FX market activities in a manner consistent with the principles of the Code. This commitment ensures that our trading practices adhere to international standards and the best practices in the FX markets.

Please find in **Annexure 13a and 13b TEX Access Agreement** and **Annexure 14 – 360T UK Appendix** which will be in place between 360T UK and a Member in respect of the TEX Technology and the UK MTF.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

In compliance with MAR, 360T UK have implemented effective systems, procedures and arrangements to measure, manage and mitigate the risks associated with trading products on the UK MTF. Below, we outlined some key examples of regulatory requirements along with our corresponding systems and controls:

(i) MAR 5.3A.2(5): a firm must have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous.

In accordance with the above regulation, 360T UK have in place appropriate pre-trade controls to meet this obligation which include the following and which are applied to all Members equally:

- 360T AG has a long-time partnership with a company called Digitec, which is based in Germany. The partnership has built a market data product called the Swaps Data Feed (SDF), a market leading representation of pricing in the FX swaps market. This data will be available to the UK MTF. The SDF is a data feed for G10, local market and non-deliverable currencies (and the same partnership is in place with 360T AG and in respect of the EU MTF). 360T UK will use this feed to detect new incoming prices that exceed pre-determined thresholds configurable on an instrument basis. In the event that a Quote exceeds the threshold, it is considered erroneous by 360T UK and is therefore withdrawn.
- 360T UK will perform a volume check for every volume entered in the UK MTF.
- 360T UK can implement further price collars for instruments that are configurable with soft and hard limits. A change in configuration takes effect within approximately 10 minutes. It is not possible for Members to make adjustments or changes to such controls.

(ii) MAR 5.3A.: a firm must be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction. A firm must ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and types of users and is sufficient to avoid significant disruptions to the orderliness of trading.

In line with regulatory requirement MAR 5.3A stated above, 360T UK has conducted a comprehensive risk assessment. Initially, 360T UK decided not to operate with circuit breakers during our initial phase of operation. This position will be reviewed annually, with the full awareness and acknowledgement of the FCA.

[2] PRIN 2.1 The Principles - FCA Handbook

Our rationale for this decision is based on the unique characteristics of our trading system. As a general principle, 360T UK considers that the MTF RFQ component of the UK MTF will be less sensitive to volatility events for several key reasons:

- No maintenance of Resting Orders: the UK MTF neither maintains nor matches resting orders, meaning that Members are not required to cancel or update resting orders in order to avoid unintended executions due to price movements;
- Market Taker Discretion: it is in the discretion of the MTF Market Taker to initiate an execution attempt after evaluating the Quotes;
- Last look capability: MTF Market Makers have the possibility of making use of 'last look' and can reject an execution attempt in the case of price movements.
- Limited RFQ Duration: a Request on the MTF RFQ component of the UK MTF expires after approximately one minute. Accordingly, when a Member initiates a Quote for a predetermined instrument, 360T UK receives an insight to the market conditions for the requested instrument only for a short period of time, which is insufficient for 360T UK to detect price movements or draw conclusions on the volatility of an instrument.

(iii) MAR 5.3A.2(6), (7), (8), (9) and (10): a firm must adopt governing orders generated by algorithmic trading.

Consistent with this requirement, 360T UK imposes restrictions on algorithmic trading in Chapter 8 of the Rulebook. Rule 8.1 requires a Member who engages in algorithmic trading on the UK MTF to comply with the organizational requirements for trading systems and trading algorithms as set out under MIDIF Rules, including an established policy governing the use of the kill functionality. Rule 8.2 requires Members engaging in algorithmic trading to engage in conformance testing to examine order entry and connectivity. 360T UK will assess whether each Member engaged in algorithmic trading is in compliance with the Rulebook on an annual basis or more frequently, as necessary.

More broadly, as provided in Rule 11.1, 360T UK has arrangements in place to prevent disorderly trading and breaches of capacity limits. 360T UK may cancel or revoke orders or executed transactions in case of malfunction of the 360T UK trading system, or to take any other courses of action, where 360T UK believes it necessary to preserve market orderliness.

As described in Section 9.3 below, 360T UK has implemented robust risk management measures that are designed to address market disruptions, errors and disorderly trading. 360T UK also monitors for market abuse and allows Members to set up their own alerts in regard to risk limits, including daily trading limits, price limits and position limits. However, 360T UK does not track Member's limits as Members may be transact the same FX products on multiple venues and/or over-the-counter.

Overall, the UK MTF operates in a similar fashion as 360T's EU MTF. Prior to Brexit, the UK adhered to the EU MIFID framework. Post-Brexit, the UK adopted the EU MIFID Framework, incorporating it into its domestic law. Under this context, the EU MTF, authorized by the OSC, has defined the standards, which the UK MTF has integrated. The UK MTF has adopted the infrastructure and risk framework of the EU MTF, to guarantee the efficient functioning of the UK MTF and to ensure compliance with norms and regulatory expectations.

4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(d) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

➢ Access Requirements

According to A8, article 4.1(22) and Recital 7 of UK MiFIR, the buying and selling of financial instruments in an MTF must be governed by non-discretionary rules in a way that results in contracts. An operator of an MTF must establish rules governing how the system operates and the characteristics of the quotes and orders (for example, their price and time of receipt in the system) that determine the resulting trades.

In accordance with the above regulatory requirements, 360T UK has established transparent and non-discriminatory rules based on objective criteria governing eligibility for membership, which are available in the UK MTF Rulebook.

(i) **Eligibility and Admission Standards:**

Chapter 4 of the Rules sets out the admission and eligibility standards for all Participants, Authorized Traders and Authorized Users, all of which are designed to permit fair and open access while protecting 360T and its market participants. 360T UK will not play any part in deciding who Members trade with or in determining the price at which they agree to trade. Each member must qualify as an Eligible Counterparty or Professional Client under MiFID.

As set out forth in Rule 4.3, Member must satisfy each of the following conditions:

(a) satisfy capital adequacy and financial resources requirements. The levels of financial resources required by any or all Members may vary for each Member;

(b) employs staff with adequate qualifications in key positions;

(c) be fit and proper to become a Member;

(d) have financial, business or personal standing suitable to enter into relevant Transactions;

(e) have sufficient level of trading ability and competence;

(f) be able to satisfy the general organisational requirements for participation in 360T UK MTF;

(g) has adequate organisational and technical requirements;

(h) have adequate pre-trade controls on price, volume and value of orders and usage of the system and post-trade controls, and

(i) have adequate execution, order management and settlement systems in place.

(ii) **Client Classification**

All applicants prior to onboarding must go through a review process in which participants must fulfil the requirements as Professional Client or Eligible Counterparty. Retail clients are not allowed to access 360T UK. Participant classification is determined primarily by reviewing applicant's financials and their regulatory status. 360T UK has implemented a comprehensive Client Classification Policy (Please see **Annexure 6 – 360T UK Client Classification Policy**) to ensure the client classification process is compliant with the provisions set down in MiFID.

(iii) **Admission Process**

360T UK may deny an application for admission as a member (a) if the applicant is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain a member, or (b) if the applicant is unable to satisfactorily demonstrate its capacity to adhere to the Rules and Applicable Laws.

(iv) **Access Agreement**

If a prospective Member satisfies all eligibility criteria, 360T UK and the member will execute an Access Agreement, pursuant to which the Member is admitted to the online trading system and agrees to be bound by the MTF's rules.

- Equal Access

The UK MTF Rulebook is designed to establish a framework of rules and procedures to ensure objective and non-discriminatory access to the UK MTF. 360T UK will not restrict access or impose burdens on access to the MTF's trading system in a discriminatory manner, within each category or class of market participants or between similarly situated categories or classes of market participants. As outlined in the Fee Schedule (Please see **Annexure 7 – Fee Schedule**), 360T UK applies comparable fee structures to all members that receive comparable access to the UK MTF trading system.

- Ontario Users

360T UK will not provide direct access to a participant in Ontario ("Ontario User") unless the Ontario User is appropriately registered as applicable under Ontario securities laws or exempt from or not subject to those requirements, and qualifies an "Eligible Counterparty" or "Professional Client" under MiFID.

For each Ontario User provided access to its MTF, 360T UK will require, as part of its application documentation or continued access to the UK MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

- Member responsibility

The MTF Rulebook Rule 7.2 requires that Members are responsible for confirming that each of its Representatives accesses and uses the trading system only carry out the Member's business, to prevent misuse or unauthorized access to the trading system. Consequently, this will help to reduce the risk of fraudulent or non-compliance transactions.

5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

- **Rules Governing Conduct**

360T UK monitors and enforces compliance with its Rules, including the Rules prohibiting abusive trade practices, in the Rulebook. Chapter 5 of the Rulebook set forth the obligation of Members. Under Rule 5.1, a Member must comply with all provisions of the Rulebook and refrain from engaging in market abuse or activities that may damage the fairness, integrity or proper functioning or orderliness of 360T UK.

In addition, Rule 5.3(a) mandates that every Member informs 360T UK of any enforcement action or obligation related to their trading activities on the 360T UK MTF or any other FX trading venue by any Governmental Authority. Under Rule 5.3(b), Members must respond promptly to all of 360T UK's inquires and requests for information in connection with its membership to the UK MTF, its use of Services, and Orders and Transactions within such reasonable time and in such manner as 360T UK may require.

- **Code of Conduct**

360T UK has adopted a Code of Conduct for its Members in Chapter 6 of the Rulebook. Under Rule 6.1, a Member must not:

(a) engage in any conduct which gives or is likely to give a false or misleading impression as to the market in, or the price of, any product or which secures the price of one or several products at an abnormal or artificial level;

(b) submit trade requests or orders on the 360T UK MTF which are fictitious, or constitute any other form of deception or contrivance;

(c) submit trade requests or orders on the 360T UK MTF without a genuine intention to trade;

(d) submit trade requests or orders on the 360T UK MTF for small quantities, intended to determine the state of the market;

(e) collude with other Members to effect pre-agreed transactions with a view to manipulate the marketplace;

(f) breach or attempt to breach an obligation under this Rulebook or cause or contribute to a breach of obligations under this Rulebook by another Member; or

(g) engage in any other act or course of action constituting Market Abuse, or which is likely to harm the integrity, fairness, orderliness or reputation of the 360T UK MTF.

As stated in Rule 6.2, if a member breaches any Rule or exhibits disruptive behaviour, then 360T UK may initiate disciplinary procedures, including but not limited to:

(a) formal written notification of contravention of the Rulebook;

(b) restriction of specific order types;

(c) imposition of systematic enforcements, such as throttling of Orders;

(d) suspension from specific Instruments;

(e) suspension from the 360T UK MTF;

(f) termination of the 360T UK MTF membership; and

(g) notification of contravention to the FCA.

- **Monitoring Conduct, Conducting investigation and Cooperation with the Regulator**

Chapter 15 of the Rulebook contains descriptions of the monitoring and reporting activities that 360T UK carries out. Specifically, 360T will monitor the trading activities conducted under these Rules with a view to identifying breaches of these Rules, disorderly trading and conduct that may amount to Market Abuse.

360T UK may initiate and carry out an investigation into any matter that may constitute a breach of these Rules. As required by Rule 15.3, any Member affected by such investigation must co-operate fully and in a timely manner with 360T UK in such investigation. On completing an investigation under this Rule 15, 360T UK take any measure in accordance with Rule 6.2 (Consequences of a breach) as mentioned above.

Rule 15.2 permits 360T UK to report to any Governmental Authority any material breaches of the Rules, disorderly trading conditions, and conduct that may involve market abuse. 360T UK may assist any Governmental Authority in any investigation of disorderly trading conditions and conduct that may involve market abuse.

- **Disciplinary Actions**

As described above, 360T may take various actions as a consequence of disruptive behavior and rule violations, including the issuance of a formal written notice, restriction of specific order types, systematic enforcements (e.g., order throttling), suspension from trading specific Instruments, suspension from accessing the MTF and/or termination of the membership.

6 RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.

As an authorised operator of MTF under the oversight of the FCA, 360T UK has been operating under transparent and non-discretionary rules in accordance with regulatory requirements. 360T maintains a set of written rules and procedures which is publicly available on 360T's website. The Rulebook appropriately governs the operations and activities of market

participants in the following chapters: Chapter 4 (Membership); Chapter 5 (Obligations of Members); Chapter 6 (Code of Conduct); Chapter 7 (Access); Chapter 8 (Requirements for Algorithmic Trading and High-Frequency Trading); Chapter 10 (Trading Rules); and Chapter 12 (Orders); and Chapter 14 (Transaction Cancellations and Price Adjustments). 360T UK believes that the Rules are consistent with applicable Ontario law.

As described in Chapter 21 of the Rulebook, 360T UK may from time to time amend the Rulebook. Members will be notified of such amendments via email and by publication of the amended Rulebook on 360T's website (UK MTF - 360t). Each such amendment will be be deemed to have been approved unless the respective Member objects thereto in writing. Together with the notification of an amendment, 360T UK shall expressly draw the Members' attention to this consequence. A Member must notify any such objection to 360T UK within six (6) weeks following the relevant notification of an amendment.

360T UK's rules treat all Members in a similar manner, and thus do not discriminate among Members. 360T UK's rules are also designed to facilitate competition among market participants for execution services and thus do not impose any unreasonable burden on competition.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with applicable legislation,

Articles 18(1) and 19(1) of MiFID requires MTFs to have transparent rules and procedures for fair and orderly trading. 360T UK's Rulebook has been drafted to comply with such requirements. Pursuant to Rule 5.1(a) and the Access Agreement, each Member agrees to be bound by, and comply with the Rulebook and Applicable Laws. Pursuant to Rule 22, all Transactions are governed by the laws of the Federal Republic of Germany. This is to help the UK MTF in sync with the EU MTF, as they apply the same laws. Additionally, certain UK banks might maintain access to the EU MTF due to the UK Overseas Person Exclusion. By agreeing to comply with the Rulebook and Applicable Laws, such persons are brought within the scope of applicable UK rules and regulations. If a Member fails to comply with the Rulebook or Applicable Laws, 360T UK may at any time revoke, suspend, limit, restrict or qualify such person's trading privileges or pursue other sanctions in accordance with the procedures set forth in Chapter 6 (Code of Conduct), Chapter 11 (Suspending Trading), and Chapter 16 (Suspension and Termination of Membership).

(ii) prevent fraudulent and manipulative acts and practices,

As noted in Section 5, 360T UK has adopted Rules prohibiting market manipulation and other illicit conduct. Among other things, Rule 6.1 prohibits any conduct that gives or is likely to give a false or misleading impression as to the market in, or the price of, any product at an abnormal or artificial level.

(iii) promote just and equitable principles of trade,

The Rulebook is designed to promote just and equitable principle of trade. For example, Rule 6.1(g) forbids Members from engaging in any activities that constitute Market Abuse or which is likely to harm the integrity, fairness, orderliness or reputation of the 360T UK MTF. Any Member that does not observe such standards will be subject to disciplinary actions in accordance with Rule 6.2 in the Rulebook.

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,

Coordination with Regulators

Article 31(2) of MiFID and articles 81 and 82 of the MiFID Org Regulation requires an operator of an MTF to report to the FCA of any significant breaches of the rules, disorderly trading conditions, conduct that may involve market abuse, and system disruptions in relation to a financial instrument. An operator of an MTF should supply the information required under this rule without delay to the FCA and any other authority competent for the investigation and prosecution of market abuse; and provide full assistance to the FCA, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or thorough the MTF's systems.

In line with those regulatory requirements, Rule 15.2 provides that 360T UK may, subject to Applicable Laws, (a) report to any Governmental Authority any material breaches of these Rules, disorderly trading conditions and conduct that may involve Market Abuse; and (b) assist any Governmental Authority in any investigation of disorderly trading conditions and conduct that may involve Market Abuse.

360T UK may disclose information and documents received from any Member in connection with its use of the Services to any Governmental Authority where such information and documents are required in connection with an investigation, inquiry or proceedings by such authority. If permitted by Applicable Laws, 360T UK shall, at its discretion, give the affected

Member at least seven (7) days' written notice of the intended disclosure. The Member shall co-operate with 360T UK and any Governmental Authority in any investigation or enquiry in relation to 360T UK.

Clearance and Settlement

Rule 13 of the UK MTF Rulebook sets out the rules in relation to the clearing and settlement of all cleared and non-cleared instruments.

After the trade is executed on the UK MTF, contract settlement will take place directly and bilaterally between the Members, and outside of 360T UK's systems and trading environment. 360T UK will not be responsible for the settlement of contracts. However, if the Members involved in a transaction agree to cancel a transaction, they must notify 360T UK of the request without undue delay. Upon 360T UK receiving such a notification from both Members, it will, as applicable, approve the request and will notify such Members of any such decision. Subsequently, 360T UK must reflect the cancellation in the relevant MTF reports that are submitted to the FCA.

(v) provide a framework for disciplinary and enforcement actions, and

As noted in Section 7, the Rulebook set forth 360T UK's disciplinary and enforcement process.

(vi) ensure a fair and orderly market.

Articles 18(1), (2) and 19(1) of MiFID requires an operator of an MTF to have (1) transparent rules and procedures for fair and orderly trading; (2) objective criteria for efficient execution of orders which are established and implemented in non-discretionary rules; (2A) arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with the risks of systems disruption; (3) transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems.

360T UK's Rulebook is designed in line with such requirements to ensure a fair and orderly market. Chapter 5 of the Rulebook sets forth certain general obligations of Members that will assist with a fair and orderly market, such as requiring Members to manage the risks inherent in using the 360T UK MTF by paying regard to its own legal, regulatory and other circumstances. Rule 5.2 requires Members to ensure the safety and soundness of its systems. For example, each Member must ensure its computer system will not be used in a manner likely to disrupt the provision of the Services or to disrupt the operation of the MTF or the provision of services for other Members. Additionally, each Member must have adequate and appropriate measures in place to protect the trading system against network or systems attacks.

Chapter 6 of the Rulebook contains a description of prohibited trading practices and specifically prescribes manipulation and disruptive trading practices. Rule 6.2 enumerates the list of disciplinary actions 360T UK may take.

7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

Discipline and Enforcement

As described in greater details in Section 5 above, 360T UK may take various measures as a consequence of disruptive behaviour and rule violations, including the issuance of a formal written notice, restriction of specific order types, system enforcements (e.g., order throttling), suspension from trading specific Instruments, suspension from accessing the MTF and/or termination of the membership.

As provided by Rule 16.3, 360T UK will notify a Member of a suspension or termination, and the grounds therefore in advance of the suspension or termination taking effect, unless it is impracticable or illegal to do so.

Recordkeeping

As require by Rule 10.3, 360T UK maintains all information on Member's trading activities and records that are in its possession for a period of at least five years.

8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

As mentioned in Section 6, Rule 13 of the UK MTF Rulebook sets out the rules in relation to the clearing and settlement of all cleared and non-cleared instruments:

(a) A Member must be a clearing member of a Central Clearing Counterparty ("CCP") or have made satisfactory arrangements with an entity that is a clearing member of a CCP.

(b) The CCP selected by the respective Member shall administer the clearing and settlement of the Cleared Instruments.

(c) Each Member must comply with the rules and procedures of the relevant CCP in respect of the clearing and settlement of the Cleared Instruments. Where the rules and procedures of the CCP with respect to clearing and settlement conflict with this Rule 13, the rules and procedures of the relevant CCP shall take precedence.

(d) After the CCP has confirmed to 360T UK that the Transaction has been cleared, the 360T UK MTF will notify the Members involved in the Transaction.

(e) In respect of Transactions in Instruments that are not Cleared Instruments, the settlement of all executed Transactions shall take place directly between the Members in accordance with the terms of the Transaction and the bilateral agreements between the Members.

(f) If requested by 360T UK, a Member shall provide promptly (and, in any event, by the end of the Business Day following the day on which a request is made by 360T UK) any details relating to settlement of a Transaction.

(g) Except to the extent prohibited by Applicable Laws, each Member shall promptly notify 360T UK upon becoming aware of any inability by a Member to clear or settle an Instrument in accordance with the Rules, Applicable Laws or acceptable industry practice, such as a loss of access to a relevant settlement and/or clearing system.

After the trade is executed on UK MTF, contract settlement will take place directly and bilaterally between the Members, and outside of 360T UK's systems and trading environment. 360T UK will not be responsible for the settlement of contracts. However, if the Members involved in a transaction agree to cancel a transaction, they must notify 360T UK of the request without undue delay. Upon 360T UK receiving such a notification from both Members, it will, as applicable, approve the request and will notify such Members of any such decision. Subsequently, 360T UK must reflect the cancellation in the relevant MTF reports that are submitted to the FCA.

8.2 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

Pursuant to 360T UK MTF's Rulebook, cleared instruments must be submitted to a CCP approved and appointed by 360T UK to provide clearing and settlement services with respect to cleared instruments (as defined in the UK MTF Rulebook) that will be traded on the UK MTF. 360T UK will only appoint CCPs that are subject to regulatory requirements consistent with the principles for financial market infrastructures set forth by CPMI-IOSCO.

At this time, the Applicant does not list any cleared instruments, but to the extent that the Applicant lists cleared instruments in the future, the MTF must submit all trades that are required to be cleared to a clearing house or clearing agency for clearing that is regulated as a clearing agency or clearing house by the applicable regulator.

9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

(a) makes reasonable current and future capacity estimates;

(b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

(c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

(d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

Background

As required by MAR and MiFID, an MTF is required to have systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business. MAR 5.3A.1R applies in particular to systems and controls concerning:

(1) the resilience of the firm's trading systems;

(2) its capacity to deal with peak order and message volumes;

(3) the ability to ensure orderly trading under conditions of severe market stress;

(4) the effectiveness of business continuity arrangements to ensure the continuity of the MTF's services if there is any failure of its trading systems, including the testing of the MTF's systems and controls;

(5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;

(6) the ability to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the trading venue;

(7) the ability to ensure any disorderly trading conditions which do arise from the use of algorithmic trading systems are capable of being managed, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the MTF's trading system by a member or participant;

(8) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;

(9) the ability to limit and enforce the minimum tick size which may be executed on the MTF; and

(10) the requirement for members and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

In compliance with the above requirements, 360T UK has implemented robust systems and controls. These measures are designed to not only ensure the resilience of the UK MTF but also to guarantee uninterrupted services provision. Additionally, they are designed to detect and manage properly and effectively any service interruption that may occur. Presented below are comprehensive descriptions of such systems and controls, specifically related incident management, monitoring and business continuity arrangements for the UK MTF:

- **Resilience and business continuity**

Incident management

An incident is any unplanned service interruption which is not part of the standard operation of a service run by 360T, and which causes, or may cause, interruption to, or a reduction in, the quality of the service offered by the UK MTF (**incident**).

Incident management has the objectives to ensure that the defined levels of service quality and availability are maintained: restore interrupted or compromised services as fast as possible; and minimise the adverse impact on business operations, (together referred to as **Incident Management**). Accordingly, 360T's incident management arrangements are concerned with restoring the service to the Customer as soon as possible, e.g., by providing workarounds which minimise the time in which the service to the Customer is unavailable. If changes are required to restore the service, the case is transferred explicitly to the Change Management process. For root cause analysis and implementation of preventative actions, 360T will invoke its Problem Management and Continual Improvement processes. An incident may be noticed and reported in four different ways:

- directly by a Customer reporting it to the 360T Client Advisory Services ("CAS") teams via email or telephone;
- by a 360T AG or 360T UK employee performing regular monitoring activities;
- by an alert triggered by the automatic monitoring of essential systems functionality;
- by a 360T AG or 360T UK employee discovering it during other activities.

First and second level support

The CAS Teams provide a single point of contact to manage all queries from users including both business and technical requests.

The project office is the contact point for all Customer related development and project issues (the **Project Office**). They link business and technical issues and are responsible for planning, coordination, and supervision of the technical delivery of the services, projects, and major changes.

An account manager is defined for each Customer as the main Customer contact and escalation instance for all service issues. The account manager works with the Customers in close cooperation with CAS- and the Project Office.

Service Processes

The CAS teams use the central IT Service Management ("ITSM") tool to register and track issues throughout the resolution process. Issues may be communicated to the CAS teams via telephone, e-mail, or they may be entered directly into the ITSM system. If possible, CAS teams process enquiries directly.

More complex or extensive inquiries are transferred to the appropriate expert groups (third level support), depending on the nature of the incident or problem.

The CAS teams have the following objectives and tasks:

- Assure service availability at all service times;
- Serve as the point of contact to receive and record all inquiries and incidents;
- Serve as Customer interface for the various service activities (e.g., Incident or Problem Management);
- Resolve issues or escalate them to qualified staff members; and
- Serve as the single point of contact to Customers.

Capture and Classification

All emails to the CAS teams as well as all automated alerts are automatically logged into the ITSM system. In addition, all issues raised by telephone or noticed by 360T employees that cannot be resolved immediately and require escalation are manually logged into the ITSM system.

The ticket is classified according to rules considering the severity to Customers. The scale for the error classification ranges from 4 (least critical) to 1 (highly critical).

The Board will participate in the Incident Management process through the receipt of real time notifications in respect of severity grade 1 or 2 incidents affecting the UK MTF and being informed on the progress of the resolution of such incidents.

The CAS teams will attempt to answer all questions and address all problems immediately. In these cases, any existing open ticket will be closed by the team. If this is not possible, then the CAS teams will escalate the issue through the ITSM system to the next support level.

Frequently asked questions with instructions and information on known errors are available in Confluence, an internal Wiki type documentation system, to assist in processing many problems.

Analysis, Processing and Testing

The person responsible for the further processing of escalated tickets is also responsible for prioritising the escalated tickets and will work on tickets sequentially following this priority.

CAS employees are responsible for managing the response to the Customer and may choose to escalate the ticket, if a faster response is required. In this case, either the backlog of tickets will be reprioritised, or additional resources can be allocated to address the issue faster. The processing responsibility includes:

- processing the ticket until it is closed or until it must be transferred to another expert;
- assigning tasks and collecting results if additional work has to be carried out by other internal or external experts;
- gathering additional information from the Customer, if necessary;
- documenting the status in the ticket system, if the ticket cannot be completely processed and closed quickly;
- ongoing communication with the Customer regarding the progress of processing;
- maintaining processing documentation in the ticket system, so that all involved parties have access to up-to-date information;
- conducting quality assurance on the solution and final tests, including obtaining confirmation from the Customer that the incident has been corrected satisfactorily; and
- prompt escalation if processing cannot be conducted as anticipated.

Closure

As soon as the service quality has been recovered, the incident ticket is closed, and the Incident Management process ends.

To ensure the expected high-quality level and to identify areas for possible general improvements, regular inspections of sample incident tickets are performed.

Problem management

A problem is the known or unknown cause of a group of incidents. It is either a reoccurring or a systematic issue and therefore requires a broader context for solving it. The goal of problem management is to minimise or completely prevent the adverse impact of problems that may or have occurred (**Problem Management**). To this end, Problem Management must identify the root causes of the incidents and initiate appropriate actions to improve or correct the situation and thus prevent that similar incidents occur again.

Problem Management is covered both by the Incident Management process and the Change Management process. During the analysis of an incident, the root causes of problems are identified and, as a result, a change request is issued to the Change Management process to improve the system to further avoid incidents of that type.

Release management

The goals of release management are to plan, coordinate and control the rollout of changes, software and related hardware (**Release Management**). For Customer specific systems, Release Management is generally handled by Change Management, where necessary planning and coordination of various changes are managed.

Monitoring

The IT Infrastructure and Platform Team is responsible for the operation of business critical applications with respect to the UK MTF. Considering all relevant components, the availability of the applications depends on complex systems consisting of physical infrastructure, computer hardware, software, network, and telecommunications components.

In this complex IT environment, small incidents may cause business critical outages. For this reason, all system components must be continuously monitored so that potential incidents are recognized as early as possible.

Depending on the system component, appropriate tools, automated mechanisms, and alert thresholds are defined to ensure proper monitoring. All deviations within a certain range are recorded as incidents. These are analysed and followed up on by technical experts. For major or critical deviations, alerts are generated automatically and sent to the appropriate team for prompt investigation.

With particular reference to the UK MTF, its capacities (including disk space, central processing unit usage, Java virtual machine memory, network usage) will be monitored in real time against predefined thresholds in an automated manner. In the event of a threshold breach which is categorised as "high risk", an automated email will be sent to CAS and SRE teams which are then responsible for analysing the root cause and taking the necessary actions to solve the problem. In the case of a severe trading interruption, the Head of CAS will draft a "trading interruption report" after the root cause has been analysed and resolved. This document will then be provided to, and reviewed by, the UK Compliance Officer who will then decide on what action needs to be taken from a regulatory compliance perspective and with respect to the Members.

Backup and Restore

The requirements for backup schedules, retention periods and data storage locations are determined based on the combination of technical, legal, and business requirements.

The backup process for each component consists of a combination of full and incremental backups, as well as synchronisation of data between servers within data centers. "Snapshots" may be taken to evidence satisfaction of retention requirements.

The backups are monitored daily and if a problem is detected, it is addressed by the system administration team during the day. In the case of any issue, backups will be rerun on the following night. For the production system, data is replicated between data centers to ensure that even in the event of a backup failure, the data is redundant.

If necessary, a restore can be performed and the system status from the specified point in time can be recovered. To verify that the backup and restore procedure works as expected, restores are performed regularly.

In addition to the backups, the contents of the production database as well as all log files, are archived daily.

Business continuity arrangements

The continuity of 360T UK's business operations and of the UK MTF is of primary importance. For this reason, and in line with the approach of 360T AG, 360T UK will implement a Business Continuity Framework in line with the comprehensive 360T Groupwide Business Continuity Management ("**BCM**") arrangements, that are structured according to a procedural hierarchy that includes emergency plans and detailed operational continuity arrangements. Direct responsibility for the framework is delegated to the 360T UK Risk function, which is ultimately under the oversight of the GRC.

Emergency Plans and Detailed Operational Continuity Arrangements

The primary requirement of the BCM framework is the development of emergency plans for relevant operationally critical sites (the Emergency Plans). The goal of each Emergency Plan is to ensure the continuation of operationally critical activities and hence minimal disruption to Customers independent of a full or partial loss of an operationally critical site. An Emergency Plan will be in place for 360T UK.

Each Emergency Plan is owned by an emergency manager (who will be the Chief Executive Officer for 360T UK, Mr. Simon Jones), who is supported by an emergency coordinator and an emergency team. It is the responsibility of the emergency manager to invoke the Emergency Plan wherever they deem this necessary. Each Emergency Plan governs the steps to be taken in the event the plan is invoked and describes various details necessary for the successful execution of the plan. This includes the nomination of the emergency team, identification of operationally critical staff, and clarification of line management responsibilities. Each emergency plan is dependent upon detailed operational continuity arrangements for its successful execution, e.g., data center failover arrangements, arrangements surrounding handover of operationally critical activities to a designated backup location, etc. Relevant operational continuity arrangements are detailed in each Emergency Plan.

The identification of operationally critical sites, activities and staff is informed by the business impact analysis, which also informs the setting of internal recovery targets (Recovery Time Objectives and Recovery Point Objectives).

Periodic Review and Testing

Emergency Plans and associated operational continuity arrangements are reviewed at least annually. Further to this, 360T tests its operational continuity arrangements regularly. This includes 360T's data center failover arrangements, testing of which is performed against relevant internal recovery targets. Results are reported to the GRC, which are then passed to the Board to consider

- **Capacity to deal with peak order and message volumes and the ability to ensure orderly trading under conditions of severe market stress**

  Historically, and due to the high load of quote messages that are generated by algorithmic engines of the MTF Market Makers, quote messages pose the highest risk on the capacity management of the EU MTF operated by 360T AG. 360T's objective is to assure that the EU MTF has sufficient capacity to guarantee a stable MTF trading environment and this objective shall equally apply to the UK MTF. The UK MTF will be subject to internal stress tests where the historical high of quote messages is the key reference. Member support is not deemed necessary in this context. An analysis will be performed by 360T UK once per month to verify whether a historical high has occurred. Regular automated stress tests in a test environment are performed with the objective of handling double the load of the maximum UK MTF quote peak (quotes/second) ever seen on the system. The performance of the test environment is weaker than the production system. If the stress tests, with a benchmark of at least twice the historical high, have no negative impact on the system's capacity, then it can be concluded that the production system has sufficient capacity to perform its functions. Regular stress tests are also carried out to simulate unexpected extreme market conditions. All stress tests are tracked on Confluence (which is a documentation system) and are discussed and reviewed by the appropriate internal teams.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

As noted in Sections 9.1 and 9.2 above, 360T UK believes that we have adequate systems and controls to manage risks to which its trading system is exposed, in line with the regulatory expectations. Similarly, 360T UK has also been taking appropriate measures to ensure proper pricing, even in the event of significant price fluctuations.

Chapter 14 of the Rulebook describes 360T UK's procedures for cancelling (busting) Transactions or adjust Transaction prices. 360T UK has the authority to cancel (bust) or adjust prices if a Member involved in a Transaction notifies 360T UK without undue delay that the Transaction was based on an entry in the 360T UK MTF that was entered by it or the other party to the Transaction inadvertently or incorrectly. Pursuant to Rule 14.2, 360T UK may also determine to review a Transaction upon request by a Member involved in the Transaction and provide prompt notice alerting the affected Members of such review.

In addition, 360T UK also has sole discretion determines that allowing the Transaction to stand as executed may have a material, adverse effect on the integrity of the market.

In making a determination whether to cancel or adjust the price of a Transaction, 360T UK may consider any relevant information, including the last trade price of the Instrument, a more recent price for a different maturity date, the price of the same or related Instrument established in another venue or another market and the market condition at the time of the trade.

360T UK will make its decision to adjust Transaction prices or bust a Transaction as soon as practicable, and 360T UK will notify the affected Member and, if applicable, the CCP, of any such decision. If 360T UK determines to cancel or adjust the price of a Trade, such determination will be final. Busted Transaction prices and any prices that have been price-adjusted will be inserted in the time and sales record at the adjusted Transaction price.

Rule 11.3 also permits 360T UK to take necessary steps to restore proper operation of the MTF in the event of a "Material Disruption". For this purpose, a "Material Disruption" means the following:

(a) any disruption, breakdown, or malfunction of any technical system used in connection with TEX[3];

(b) any attempt to manipulate prices, or commit Market Abuse, in relation to any Transaction traded on TEX;

(c) any failure by a third party to supply services or perform obligations to 360T that are required for the proper operation of TEX and/or the 360T UK MTF;

(d) any emergency or extraordinary market conditions or circumstances; or

(e) any Force Majeure Event.

Where there is Material Disruption in the Services, 360T UK may take such steps as it deems necessary to restore the proper operation of, and the orderly conduct of business on, the 360T UK MTF, including:

(a) terminating or suspending the operation of the 360T UK MTF or of one or more of the Services in whole or in part;

(b) suspending trading, or placing restrictions on trading certain Instruments;

(c) cancelling some or all pending Orders;

(d) cancelling some or all Transaction Notices sent to Members during the Material Disruption; and/or

(e) determining any price adjustment to be made in respect of Transactions formed during the Material Disruption

Additionally, according to Rule 7.4, where there is a Material Disruption or when 360T UK otherwise believes it is in the best interests of TEX to do so, 360T UK may, without notice, terminate, suspend or change the username and/or password of any Authorised User.

10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

360T UK has to adhere to the MIFIDPRU capital requirements. It is characterised as an SNI MIFIDPRU investment firm and is subject to a permanent minimum capital requirement of £150,000. Accordingly, its basic own funds requirement is

[3] TEX means the online technology system allowing users to enter into bilateral, over-the-counter transactions provided by 360T.

the highest of: (i) the permanent minimum capital requirement; and (ii) the fixed overheads requirement. The basic own funds have been calculated as £1.3 million, based on the fixed overheads requirement.

360T UK has been fully funded and its financial books and records will be maintained pursuant to applicable UK GAAP and by using the financial currency GBP.

As part of the MIFIDPRU requirements, 360T UK also maintains an Internal capital and risk assessment ("ICARA") document (Please see **Annexure 8 – ICARA document**) to ensure adherence to the overall financial adequacy rules. The Board will consider and approve the contents of the ICARA document at a minimum of once annually. Material changes to 360T UK's business model or operating model will trigger an intra-year ICARA assessment, ensuring that our capital adequacy evaluations remain aligned with 360T UK's operating model at that time.

11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

As explained in the previous sections, Articles 18(1) and 19(1) of MiFID requires an operator of an MTF to have transparent rules and procedures for fair and orderly trading, transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems, and to have published, transparent and non-discriminatory rules governing access to its facility. In addition, an operator of an MTF must have effective arrangements and procedures for the regular monitoring of the compliance by its users with its rules.

In keeping with this requirement, Rule 6.1(g) forbids Members from engaging in any activities constituting market abuse or which is likely to harm the integrity, fairness, orderliness or reputation of the UK MTF. 360T UK monitors the trading practices of its Members to confirm that they are in compliance with the Rulebook, which allows 360T UK to confirm such trading practices are not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

Chapter 12 of the Rulebook set forth the functionality of 360T UK's trading system. Specifically, Rule 12.1 provides as follows:

(a) The 360T UK MTF operates an Request for Quote ("RfQ") Trading Model, where 360T UK facilitates Transactions between Members who have a pre-existing underlying trading relationship for the purpose of executing Transactions with one another.

(b) On a Member initiating the RfQ Trading Model by submitting a Request, the Member providing a Quote, has to submit the Quote within a timeframe specified by the 360T UK MTF. During this time frame, the Members may continually update or otherwise withdraw their Request and Quote.

(c) The RfS Trading Model is a version of the RfQ Trading Model whereby a Member submitting the Request sets the relevant parameters thereof and pre-selects the Members it wants to engage in for the purpose of the Transaction. This pre-selection is subject to the existence of mutual permissions, availability of credit and the appropriate documentation. Such pre-selected Members may respond with their indicative Quotes. Member submitting a Request responds whether the Request is matched or not.

(d) No Transaction occurs unless and until the Member submitting the Request selects a Quote, the relevant Member providing a Quote confirms the Quote within a Last Look timeframe specified by the 360T UK MTF, and the 360T UK MTF confirms that all relevant Transaction Information has been submitted together with the Member's confirmation of the Quote.

(e) Once a Transaction is concluded on the 360T UK MTF, Transaction Notices are sent to both Members.

(f) Upon the earlier of the execution of a Transaction and the expiration of the timeframe referenced above, the remaining Quotes are automatically withdrawn by the 360T UK MTF.

(g) The 360T UK MTF is conducted on a fully disclosed basis, such that the Members disclose to each other who they are when transmitting Requests or Quotes or entering into Transactions with one another.

Pursuant to Rule 12.3, 360T UK has the sole discretion to set minimum and/or maximum Order size, and any incremental sizes, for any Instrument.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

Post-trade transparency reports will be published on 360T's website daily by 9.am local time for the business day closing 4 weeks previous, in order to comply with Articles 8 and 10 of MiFIR. The traded instruments will be reportable to the FCA FIRDS systems in accordance with Article 27 of MiFIR.

Pursuant to Rule 20, 360T UK will publish all information which is necessary and appropriate for the use of the 360T UK MTF, considering the nature of the Members and the traded Instruments, on its website.

12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

Rule 5.1 requires each Member to comply with all provisions of the Rulebook. Similarly, each Member must execute the Access Agreement, which provides that Member agrees to be bound by the Rulebook. Rule 15.2 requires each Member to cooperate with 360T UK and any Governmental Authority in any investigation or inquiry in relation to 360T UK.

In addition, Rule 14.2 authorizes 360T UK to discloses information and documents received from a Member in connection with its use of the Services to any Governmental Authority if required in connection with an investigation, inquiry or proceeding by such authority.

Under Rule 16.4, a Member whose trading ability or access to MTF’s trading system has been suspended or terminated remains bound by the Rules. In addition, a suspended or terminated Member is obliged to pay any and all Fees pursuant to the Rules, is liable for all obligations arising pursuant to Transactions to which it is a party and for all other obligations whether incurred before, during or after such suspension or termination, and is responsible and liable for its acts and omissions during its membership.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

Rule 15.1 requires 360T UK to monitor the trading trading activity conducted under these Rules with a view to identifying breaches of these Rules, disorderly trading and conduct that may amount to Market Abuse.

In addition, 360T UK has made appropriate arrangements to ensure that it has appropriate systems, resources and procedures for evaluating compliance with the Rules and legislative requirements and for disciplining market participants. 360T UK monitors its compliance resources and will engage additional personnel as deemed necessary on a temporary or permanent basis.

360T has implemented an automated monitoring system, Scila, to capture the activities of 360T UK. The parameters of the alert-based system are dynamically set by participant risk levels based on statistical analysis gathered by the Risk Level Group at 360T. Additionally, fine tuning of alert parameters is performed by senior compliance employees with input from additional compliance staff and business teams.

All alerts are subject to a Level 1 review and will be sent to level 2 if it cannot be resolved and, where a genuine suspicion arises, it will be escalated to the UK Compliance Officer to determine, in conjunction with the Head of Risk and Market Oversight, if a Suspicious Transaction and Order report (**STOR**) has to be submitted electronically to the FCA. For further details, please see Section 5 above.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

As explained above, Rule 15.2 requires each Member to cooperate with 360T UK and any Governmental Authority in any investigation or inquiry in relation to 360T UK. In addition, Rule 15.2 authorized 360T UK to disclose information and documents received from any Member in connection with its use of the Services to any Governmental Authority where such information and documents are required in connection with an investigation, inquiry or proceedings by such authority.

13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

Rule 10.3 requires 360T UK to maintain all information on Member's trading activities and records that are in its possession for a period of at least five years.

14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

All of the outsourcing arrangements of 360T UK are subject to the 360T Group Outsourcing Policy (Please see **Annexure 9 - Group Outsourcing Policy**). This policy has been amended as necessary to encapsulate particular requirements arising from UK laws and FCA requirements. 360T's Group outsourcing committee, on which 360T UK has senior representation, is the central checkpoint, at Group level, to validate all the risks that arise in relation to the Group's outsourcing arrangements are sufficiently identified and that respective mitigation measures are put in place to manage each such risk.

360T performs an evaluation of its outsourcing partners to determine which outsourced services or activities would be regarded as material in terms of risk. Based on the Risk Analysis Questionnaire, the 360T Compliance Department conducts a risk assessment considering information provided by relevant organisational units (in particular, the Business Owner, as defined below) and the internal audit function.

360T management has appointed an Outsourcing Officer and a Deputy of the Outsourcing Officer who is ultimately responsible for the outsourcing oversight function. As of 24 August 2023, the nominated Outsourcing Officer is the UK Compliance Officer (who is the 360T Group CCO). Accordingly, 360T UK will be well represented in terms of the oversight of the outsourcing arrangements that are in place for 360T UK.

For each outsourced service, 360T identifies and appoints a responsible business persons (the "Business Owner"). The Business Owner ("**BO**") is the competent contact person for any queries on the outsourced service and will have at least a solid basic knowledge of the content and details of the outsourced service.

Each outsourcing service will be based on a written contract, and the Legal Department will be responsible for ensuring that all contracts with outsourcing partners (both material and non-material) fulfil applicable regulatory requirements. Each outsourced servicing contract will be signed by at least one member of 360T management and an additional authorized signatory.

A regular review of all outsourced services that 360T UK has entered into will take place at least on an annual basis. This includes a review of the outsourcing risk assessment, and a review of the exit and business continuity plans by the BO and a confirmation that contracts are kept up to date.

360T UK's Board will receive an annual report on the outsourced services, which includes an overview of the annual risk assessments and relevant details on new/changed outsourced services. The Board may ask for interim reports, when needed. In any event, the UK Compliance Officer, as the Outsourcing Officer, will provide regular updates on the

outsourced services and/or any changes in the outsourcing systems and controls to the Board with the quarterly and annual compliance reports.

The Board will remain fully responsible and accountable for ensuring that 360T UK continues to meet its regulatory obligations in the UK with respect to the outsourcing arrangements and that such arrangements do not result in the delegation by the Board of its responsibility. It will also ensure that 360T UK avoids undue additional operational risk in respect of such arrangements and it must not outsource critical or important operational functions if it materially impairs the quality of 360T UK's internal control environment and the FCA's ability to monitor its compliance with its regulatory obligations.

The Risk Management Function will also ensure that the monitoring of risks raised by third party service providers and outsource service providers is adequately reflected in the internal control framework.

15 FEES

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

Article 48(9) of MiFID and MiFID RTS 10 requires that an operator of an MTF's fee structure, for all the fees it charges and rebates it grants in relation to the MTF, must:

(1) be transparent, fair and non-discriminatory;

(2) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading or market abuse; and

(3) impose market making obligations in individual financial instruments or suitable baskets of financial instruments for any rebates that are granted.

In accordance with these requirements, 360T UK has adopted fees that are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by Members to the services offered by the MTF. As Noted in Section 4 above, 360T UK charges comparable fees to all Members that receive comparable access to MTF's trading system. 360T UK does not restrict access or impose burdens on access in a discriminatory manner within each category or class of Members or between similarly situated categories or classes of Members.

The process for setting fees is fair and appropriate. 360T UK's fees are established based on an ongoing consideration of the implications of such fees on its Members and their businesses. 360T UK considers various factors in setting fees, including the fees of its competitors, 360T UK's own costs, the amount of volume in the applicable product and the temper and reactions of market participants. 360T UK operates in a highly competitive marketplace for foreign exchange transactions and establishes fees at market rates. Members in foreign exchange markets have a wide variety of trading options from which to select, ensuring that 360T UK sets fees competitively. 360T UK believes that its fee schedule is in line with current market practice and notes that it is publicly available. These fees do not create unreasonable barriers to access because of their uniform application to all Members. To provide the public with access to the transparent fee schedule, 360T UK will publish the fee schedule on its website.

16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

As described above, Rule 15.2 requires each Member to cooperate with 360T UK and any Governmental Authority in any investigation or inquiry in relation to 360T UK. In addition, Rule 15.2 authorizes 360T UK to disclose information and documents received from a Member in connection with its use of the Services to any Governmental Authority, including the Commission, if required in connection with an investigation, inquiry or proceedings by such authority.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

The FCA has entered into multilateral and bilateral Memoranda of Understanding ("MoU") and agreements with foreign regulatory authorities in numerous jurisdictions to cooperate and exchange information with other regulators[4]. The FCA has signed agreements with the OSC and both regulators are current signatories to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the "Principles for the Regulation and Supervision of Commodity Derivatives Markets" (2011).

The IOSCO Principles are designed to help ensure that physical commodity markets serve their fundamental price discovery and hedging functions while operating free from manipulation and abusive trading schemes. 360T UK believes that MiFID and FCA regulations are consistent with the IOSCO Principles. Therefore, 360T believes that it will be adhering to the IOSCO Principles to the extent that it complies with the MiFID and FCA regulations.

Part II – Submission by 360T UK

The instruments for which the Applicant seeks approval for Ontario Participants to trade on the MTF fall under the definition of "derivative," as set forth in the Act.

The MTF falls under the definition of "marketplace" set out in the Act because it brings together buyers and sellers of derivatives and uses established, non-discretionary methods under which orders interact with each other.

An "exchange" is not defined under the Act; however, subsection 3.1(1) of the companion policy to NI 21-101 provides that a "marketplace" is considered to be an "exchange" if it, among other things, sets requirements governing the conduct of marketplace participants. A MTF has certain obligations to monitor participants' trading activity. Because a MTF sets requirements for the conduct of its participants and surveils the trading activity of its participants, it will be considered by the OSC to be an exchange for purposes of the Act.

Pursuant to OSC Staff Notice 21-702 Regulatory Approach for Foreign-Based Stock Exchanges, the OSC considers an exchange located outside Ontario to be carrying on business as an exchange in Ontario if it provides Ontario Participants with direct access to the exchange. We understand that the Decision Makers other than the Ontario Securities Commission take a similar position in those Jurisdictions.

The Applicant understands that since the MTF provides Ontario Participants with direct access to trading of the MTF Instruments on the MTF it will be considered by the OSC to be "carrying on business as an exchange" in Ontario, and therefore must either be recognized or exempt from recognition by the OSC.

The Applicant submits that an exemption from recognition is appropriate for the MTF because the Applicant is subject to regulation by the FCA and full regulation by the OSC would be duplicative and inefficient.

The Applicant understands that this Application will be reviewed and discussed with Staff of the OSC and that it will be published by the OSC, along with a draft order, for a 30-day comment period.

Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.

* * *

[4] Agreements with overseas regulators | FCA

If you have any questions or you would otherwise like to discuss this further, please contact Martin Oakley, Global Head Regulatory Affairs & Group Chief Compliance Officer, at martin.oakley@360t.com or at +44 20 7862 7509 (U.K.) or +49 69 900289720 (Germany).

Sincerely,

_____

Martin Oakley
Global Head Regulatory Affairs & Group Chief Compliance Officer
Date

Part IV List of Annexures

Document	Annexure
360T UK Certificate of Incorporation	1
Change of Registered Office Address	1b
Board Information	2
360T UK MTF Rulebook	3
360T UK Fit and Proper Policy and Certification Procedures	4
360T UK Group Conflict of Interests Policy	5
360T UK Client Classification Policy	6
Fee Schedule	7
ICARA Document	8
Group Outsourcing Policy	9
Group Structure Chart	10
DBG Market Abuse Policy	11
360T UK Compliance Handbook	12
TEX Access Agreement	13a
TEX Access Agreement	13b
360T UK Appendix	14

Headnote

Section 147 of the Securities Act (Ontario), section 15.1 of NI 21-101, section 12.1 of NI 23-101 and section 10 of NI 23-103 – Application for an order that a multilateral trading facility (MTF) authorized by the United Kingdom (U.K.) Financial Conduct Authority (the FCA or Foreign Regulator) is exempt from the requirement to be recognized as an exchange in Ontario and from the requirements of NI 21-101, NI 23-101 and NI 23-103 in their entirety – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 147.
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 Electronic Access to Marketplaces, s. 10.

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

AND

IN THE MATTER OF
360 TRADING NETWORKS UK LIMITED

ORDER
(Section 147 of the Act)

WHEREAS 360 Trading Networks UK Limited (the **Applicant**) has filed an application dated November 30, 2023 (**Application**) with the Ontario Securities Commission (**Commission**) requesting the following relief (collectively, the **Requested Relief**):

(a) Exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act pursuant to section 147 of the Act; and

(b) Exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101 and the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) pursuant to section 10 of NI 23-103.

AND WHEREAS on December 22, 2023, the Commission issued an interim order under section 147 of the Act exempting the Applicant on an interim basis from the requirement under subsection 21(1) of the Act to be recognized as an exchange (**Interim Order**);

AND WHEREAS the Interim Order will terminate on the earlier of i) June 30, 2024 and (ii) the effective date of a subsequent order exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act, unless further extended by the order of the Commission;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is a private limited company organized under the laws of England & Wales. The applicant is a wholly owned subsidiary of 360 Treasury Systems AG, which in turn is a wholly owned subsidiary of Deutsch Börse AG. In the Province of Ontario, 360 Treasury Systems AG operates under the terms of an exemption order granted by the OSC on 14 June 2019.

2. On November 22, 2023, the Financial Conduct Authority (the **FCA**), a financial regulatory body in the U.K., authorized the Applicant to act as an operator of a multilateral trading facility (**MTF**) and the Applicant's U.K. MTF began operations on December 15, 2023;

3. The Applicant is a marketplace for trading FX derivative instruments. The MTF currently supports request-for-quote functionality for FX forwards, FX swaps, FX Strategy, FX options, FX non-deliverable forwards, FX non-deliverable swaps, and FX non-deliverable strategy (**the MTF Instruments**);

4. The Applicant is subject to regulatory supervision by the FCA and is required to comply with the FCA's Handbook (**FCA Rules**), which includes, among other things, rules on (a) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (b) market conduct (including rules applicable to firms operating an MTF), and (c) systems and controls (including rules on outsourcing,

governance, record-keeping and conflicts of interest). The FCA requires the Applicant to comply at all times with a set of threshold conditions for authorization, including requirements that the Applicant has sound business and controlled business operations and that it has appropriate resources for the activities it carries on. The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and is capitalized in excess of regulatory requirements. The Applicant is required to maintain an independent compliance function, which is headed by the Applicant's Chief Compliance Officer, an FCA-approved person. The Applicant's Compliance Department is responsible for identifying, assessing, advising, monitoring and reporting on the Applicant's compliance risk (i.e., the risk that the Applicant fails to comply with its obligations under the Financial Services and Markets Act 2000, the retained EU law version of the Markets in Financial Instruments Regulation (600/2014), the rules pertaining to this legislation, the applicable guidance from the FCA and the FCA Rules);

5. An MTF is obliged under the FCA rules to have requirements governing the conduct of members, to monitor compliance with those requirements and report to the FCA a) significant breaches of MTF rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant will also notify the FCA when a participant's access is terminated as a result of a significant rule infringement, and may notify the FCA when a participant is temporarily suspended or subject to condition(s). As required by FCA rules, the Applicant has implemented a trade surveillance program. The trade surveillance program is designed to maintain a fair and orderly market for the MTF's members;

6. At this time, the Applicant does not list any cleared instruments, but to the extent that the Applicant lists cleared instruments in the future, the MTF must submit all trades that are required to be cleared to a clearing house or clearing agency for clearing that is regulated as a clearing agency or clearing house by the applicable regulator;

7. The Applicant requires that its members qualify as an “eligible counterparty” or “professional client”, as defined by the FCA in COBS 3 of the FCA Rules and (i) satisfy capital adequacy and financial resource requirements, (ii) employ staff with adequate qualifications in key positions, (iii) be fit and proper to become members, (iv) have financial, business or personal standing suitable to enter into the relevant transactions, (v) have a sufficient level of trading ability and competence, (vi) be able to satisfy the general organizational and technical requirements for participation on the MTF, (vii) provide the Applicant with its Legal Entity Identifier (**LEI**) and all other required onboarding information; (viii) have adequate pre-trade controls on price, volume and value of orders and usage of the system and post-trade controls, and (ix) have adequate execution, order management and settlement systems in place. Each prospective member must: comply and ensure that its authorized traders comply, and, in each case, continue to comply, with the MTF Rulebook and applicable law; have the legal capacity to trade in the instruments it selects to trade on the MTF; and have all registrations, authorizations, approvals and/or consents required by applicable law in connection with trading in instruments on the MTF;

8. All members that are located in Ontario, including participants with their headquarters or legal address in Ontario (e.g., as indicated by a participant's LEI) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario Users**) will be required to sign a user acknowledgment representing that they meet the criteria set forth in the user acknowledgment, including that they are appropriately registered under Ontario securities laws, exempt from registration or not subject to registration requirements. The user acknowledgment will require an Ontario User to make an ongoing representation each time it uses the MTF that it continues to meet the criteria set forth in the user acknowledgment. An Ontario User will also be required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis;

9. The Applicant expects that Ontario Users will consist of banking institutions, broker-dealers and corporate entities that meet the criteria described above;

10. The Applicant does not offer access to retail clients;

11. Because the MTF sets requirements for the conduct of its members and surveils the trading activity of its members, it is considered by the Commission to be an exchange;

12. Since the Applicant seeks to provide Ontario Users with direct access to trading of the MTF Instruments on the MTF, it is considered by the Commission to be “carrying on business as an exchange” in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;

13. The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein; and

14. The Applicant satisfies the exemption criteria as described in Appendix I to Schedule “A”.

AND WHEREAS the products traded on the MTF are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant's activities on an ongoing basis to determine whether it is appropriate for the Exchange Relief to continue to be granted subject to the terms and conditions set out in Schedule "A" to this order;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Requested Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order, or the determination whether it is appropriate that the Applicant continue to be exempted from the requirement to be recognized as an exchange, may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the Applicant satisfies the criteria set out in Appendix I to Schedule "A" and that the granting of the Requested Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that,

(i) pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act; and

(ii) pursuant to sections 15.1 of NI 21-101, 12.1 of NI 23-101 and 10 of NI 23-103, the Applicant is exempt from the requirements in NI 21-101, NI 23-101 and NI 23-103.

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule "A".

DATED _____ ___, 2024

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant (**360 Trading Networks UK Limited**, or **360T UK**) will continue to meet the criteria for exemption included in Appendix I to this Schedule.

Regulation and Oversight of the Applicant

2. **360T UK** will maintain its authorization as an operator of a multilateral trading facility ("**MTF**") with the U.K. Financial Conduct Authority ("**FCA**") and will continue to be subject to the regulatory oversight of the FCA.

3. **360T UK** will continue to comply with the ongoing requirements applicable to it as an operator of an MTF authorized with the FCA.

4. **360T UK** will promptly notify the Commission if its authorization as an operator of an MTF has been revoked, suspended, or amended by the FCA, or the basis on which its authorization as an operator of an MTF has been granted has significantly changed.

5. **360T UK** must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. **360T UK** will not provide direct access to a participant in Ontario including a participant with its headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity ("**Ontario User"**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or exempt from or not subject to those requirements, and qualifies an "eligible counterparty" or "professional client" as defined by the FCA in COBS 3 of the FCA's Handbook.

7. For each Ontario User provided direct access to its MTF, **360T UK** will require, as part of its application documentation or continued access to the MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

8. **360T UK** may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided **360T UK** notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses **360T UK**'s MTF.

9. **360T UK** will require Ontario Users to notify **360T UK** if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, **360T UK** will promptly restrict the Ontario User's access to **360T UK** if the Ontario User is no longer appropriately registered or exempt from those requirements.

Trading by Ontario Users

10. **360T UK** will not provide access to an Ontario User to trading in products other than FX forwards, FX swaps, FX options, FX Strategy, FX non-deliverable forwards, non-deliverable swaps, and non-deliverable strategy without prior Commission approval.

Submission to Jurisdiction and Agent for Service

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of **360T UK** in Ontario, **360T UK** will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

12. **360T UK** will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission 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, related to, concerning or in any other manner connected with the Commission's regulation and oversight of **360T UK's** activities in Ontario.

Prompt Reporting

13. **360T UK** will notify staff of the Commission promptly of any of:

    a. any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on **360T UK**'s operations;

    b. **360T UK** institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate **360T UK** or has a proceeding for any such petition instituted against it;

    c. a receiver is appointed for **360T UK** or **360T UK** makes any voluntary arrangement with creditors;

    d. **360T UK** marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;

    e. any known investigations of, or disciplinary action against, **360T UK** by the FCA or any other regulatory authority to which it is subject; and

    f. **360T UK** makes any material change to the eligibility criteria for Ontario Users.

Semi-Annual Reporting

14. **360T UK** will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:

    (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by **360T UK**, other persons or companies located in Ontario trading on **360T UK**'s MTFs as customers of participants (Other Ontario Participants);

    (b) the legal entity identifier assigned to each Ontario User, and, to the extent known by **360T UK**, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;

    (c) a list of all Ontario Users against whom disciplinary action has been taken since the previous report by **360T UK** or its regulation services provider (RSP) acting on its behalf, or, to the best of **360T UK**'s knowledge, by the FCA with respect to such Ontario Users' activities on **360T UK** and the aggregate number of disciplinary actions taken against all participants since the previous report by **360T UK** or its RSP acting on its behalf;

    (d) a list of all active investigations since the last report by **360T UK** relating to Ontario Users and the aggregate number of active investigations since the last report relating to all participants undertaken by **360T UK**;

    (e) a list of all Ontario applicants for status as a participant who were denied such status or access to **360T UK** since the last report, together with the reasons for each such denial; and

    (f) for each product,

        (i) the total trading volume and value originating from Ontario Users, and, to the extent known by **360T UK**, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and

        (ii) the proportion of worldwide trading volume and value on **360T UK**'s MTFs conducted by Ontario Users, and, to the extent known by **360T UK**, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

    provided in the required format.

Information Sharing

15. **360T UK** will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX I TO SCHEDULE "A"

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (**Foreign Regulator**).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

a. effective oversight of the exchange,

b. that business and regulatory decisions are in keeping with its public interest mandate,

c. fair, meaningful and diverse representation on the board of directors (**Board**) and any committees of the Board, including:

   i. appropriate representation of independent directors, and

   ii. a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

d. the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

e. there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

i. participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,

ii. the competence, integrity and authority of systems users, and

iii. systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(d) The exchange does not

i. permit unreasonable discrimination among participants, or

ii. impose any burden on competition that is not reasonably necessary and appropriate.

(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

a. The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.

b. The Rules are not contrary to the public interest and are designed to

i. ensure compliance with applicable legislation,

ii. prevent fraudulent and manipulative acts and practices,

iii. promote just and equitable principles of trade,

iv. foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,

v. provide a framework for disciplinary and enforcement actions, and

vi. ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

a. parties are given an opportunity to be heard or make representations, and

b. it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

8.2 Risk Management of Clearing House

The exchange does not offer products which are intended to be cleared.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

a. order entry,

b. order routing,

c. execution,

d. trade reporting,

e. trade comparison,

f. data feeds,

g. market surveillance,

h. trade clearing, and

i. financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

a. makes reasonable current and future capacity estimates;

b. conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

c. reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

d. ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

e. ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

f. maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

g. maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 FEES

15.1 Fees

a. All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

b. The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

Index

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