The Ontario Securities Commission

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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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A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Thomas John Finch

FOR IMMEDIATE RELEASE
March 6, 2024

THOMAS JOHN FINCH,
File No. 2023-29

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

A copy of the Order dated March 6, 2024 is available at capitalmarketstribunal.ca.

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A.2.2 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
March 6, 2024

CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.,
File No. 2022-24

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

A copy of the Order dated March 6, 2024 is available at capitalmarketstribunal.ca.

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A.2.3 Aimia Inc. and Mithaq Capital SPC

FOR IMMEDIATE RELEASE
March 7, 2024

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

TORONTO – The hearing of the motion brought by Mithaq Capital SPC for an order dismissing the application of Aimia Inc. in the above-named matter is scheduled to be heard on April 10, 2024 at 10:00 a.m. by videoconference.

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

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A.2.4 Raymond Pomroy

FOR IMMEDIATE RELEASE
March 8, 2024

RAYMOND POMROY,
File No. 2024-3

TORONTO – Following a hearing held today, the Tribunal issued an Order in the above- named matter approving the Settlement Agreement reached between Staff of the Commission and Raymond Pomroy.

A copy of the Order dated March 8, 2024, Settlement Agreement dated February 26, 2024 and Oral Reasons for Approval of a Settlement dated March 8, 2024 are available at capitalmarketstribunal.ca.

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A.2.5 Mithaq Canada Inc. et al.

FOR IMMEDIATE RELEASE
March 11, 2024

MITHAQ CANADA INC. AND
AIMIA INC. AND
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE,
File No. 2023-28

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

A copy of the Reasons for Decision dated March 8, 2024 is available at capitalmarketstribunal.ca.

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A.3
Orders

A.3.1 Thomas John Finch

IN THE MATTER OF
THOMAS JOHN FINCH

File No. 2023-29

Adjudicator: Timothy Moseley (chair of the panel)
Jane Waechter

March 6, 2024

ORDER

WHEREAS on March 6, 2024, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Ontario Securities Commission and for Thomas John Finch;

IT IS ORDERED THAT:

1. by April 5, 2024 at 4:30 p.m., the respondent shall:

   a. serve and file their witness list,

   b. serve a summary of each witness's anticipated evidence, and

   c. indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence; and

2. a further attendance in this matter is scheduled for May 6, 2024, at 1:00 p.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Timothy Moseley"

"Jane Waechter"

A.3.2 Cormark Securities Inc. et al.

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.

File No. 2022-24

Adjudicators: M. Cecilia Williams (chair of the panel)
Jane Waechter
Geoffrey D. Creighton

March 6, 2024

ORDER

WHEREAS on November 29, 2023 the Capital Markets Tribunal issued an order directing Cormark Securities Inc., William Jeffrey Kennedy and Staff of the Ontario Securities Commission to agree on a referee to conduct a privilege review; and

WHEREAS on January 16, 2024 the Capital Markets Tribunal issued an order appointing the Honourable Robert A. Blair of Arbitration Place (the **Referee**) to conduct a review of documents over which Canopy Growth Corporation (**Canopy**) has claimed privilege; and

ON READING the report of the Referee dated March 4, 2024, summarizing his conclusions with respect to each communication or document over which privilege has been asserted by Canopy (the **Report**);

IT IS ORDERED THAT:

1. the non-privileged documents or communications, or portions thereof, as determined by the Referee and set out in the Report, shall be produced by Canopy to all parties by no later than Tuesday, March 12, 2024.

"M. Cecilia Williams"

"Jane Waechter"

"Geoffrey D. Creighton"

A.3.3 Raymond Pomroy – ss. 127, 127.1

IN THE MATTER OF
RAYMOND POMROY

File No. 2024-3

Adjudicator: Andrea Burke (chair of the panel)
Mary Condon
William Furlong

March 8, 2024

ORDER
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

WHEREAS on March 8, 2024, the Capital Markets Tribunal held a hearing by video conference to consider the Joint Request for a Settlement Hearing filed by Raymond Pomroy (**Pomroy**) and Staff of the Enforcement Branch of the Ontario Securities Commission (**Staff**) for approval of a settlement agreement dated February 26, 2024 (the **Settlement Agreement**);

ON READING the Joint Application for a Settlement Hearing, including the Settlement Agreement, the Statement of Allegations dated February 28, 2024, and the written submissions, on hearing the submissions of the representatives of the parties, and on being advised by Staff that it has received payment from Pomroy in the amount of $90,000 and on considering that Pomroy has given an undertaking to the Commission attached as Schedule "A" to this Order, in accordance with the terms of the Settlement Agreement;

IT IS ORDERED that:

1. the Settlement Agreement is approved;

2. pursuant to paragraph 7 of subsection 127(1) of the Act, Pomroy shall immediately resign any position that he holds as a director or officer of a reporting issuer;

3. pursuant to paragraph 8 of subsection 127(1) of the Act, Pomroy is prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 5 years;

4. pursuant to paragraph 9 of subsection 127(1) of the Act, Pomroy shall pay an administrative penalty in the amount of $75,000 to the Commission; and

5. pursuant to section 127.1 of the Act, Pomroy shall pay costs of the investigation to the Commission in the amount of $15,000.

"Andrea Burke"

"Mary Condon"

"William Furlong"

Schedule "A"

IN THE MATTER OF
RAYMOND POMROY

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated February 26, 2024 (the **Settlement Agreement**) between Raymond Pomroy (the **Respondent**) and the Ontario Securities Commission (the **Commission**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. The Respondent undertakes to the Commission that he shall complete an education course, agreeable to the Commission, in relation to the roles, responsibilities and obligations of directors and officers of reporting issuers as well as disclosure obligations of reporting issuers (the **Education Course**) prior to becoming a director or officer of a reporting issuer. The Respondent must complete this Education Course no more than one year prior to the date on which he becomes a director or officer of a reporting issuer.

3. The Respondent undertakes to the Commission to cooperate with the Commission in its investigation into the matters set out in the Settlement Agreement, including, if required, testifying as a witness in any proceedings commenced or continued by the Commission relating to the matters set out in the Settlement Agreement dated February 26, 2024, and meeting in advance of any such proceeding to prepare for that testimony.

DATED at Mississauga, Ontario, this 26 day of February, 2024.

"James Gibson"	"Raymond Pomroy"
Witness: James Gibson, counsel for Raymond Pomroy	**RAYMOND POMROY**

IN THE MATTER OF
RAYMOND POMROY

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

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.

PART II - JOINT SETTLEMENT RECOMMENDATION

5. The parties will jointly file a request that the Capital Markets Tribunal (the **Tribunal**) issue a Notice of Hearing (the **Notice of Hearing**) to announce that it will hold a hearing (the **Settlement Hearing**) to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**), it is in the public interest for the Tribunal to make certain orders against the Respondent.

6. The parties recommend settlement of the proceeding (the **Proceeding**) against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in this Settlement Agreement. The Respondent consents to the making of an order (the **Order**) substantially in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out in Part III herein.

7. For the purposes of the Proceeding and any other regulatory proceeding commenced by a securities regulatory authority only, and without prejudice to the Respondent's position in any other proceeding, the Respondent agrees for the purpose of settlement with the facts set out in Part III of this Settlement Agreement, the conclusions in Part V, and the terms of settlement in Part VI of this Settlement Agreement.

PART III - AGREED FACTS

A. SoLVBL's Business and Technology

8. 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.

9. 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.

10. 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.

11. 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.

B. Planned Private Placements and the NFT Deal

12. 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.

13. 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.

14. 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**).

15. 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.

16. 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.

17. 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.

C. Announcement of the NFT Deal

18. 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

19. 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."

20. 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.

21. 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

22. 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."

23. 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.

24. 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 Statements in the News Releases

25. 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.

26. 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.

27. 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

28. 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."

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

D. SoLVBL Raises $4 Million in Private Placements

30. 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.

31. 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).

32. 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.

33. 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).

E. No Work Done on NFT Deal

34. 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.

F. Statements Reasonably Expected to Have Significant Effect on Market Price or Value

35. 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.

36. 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.

37. 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."

38. 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.

39. 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.

40. 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."

41. 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."

G. MITIGATING FACTORS

42. Pomroy has accepted full responsibility for his conduct and admits to his part in the misconduct described above.

43. Pomroy has been granted credit for cooperation pursuant to the OSC Staff Notice: 15-702 *Revised Credit for Cooperation Program* for cooperating fully with the investigation, including the undertaking to cooperate fully as this matter progresses and testify as a witness in any future enforcement proceeding as set out in Schedule "B" to this Settlement Agreement.

44. Pomroy has no history of prior misconduct with any securities regulatory authority or history of registration at the time of the conduct.

PART IV - RESPONDENT'S POSITION

45. The Respondent requests that the Settlement Hearing panel consider the following circumstances. The Commission does not object to the Respondent putting forward the circumstances set out below:

(a) Pomroy had no previous experience acting as an officer of a public company or in a role involving the disclosure obligations of a reporting issuer;

(b) Pomroy relied upon Akbar, the company's counsel, for information provided in the News Releases and to ensure that the News Releases and public filings complied with Ontario securities law;

(c) Other than his negotiated salary, Pomroy did not profit from his role as CEO of SoLVBL or from the conduct at issue; and

(d) Pomroy is making the required settlement payments from his personal funds and neither SoLVBL nor any insurer has agreed to indemnify him for those payments.

PART V - NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

46. By engaging in the conduct described above, Pomroy admits and acknowledges that he made and caused SoLVBL to make statements in the News Releases and in contemporaneous MD&As regarding the NFT Deal that he 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 Act. These statements would reasonably be expected to have a significant effect on the market price or value of SoLVBL's securities.

PART VI - TERMS OF SETTLEMENT

47. The Respondent agrees to the terms of settlement set forth below.

48. The Respondent consents to the Order substantially in the form attached as Schedule "A", pursuant to which it is ordered that:

(a) this Settlement Agreement is approved;

(b) Pomroy immediately resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(c) Pomroy be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 5 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;

(d) Pomroy pay an administrative penalty in the amount of $75,000, pursuant to paragraph 9 of subsection 127(1) of the Act;

(e) Pomroy pay costs of the investigation in the amount of $15,000, pursuant to section 127.1 of the Act;

(f) the amounts set out in sub-paragraphs (d) and (e) be paid in full to the Commission by wire transfer prior to the commencement of the Settlement Hearing.

49. The Respondent has given an undertaking (the **Undertaking**) to the Commission in the form attached as Schedule "B" to this Settlement Agreement, which includes an undertaking to complete an education course no more than one year before the date on which he becomes a director or officer of a reporting issuer and an undertaking to testify as a witness in any proceeding commenced or continued by the Commission relating to the matters set out in this Settlement Agreement.

50. The Respondent consents to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 48, other than sub-paragraphs 48(d) and 48(e). These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

51. The Respondent acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VII - FURTHER PROCEEDINGS

52. If the Tribunal approves this Settlement Agreement, no enforcement proceedings will be commenced or continued against the Respondent under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement or the Undertaking, in which case enforcement proceedings may be brought under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement or the Undertaking.

53. The Respondent acknowledges that, if the Tribunal approves this Settlement Agreement and the Respondent fails to comply with any term in it or the Undertaking, proceedings may be brought against the Respondent.

54. The Respondent waives any defences to a proceeding referenced in paragraph 52 or 53 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement or the Undertaking.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

55. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Tribunal, which shall be held on a date determined by the Tribunal's Governance and Tribunal Secretariat in accordance with this Settlement Agreement and the Tribunal's *Rules of Procedure and Forms*.

56. The Respondent will attend the Settlement Hearing in person or by video conference.

57. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

58. If the Tribunal approves this Settlement Agreement:

(a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

(b) no party will make any public statement concerning this Proceeding that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

59. Whether or not the Tribunal approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission or the Tribunal's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX - DISCLOSURE OF SETTLEMENT AGREEMENT

60. If the Tribunal does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

    (a) this Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing will be without prejudice to any party; and

    (b) the parties will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

61. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Tribunal does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless the parties otherwise agree in writing or if required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

62. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

63. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Mississauga, Ontario, this this 26th day of February, 2024.

"James Gibson"	"Raymond Pomroy"
Witness: James Gibson, counsel for Raymond Pomroy	**RAYMOND POMROY**

DATED at Toronto, Ontario, this 28th day of February, 2024.

ONTARIO SECURITIES COMMISSION

By: "Jeff Kehoe"

Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A"

ORDER

IN THE MATTER OF
RAYMOND POMROY

File No.

(Names of panelists comprising the panel)

(Day and date order made)

ORDER
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

WHEREAS on **[date]**, the Capital Markets Tribunal (the **Tribunal**) held a hearing **[in person /by video conference]** to consider the request made jointly by the parties for approval of a settlement agreement dated **[date]** (the **Settlement Agreement**) regarding Raymond Pomroy (**Pomroy** or the **Respondent**);

ON READING the joint application for a settlement hearing, including the Settlement Agreement dated **[date]**, the Statement of Allegations dated **[date]**, and the written submissions and on hearing the submissions of the representatives for each of the parties, and on considering the Respondent having made the payment of the administrative penalty and costs amounts, and has given an undertaking to the Commission attached as Schedule "A" to this Order, in accordance with the terms of the Settlement Agreement;

IT IS ORDERED THAT:

1. Pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the Settlement Agreement is approved;

2. Pursuant to subsection 127(1) and 127(1.1) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

   (a) this Settlement Agreement is approved;

   (b) Pomroy immediately resign any position that the Respondent holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

   (c) Pomroy be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 5 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;

   (d) Pomroy pay an administrative penalty in the amount of $75,000, pursuant to paragraph 9 of subsection 127(1) of the Act; and

   (e) Pomroy pay costs of the investigation in the amount of $15,000, pursuant to section 127.1 of the Act.

[Adjudicator]

[Adjudicator]

[Adjudicator]

SCHEDULE "B"

UNDERTAKING

IN THE MATTER OF
THE *SECURITIES ACT,*
RSO 1990, c S.5

IN THE MATTER OF
RAYMOND POMROY

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated **[date]** (the Settlement Agreement) between Raymond Pomroy (the **Respondent**) and the Ontario Securities Commission (the **Commission**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. The Respondent undertakes to the Commission that he shall complete an education course, agreeable to the Commission, in relation to the roles, responsibilities and obligations of directors and officers of reporting issuers as well as disclosure obligations of reporting issuers (the **Education Course**) prior to becoming a director or officer of a reporting issuer. The Respondent must complete this Education Course no more than one year prior to the date on which he becomes a director or officer of a reporting issuer.

3. The Respondent undertakes to the Commission to cooperate with the Commission in its investigation into the matters set out in the Settlement Agreement, including, if required, testifying as a witness in any proceedings commenced or continued by the Commission relating to the matters set out in the Settlement Agreement dated **[date]**, and meeting in advance of any such proceeding to prepare for that testimony.

DATED at **[city]**, **[province]** this **[date]** day of **[date]**.

______________________________	______________________________
Witness: ●	**RAYMOND POMROY**

A.4
Reasons and Decisions

A.4.1 Raymond Pomroy – ss. 127(1), 127.1

Citation: *Pomroy (Re)*, 2024 ONCMT 10
Date: 2024-03-08
File No. 2024-3

IN THE MATTER OF
RAYMOND POMROY

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Andrea Burke (chair of the panel) Mary Condon William Furlong	
Hearing:	By videoconference, March 8, 2024	
Appearances:	Sarah McLeod	For Staff of the Ontario Securities Commission
	James Gibson	For Raymond Pomroy

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

1. OVERVIEW

[1] Staff of the Ontario Securities Commission has alleged that Raymond Pomroy made misleading or untrue statements in news releases and filings, contrary to section 126.2(1) of the *Securities Act*[1] (the **Act**) and also that he thereby engaged in conduct contrary to the public interest.

[2] Staff and Pomroy seek approval of a settlement agreement dated February 26, 2024 that they have entered into regarding these allegations (the **Settlement Agreement**). We conclude that it is in the public interest to approve the settlement for the following reasons.

2. FACTS AND ADMISSIONS

[3] The relevant factual background and admissions are set out in more detail in the Settlement Agreement, but we summarize the most important agreed facts and admissions here.

[4] From September 2019 to November 19, 2021, Pomroy served as the Chief Executive Officer of SoLVBL Solutions Inc. (**SoLVBL**), a reporting issuer in Ontario. SoLVBL's shares trade on the Canadian Securities Exchange and on the United States over-the-counter Pink Sheets.

[5] Ahmed Kaiser Akbar was a founder of and initial investor in SoLVBL's predecessor. During the period from April to July 2021, Akbar acted as a consultant and served as legal counsel for SoLVBL. Along with his spouse, Akbar owned over 10% of the shares of SoLVBL.

[6] 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 (comprised of one SoLVBL share and one warrant). The agreement provided that the price would be reconfirmed prior to the launch of the private placements.

[7] 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 the shares of the existing shareholders.

[1] RSO 1990, c S.5

[8] 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. SoLVBL and New Foundation entered into an Intellectual Property Licensing Agreement effective April 29, 2021 which granted New Foundation an exclusive, worldwide license to use SoLVBL's intellectual property for the creation of non-fungible tokens (or NFTs) (the **NFT Deal**). Other than the execution of the Licensing Agreement, no work was done on the NFT Deal and New Foundation does not appear to have conducted any business outside of signing the Licensing Agreement.

[9] In May and June 2021, SoLVBL issued two news releases regarding the NFT Deal that contained false and misleading information (the **News Releases**). SoLVBL's Management Discussion & Analyses from May 31, 2021 to May 1, 2022 repeated some of the same false and misleading statements regarding New Foundation and the NFT Deal. These false and misleading statements would reasonably be expected to have had a significant effect on the market price or value of the SoLVBL shares. The News Releases were drafted by Akbar and 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.

[10] The News Releases:

a. created the misleading impression that SoLVBL was entering into a deal with an established international company;

b. created the misleading impression that SoLVBL submitted a competitive proposal in an RFP process in order to win the contract with New Foundation; and

c. did not disclose the relationship between SoLVBL and New Foundation and important facts about the NFT Deal, including that all of New Foundation's investors were also shareholders of SoLVBL who were funding SoLVBL's operations with loans to the company and had an interest in SoLVBL successfully raising capital in the upcoming private placements.

[11] Following the announcement of the NFT Deal in the News Releases, SoLVBL finalized the terms of two private placements with Research Capital. The private placements occurred in July 2021 and raised a total of $4 million. Following the private placements, SoLVBL paid off debts owed to various insiders, including Akbar, and paid unpaid salary owed to Pomroy.

3. THE SETTLEMENT AGREEMENT

3.1 Key Terms of the Settlement Agreement

[12] Staff and Pomroy have agreed that Pomroy will pay an administrative penalty of $75,000 to the Commission, and costs of the Commission's investigation in the amount of $15,000. In accordance with the terms of the Settlement Agreement, Pomroy paid these amounts to the Commission before this hearing.

[13] The parties have also agreed that:

a. Pomroy will immediately resign any position he holds as a director or officer of a reporting issuer and will be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 5 years; and

b. Pomroy will provide an undertaking to the Commission to: (i) complete an education course no more than one year before the date on which he becomes a director or officer of a reporting issuer, (ii) cooperate with Staff's investigation and testify as a witness in any proceeding commenced or continued by the Commission relating to the matters set out in the Settlement Agreement, and (iii) meet with Staff in advance to prepare to testify. In accordance with the terms of the Settlement Agreement, Pomroy provided this undertaking to the Commission before this hearing.

3.2 Our Consideration of the Settlement Agreement

[14] We have reviewed the Settlement Agreement in detail. In addition, we had the benefit of a confidential settlement conference (as well as follow-up communications) with OSC Staff and Pomroy's counsel.

[15] Our role at this settlement hearing is to determine whether the negotiated result in the Settlement Agreement falls within a range of reasonable outcomes, and whether it is in the public interest to approve the settlement.[2] The Settlement Agreement is the product of negotiation between Staff and Pomroy. When considering settlements for approval, the

[2] *Research in Motion Limited (Re)*, 2009 ONSEC 19 at paras 45-46

Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties.[3] We have done so in this case.

[16] We have taken into consideration the agreed mitigating factor that Pomroy has been granted credit for cooperation by Staff pursuant to OSC Staff Notice 15-702 *Revised Credit for Cooperation Program* for cooperating fully with the investigation, including by providing the undertaking.

[17] Pomroy asked, and Staff did not object, that we consider several additional factors. We have done so. Those factors are detailed in the Settlement Agreement. They include that Pomroy had no previous experience as an officer of a public company, Pomroy relied on Akbar as a corporate and securities lawyer with approximately 22 years of experience, Pomroy did not benefit from his role as CEO other than to receive his negotiated salary, and Pomroy is making the required settlement payments from his personal funds. While some of these additional factors may be mitigating, we do not necessarily agree that they all are.

[18] We initially struggled with the sufficiency of the amount of the administrative penalty agreed by the parties, from the perspective of the public interest. We asked questions of counsel and heard their submissions on this point in the confidential settlement conference. We ultimately defer to the parties' ability to negotiate the settlement terms and are satisfied, given all of the circumstances, that the terms of the Settlement Agreement (including the administrative penalty) fall within a reasonable range of outcomes.

[19] In arriving at our decision, we have applied the relevant factors from the non-exhaustive list of factors the Tribunal has identified as relevant to sanctions orders in general.[4]

4. CONCLUSION

[20] In our view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances. The Settlement Agreement also properly reflects the principles underlying the application of sanctions, including recognition of the seriousness of the misconduct, the need for specific and general deterrence of such misconduct, and the importance of fostering investor protection and confidence in the capital markets.

[21] For these reasons we conclude that it is in the public interest to approve the Settlement Agreement. We will therefore issue an order substantially in the form of the draft attached to the Settlement Agreement.

Dated at Toronto this 8th day of March, 2024

"Andrea Burke"

"Mary Condon"

"William Furlong"

[3] *Katanga Mining Limited (Re)*, 2018 ONSEC 59 at para 18
[4] *Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at paras 23-26

A.4.2 Mithaq Canada Inc. et al. – ss. 8, 21.7, 104, 127

Citation: *Mithaq Canada Inc (Re)*, 2024 ONCMT 9
Date: 2024-03-08
File No. 2023-28

IN THE MATTER OF
MITHAQ CANADA INC.

AND

IN THE MATTER OF
AIMIA INC.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE

REASONS FOR DECISION
(Sections 8, 21.7, 104 and 127 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Timothy Moseley (chair of the panel) James D.G. Douglas Dale R. Ponder	
Hearing:	By videoconference, December 12 and 13, 2023	
Appearances:	Andrew Gray Sarah Whitmore Hanna Singer	For Mithaq Canada Inc.
	Orestes Pasparakis James Renihan Mark Laschuk	For Aimia Inc.
	Eliot Kolers Hamza Mohamadhossen	For Toronto Stock Exchange
	Anna Huculak Jason Koskela David Mendicino Jordan Lavi	For Staff of the Ontario Securities Commission
	David D. Conklin Jerred Kiss	For Special Committee of the Board of Directors of Aimia Inc.
	Teresa M. Tomchak Lauren Harper	For Eagle 1250 Investments Group LLC

REASONS FOR DECISION

1. OVERVIEW

[1] Mithaq Capital SPC (**Mithaq Capital**) is the largest common shareholder of Aimia Inc., a publicly traded company. Mithaq Capital and its wholly-owned subsidiary, Mithaq Canada Inc. (**Mithaq**), have been engaged in litigation in court and before this Tribunal about Aimia's governance and strategy. On October 5, 2023, Mithaq made an unsolicited take-over bid for Aimia.

[2] In this application, Mithaq asked us to:

a. cease trade a private placement that Aimia implemented, primarily on the ground that it was a defensive tactic; and

b. set aside a decision of the Toronto Stock Exchange (**TSX**) that approved the private placement without requiring that Aimia obtain shareholder approval.

[3] Mithaq also asked us to cease trade a shareholder rights plan that Aimia adopted. That request became moot, as we explain below.

[4] Aimia brought a cross-application asking us to deny Mithaq the benefit of an exemption contained in Ontario securities law that permits a bidder to acquire up to 5% of the target's shares if certain conditions are met.

[5] We heard this application on December 12 and 13, 2023. On December 14, 2023, we dismissed both the application and the cross-application, for reasons to follow.[1] These are our reasons for that decision.

[6] We concluded that the private placement was designed primarily to meet Aimia's serious and immediate need for financing. Aimia began planning the private placement well before Mithaq's bid, when Aimia had no reasonable basis to see a bid as imminent. Indeed, the private placement was near implementation when Mithaq announced its bid. The private placement did end up changing the bid environment, unfavourably for Mithaq. However, that characteristic was secondary, and was insufficient to justify cease trading the private placement.

[7] We also concluded that there was no basis to interfere with the TSX decision. Contrary to Mithaq's submissions, that decision was thorough and contained no error in principle, and there is no new and compelling evidence that was not before the TSX.

[8] Finally, on Aimia's cross-application, we found no reason to deny Mithaq the exemption that Ontario securities law provides. Specifically, we rejected Aimia's contention that we should decide that Mithaq's bid was not made in good faith.

2. BACKGROUND

[9] In these reasons, all events occurred in 2023 unless otherwise noted.

[10] Aimia is a reporting issuer, whose common shares are listed on the TSX. Mithaq Capital filed early warning reports in February, April and May, disclosing that it owned or controlled 18.74%, 19.99% and 30.96%, respectively, of Aimia's common shares.

[11] In advance of an April annual general meeting of Aimia shareholders, Mithaq Capital announced that it would vote against the re-election of Aimia's board. At the meeting, the board chair was not re-elected, and none of the other director nominees received more than 52.41% of the votes cast. Mithaq Capital asked for a proxy review of the voting results, but Aimia denied the request. Mithaq Capital then applied to the Ontario Superior Court of Justice, seeking relief to facilitate its requested proxy review.

[12] Aimia responded by adding Mithaq Capital to a different court proceeding it had already brought relating to an individual's alleged disclosure to Mithaq Capital of Aimia's confidential information. In adding Mithaq Capital, Aimia sought to prevent it from requisitioning a special shareholder meeting, voting its Aimia shares, or acquiring additional Aimia shares, among other requested relief.

[13] In June, Aimia adopted a shareholder rights plan, which it stated publicly was in response to Mithaq Capital's increased shareholdings. Aimia never sought shareholder approval of the plan.

[14] On September 15, Aimia asked the TSX to give conditional approval for a private placement reflected in a non-binding term sheet. The TSX gave preliminary comments and ultimately gave conditional approval on September 28.

[15] On October 5, Mithaq made an all-cash offer for all outstanding common shares of Aimia at $3.66 per share. The offer was to remain open for acceptance until January 18, 2024, unless extended. On October 10, Aimia announced that it had formed a Special Committee of the board to assess the offer.

[16] On October 11, the TSX decided to maintain its earlier decision to conditionally approve the private placement, but also required Aimia to give advance notice to the market.

[17] On October 13, Aimia announced that it intended to complete a private placement to a group of undisclosed investors, and to close that transaction on October 19. The private placement would be for up to 10,475,000 Aimia common shares and an equal number of common share purchase warrants.

[18] Aimia also announced that under the terms of the private placement, the investor group would get up to three of the eight board seats and, if the private placement were fully subscribed and all warrants exercised, the shares issuable would represent 24.89% of the then-outstanding common shares (on an undiluted basis). The private placement was expected to raise up to $32.5 million in gross proceeds, the stated purpose of which was to fund Aimia's operations over the next 12 to 24 months and to support its strategic investment plan and other contingencies.

[1] *Mithaq Canada Inc (Re)*, (2023) 46 OSCB 10387

[19] Following Aimia's announcement, Mithaq commenced this application. On October 19, we held an expedited hearing to consider Mithaq's request for interim relief. By order that day,[2] for reasons we issued on December 6,[3] we granted some of the interim relief that Mithaq had sought. We considered an undertaking that Aimia had given us about steps it would take to unwind the private placement if Mithaq ultimately succeeded in its application. We also considered Aimia's representation about what securities would be issued under the private placement. We decided that we would cease trade the private placement unless Aimia gave an additional undertaking that any securities issued under the private placement could not be tendered to any alternative take-over bid or issuer bid. Soon after we issued that order, Aimia gave the additional undertaking. The private placement was not cease traded.

[20] The following day, on October 20, the TSX confirmed that it had considered the result of the October 19 hearing, and that it was giving its conditional approval of the private placement. On that same day, Aimia issued a directors' circular that disclosed the private placement investors' stated intention not to tender to Mithaq's bid.

[21] Aimia's shareholder rights plan expired on its own terms on December 7. On that day, Aimia announced that it had adopted a replacement plan the previous day. At the hearing before us on December 12 and 13, Aimia undertook to withdraw the replacement plan on the issuance of our decision (which, as it turned out, was December 14).

3. INTERVENORS

[22] Eagle 1250 Investments Group LLC (**Eagle**), the lead investor in the private placement, sought intervenor status in this proceeding, with full rights of participation. Aimia's Special Committee did the same. By order issued by a separate panel on November 23,[4] for reasons issued on December 20,[5] this Tribunal granted those intervenor requests.

4. PRELIMINARY ISSUE – EXPERT REPORTS

4.1 Introduction

[23] Before turning to our main analysis, we address one preliminary issue relating to expert reports.

[24] Each of Mithaq and Aimia sought to introduce into evidence two expert reports, one about the Aimia board's process in responding to the Mithaq bid, and one about the proper valuation of the shares and warrants issued under the private placement. After hearing submissions, we decided to exclude the competing reports about the board's process, but to admit the competing valuation reports. We deal first with the reports about the board's process.

4.2 Reports about the board's process

[25] Mithaq tendered a report from Alan Hibben, who has extensive experience as an investment banker, executive, board member and advisor to public companies. Mithaq asked Hibben to address three topics:

a. the approach of Aimia's directors to the private placement and alternatives;

b. the financial terms of the private placement and the alternatives Aimia's board could have pursued; and

c. the impact of the private placement on the take-over bid process.

[26] Commission Staff objected to the admission of Hibben's report, on the ground that this Tribunal is expert in capital markets matters, and does not need expert opinion evidence on the questions covered in that report.

[27] In resolving that issue, we were guided by the Supreme Court of Canada's decision in *R v Mohan*,[6] which sets out a framework for considering expert evidence. One of the threshold criteria that *Mohan* establishes is necessity; in other words, does the tribunal need the expert opinion to understand evidence that would otherwise be beyond the tribunal's understanding? If the tribunal does not need the expert opinion, then the tribunal should not admit the report.

[28] Mithaq submitted that Hibben's opinions were necessary and that they would be helpful. However, the test is necessity, not helpfulness. As *Mohan* tells us, "helpful" sets too low a bar.[7]

[29] The issues in Hibben's report are for us to decide. Hibben bases his opinions on his review of various documents, including continuous disclosure documents, board presentations, and investor communications. This Tribunal regularly

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[2] *Mithaq Canada Inc (Re)*, (2023) 46 OSCB 8654
[3] *Mithaq Canada Inc (Re)*, 2023 ONCMT 48
[4] *Mithaq Canada Inc (Re)*, (2023) 46 OSCB 9591
[5] *Mithaq Canada Inc (Re)*, 2023 ONCMT 51
[6] [1994] 2 SCR 9 (***Mohan SCR***), 1994 CanLII 80 (SCC)
[7] *Mohan SCR* at 23

reviews such documents, and decides issues like those that Hibben addresses, without assistance.[8] The issues are squarely within the Tribunal's expertise. We do not need Hibben's opinions. We therefore ruled Hibben's report inadmissible.

[30] For similar reasons, we ruled inadmissible a report that Aimia tendered, written by Edward Waitzer. That report responds directly to Hibben's and covers the same issues. We did not need it in order to decide those issues.

4.3 Valuation reports

[31] Mithaq and Aimia also tendered expert reports that give financial analysis of the value implications of the private placement's terms. Mithaq's report was written by Ernst & Young LLP, and Aimia's was written by KSV Soriano Inc.

[32] Both reports adopt a technical approach. Ernst & Young, for example, uses the well-established Black-Scholes method to calculate the value of the warrants issued in the private placement, and then derives the value of the shares from that figure. In other words, the value of a share is the total price paid per unit in the private placement, less the calculated value of a warrant.

[33] We agreed with Mithaq's submission that a calculation of this kind was necessary in this case to enhance our understanding of the valuation issues.

[34] Aimia's responding report from KSV Soriano adopts a different approach. It first values the shares issued in the private placement, and then derives the value of the warrants from that.

[35] To reach our own conclusion, if necessary, about the value of the shares and warrants, we had to consider both reports, particularly because each took a different approach to that valuation. We say "if necessary" because the parties disputed whether the reports were relevant at all. Aimia submitted its report because Mithaq had submitted one, and Aimia felt obliged to respond. However, Aimia submitted that the discussion about the value of the shares and warrants has little to do with the application, because the issue we must decide is whether Aimia needed financing, not whether Aimia could have obtained a better deal. Aimia submitted that the fact that the shares might have been issued at a discount to market does not make the private placement a defensive tactic.

[36] We had some sympathy for that argument, but we decided to admit the two reports. We did so because, as we explain in greater detail below, analysis of whether a private placement is a defensive tactic includes consideration of whether the private placement was of value to Aimia shareholders. The answer to that question depended, at least in part, on the value of the shares and warrants issued under the private placement. Accordingly, the reports were relevant. For reasons we set out later, we ultimately decided not to place weight on the reports, despite their relevance.

5. PRIVATE PLACEMENT

5.1 Introduction

[37] We turn now to Mithaq's principal complaint, which was that Aimia's private placement is a defensive tactic designed to thwart Mithaq's take-over bid.

[38] We disagree. The private placement was designed primarily to meet Aimia's serious and immediate need for financing. It did have the additional characteristic of changing the dynamics of the bid environment in a way that was unfavourable to Mithaq. However, that characteristic, while of some consequence, was secondary to the main purpose. It did not warrant interfering with the private placement.

5.2 Legal framework

[39] In assessing Mithaq's complaint, we begin with the purposes of provisions in Ontario securities law that relate to take-over bids. First, a general statement is in order about a policy that mentions those purposes.

[40] National Policy 62-202 *Take-Over Bids – Defensive Tactics* (**NP 62-202**) contains guidance relating to defensive tactics in the context of take-over bids. While NP 62-202 is not itself part of Ontario securities law, this Tribunal has consistently applied many of its provisions.[9] In these reasons, wherever we cite part of NP 62-202, we adopt it.

[41] The first part of NP 62-202 we adopt identifies two of the main objectives of provisions in Ontario securities law related to take-over bids. The primary objective is "the protection of the *bona fide* interests of the shareholders of the target company". A secondary objective is to provide "an open and even-handed environment" in which bids can proceed.

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[8] See, *e.g.*, *The Catalyst Capital Group Inc (Re)*, 2020 ONSEC 6 at paras 28, 44, 55-70, 92-131; *HudBay Minerals Inc (Re)*, 2009 ONSEC 15 (***HudBay***) at paras 28-29, 140-149; *Hecla Mining Company (Re)*, 2016 ONSEC 31 (***Hecla***) at paras 96, 103-117

[9] See, *e.g.*, *ESW Capital LLC (Re)*, 2021 ONSEC 7 (***ESW***) at para 72; *Aurora Cannabis Inc (Re)*, 2018 ONSEC 10 at para 145; *Hecla* at paras 75-83

[42] As we examine in detail the private placement and its effect on the bid environment, we must remember our role. We have broad discretion to intervene, but that discretion is not unlimited.[10] Its exercise will be informed by the purposes of the *Securities Act* (the ***Act***)[11] (including the fostering of fair and efficient capital markets, confidence in the capital markets, and capital formation)[12] and the objectives of the take-over bid provisions.

[43] For private placements, we must balance the legitimate corporate objectives of the private placement (and there may be more than one objective) against facilitating shareholder choice, all while being cautious not to interfere unduly with the business judgment of the issuer's board.[13]

[44] Indeed, this Tribunal previously held, in *Hecla Mining Company (Re)*, that we should block a private placement only where there is "a clear abuse of the target shareholders and/or the capital markets."[14] During the hearing, we questioned whether the standard of "clear abuse" should persist, given that the genesis of that standard pre-dates the 1994 amendments to the *Act* that added, as purposes of the *Act*, the protection of investors against "unfair" practices[15] and the fostering of "fair" capital markets.[16]

[45] In response, Aimia noted that no party, in their written submissions, was seeking a change to the "clearly abusive" standard, and that all parties' submissions had been predicated on the assumption that the "clearly abusive" standard applied. As for Mithaq, we did not understand it to be advocating that we depart from the "clear abuse" standard set out in *Hecla*. Accordingly, we have applied that standard in our analysis. It remains to be seen whether, in some future proceeding, a party will submit that the standard ought to change. Because no party suggested that to us, and because we therefore did not have the benefit of submissions about the relevance, if any, of the 1994 amendments or of any other legislative or policy developments that may bear on the question, we do not express a view.

[46] Having identified the applicable standard, we will next summarize ongoing court proceedings between Mithaq Capital and Aimia, which Mithaq submitted we should consider in our analysis. Following that, we will describe and apply the two-stage test set out in *Hecla*,[17] which helped us determine whether we should cease trade the private placement.

5.3 Litigation in court between Mithaq Capital and Aimia

[47] In its submissions, Mithaq referred extensively to ongoing court litigation between Mithaq Capital and Aimia. On April 12, 2023, Aimia brought the first claim, in the Ontario Superior Court of Justice. In that proceeding, Aimia alleged that Christopher Mittleman, a former Aimia insider, gave Aimia's confidential information to Mithaq Capital and others. Following the annual general meeting, Mithaq Capital applied to the Court for a review of the proxies and ballots cast at the meeting. Aimia responded by joining Mithaq Capital and others to its claim against Christopher Mittleman.

[48] Aimia sought relief from the Court based on allegations of:

a. improprieties relating to the solicitation of proxies and votes for the annual general meeting; and

b. breaches of the early warning and take-over bid provisions of the *Act*.

[49] The parties' claims and the relief they sought evolved over time, including after Mithaq launched its bid on October 5, with Aimia expanding its allegations of breaches of the take-over bid provisions and Mithaq countering that Aimia's claim was a defensive tactic aimed at frustrating Mithaq's bid.

[50] Mithaq asked us to consider the litigation broadly in the context of its request that we cease trade the private placement. Mithaq submitted that the positions Aimia took in the litigation were part of Aimia's overall defensive posture, and that we should see through these tactics.

[51] In contrast, Aimia's references to the litigation were more limited. Aimia submitted that while the litigation gave us context, the issues raised in the litigation were for the Court to decide.

[52] We agree with Aimia. The parties chose the issues to put before the Court. If we were to take the litigation into account as Mithaq suggested, we would have had to assess not only the merits of the claims that the parties made against one another, but also whether the parties had acted in good faith in bringing those claims. We decided that we should not do that, for two main reasons.

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[10] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 45
[11] RSO 1990, c S.5
[12] *Act*, ss 1.1(b), 1.1(b.1)
[13] *Hecla* at paras 81, 82, 88
[14] *Hecla* at para 89, citing *Red Eagle (Re)*, 2015 BCSECCOM 401 at para 89
[15] *Act*, s 1.1(a)
[16] *Act*, s 1.1(b)
[17] *Hecla* at paras 94-95

[53] First, any time this Tribunal is asked to decide issues that are before a court at the same time, there is a real risk of duplication of effort, and of inconsistent findings. A duplication of effort is contrary to the objectives of courts and of this Tribunal to conduct proceedings efficiently and to minimize the costs that parties incur. Inconsistent findings raise concerns about fairness and about the integrity of the justice system.

[54] Second, the record in this proceeding was not sufficient for us to decide the issues in the court litigation, especially since there are claims and issues in that litigation that are beyond the scope of the issues in this proceeding (*e.g.*, about the validity of proxies at the annual general meeting).

[55] In some cases, this Tribunal should decide certain issues even if they are the subject of parallel court proceedings, *e.g.*, if there is a need for a speedy resolution, or because of the Tribunal's expertise. This is not one of those cases. Mithaq did not persuade us that the circumstances of this case would justify overriding the strong presumption that we should not prejudge the very issues that the parties asked the Court to adjudicate.

[56] As a result, the claims in the litigation did not influence our analysis of any of the issues in this proceeding.

5.4 The test for whether to cease trade the private placement

[57] We turn now to the analytical framework set out in *Hecla*, in which the Tribunal prescribed a two-stage test to help determine whether a private placement should be cease traded as being a defensive tactic in response to a take-over bid.

[58] At the first stage, the panel must determine if the private placement is "clearly not" a defensive tactic designed, in whole or in part, to alter the dynamics of the bid process.[18] If it is clearly <u>not</u> such a defensive tactic, then the principles in NP 62-202 do not apply, and the Tribunal would not cease trade the private placement unless there was some other independent and sufficient reason for it to do so. On the other hand, if it cannot be said that the private placement is clearly not such a defensive tactic, the analysis passes to a second stage.

[59] At the second stage, the Tribunal will balance the corporate objectives of the private placement against facilitating shareholder choice. That balancing takes into account a number of factors, which we review below.

5.5 Is the private placement "clearly not" a defensive tactic?

5.5.1 Introduction

[60] The first of the two stages of the test asks whether the private placement is clearly not a defensive tactic. A preliminary step in that stage is to determine which party has the onus on the issue.

[61] Ordinarily, the applicant (Mithaq in this case) bears the burden of establishing elements of its case. On this issue, then, Mithaq would have to show that it is at least unclear whether the private placement was a defensive tactic.

[62] However, the Tribunal held in *Hecla* that the onus in this first stage may shift. If Mithaq were to begin by showing that the private placement's impact on the existing bid environment was material (*i.e.*, without reference to whether the private placement was a defensive tactic), then it would be Aimia that had the burden of showing that the private placement <u>is clearly not</u> a defensive tactic.[19]

[63] Accordingly, we begin our analysis by asking whether the private placement's impact on the existing bid environment was material. We concluded that it was. The onus therefore shifted to Aimia for the first stage, *i.e.*, to show that the private placement was clearly not a defensive tactic. We concluded that Aimia did not meet that burden. We therefore moved to the second stage, in which we balanced the corporate objectives of the private placement against shareholder choice, and considered whether the circumstances warranted our interfering with the private placement. We concluded that they did not.

[64] We turn now to our assessment of the preliminary question about onus, *i.e.*, whether Mithaq established that the private placement's impact on the existing bid environment was material.

5.5.2 Evidentiary onus

5.5.2.a Introduction

[65] In assessing whether the private placement had a material impact on the bid environment, we considered its effects on:

[18] *Hecla* at para 94
[19] *Hecla* at para 96

a. the cost of the bid;

b. the likelihood of success of Mithaq's bid; and

c. other potential bids.

5.5.2.b The private placement's effect on the cost of the bid

[66] First, Aimia says the private placement did not have a material effect on the cost of Mithaq's bid. It was not disputed that the cash outlay required to achieve the bid's minimum tender condition would be greater following the private placement. The debate was about whether that increase was material.

[67] Mithaq might also incur additional financing costs or be subject to more onerous financing terms, either of which would increase Mithaq's cost of acquisition. Mithaq's potential additional cost would be further increased if the warrants issued under the private placement were exercised.

[68] We concluded that while it was reasonably likely that the cost of Mithaq's bid would increase as a result of the private placement, we cannot be sufficiently certain, based on the evidentiary record before us, that such an increase would be material. Therefore, we cannot conclude on this factor alone that the private placement had a material impact on the bid environment.

5.5.2.c The private placement's effect on the likelihood of success of Mithaq's bid

[69] Second, Aimia noted that Mithaq led no evidence to show that the private placement affected Mithaq's appetite to proceed with the bid. We did not accept the implication that Mithaq needed to adduce evidence about its own appetite to proceed. Bidders may reasonably choose not to declare their intentions in this way. As a result, we focused on the likelihood of success of Mithaq's bid should Mithaq proceed with it.

[70] Aimia also submitted that the private placement did not make it impossible that Mithaq's bid would succeed. That submission is factually accurate, but it applies an incorrect standard. We had to determine not whether success was possible, but instead whether the private placement materially affected the likelihood of success of Mithaq's bid. We concluded it did.

[71] At the time of Mithaq's bid, Mithaq Capital held 30.96% of Aimia's shares (*i.e.*, not clear control). Mithaq submitted that the new shares in the hands of private placement investors who had declared their intention not to tender to the bid would materially interfere with its ability to achieve the minimum tender condition. The number of shares needed to be tendered to satisfy the condition would increase from approximately 29 million to approximately 34.3 million. Mithaq asserted that if the private placement investors chose not to tender, 59% of all remaining Aimia common shares would need to be tendered in order for Mithaq to meet the minimum tender condition. This percentage would increase if any warrants issued under the private placement were exercised before the bid expired.

[72] We concluded that the private placement did have a material effect on the bid environment, because of the impact on Mithaq's ability to satisfy the minimum tender condition and therefore on the likelihood of success of Mithaq's offer.

5.5.2.d The private placement's effect on other potential bids

[73] Finally with respect to the evidentiary onus, we considered the effect of the private placement on other potential bids. In doing so, we were mindful that our role is not to ensure the success of a particular bid, but rather to ensure that the bid process is fair and open and that we give appropriate protection to the interests of Aimia's shareholders.

[74] Mithaq argued that the $3.70 exercise price of the warrants, which was four cents higher than Mithaq's offer price of $3.66, might discourage any competing bid at a price higher than $3.70. Mithaq submitted that a bid higher than $3.70 would cause the warrants to be exercised, either for purposes of tendering to the higher bid or for market trading purposes at what would likely be a higher prevailing market price for the shares. Either way, there would be an increase in the number of outstanding shares, resulting in higher acquisition costs to a competing bidder.

[75] We therefore concluded that the warrant exercise price might discourage other potential bidders for Aimia or might discourage Mithaq from improving its bid. These effects on the bid environment are material, and while our conclusion on this point is based on speculation (an exercise that we should avoid except where necessary), that speculation is necessary here, given the forward-looking nature of this criterion.

5.5.2.e Conclusion about the evidentiary onus

[76] Mithaq showed that the private placement had a material impact on the bid environment because of its effect on Mithaq's ability to meet the minimum tender condition and its effect on other potential bids. The onus therefore shifted to Aimia to establish that the private placement was clearly not a defensive tactic. We now turn to consider that question.

5.5.3 Aimia cannot show that the private placement was clearly not a defensive tactic

5.5.3.a Introduction

[77] We decided that Aimia cannot show that the private placement was clearly not a defensive tactic. In reaching that decision, we considered the following three relevant factors set out in *Hecla*, none of which alone is necessarily determinative, although each could be:[20]

a. whether the private placement was designed to respond to Aimia's serious and immediate need for financing (we concluded this was its primary purpose);

b. whether the private placement was planned or modified in response to, or in anticipation of, a take-over bid (we concluded that it was not, other than an inconsequential pricing change); and

c. whether the private placement was part of a good faith, non-defensive, business strategy (we concluded that it was, but that it could also reasonably be seen to have taken on a defensive aspect).

[78] We now review each factor in detail. Given our conclusion on the third, it might not be necessary to analyze the first two. However, some facts overlap, and later in these reasons we return to some of this analysis. We therefore consider it useful to address each of the three factors.

5.5.3.b Serious and immediate need for financing

[79] For the first factor, Mithaq and Aimia disputed whether Aimia had a serious and immediate need for financing. We concluded that it did.

[80] We agreed with Aimia's contention that when we were assessing its need for financing, we had to bear in mind the type of business that it carries on. Aimia does not directly operate any business. Instead, it purchases interests in other companies. As a result, it aims to maintain cash sufficient to allow it to take advantage of suitable investment opportunities as they arise.

[81] Aimia also described its difficulty in obtaining debt financing at the parent level of the company. It attributed that difficulty to lenders' concerns that Aimia has limited cash flow at the parent level and that it cannot easily access cash sitting at the subsidiary level.

[82] Philip Mittleman, Aimia's CEO, testified that in early 2023, he was in regular contact with Jefferies Securities Inc., which Mittleman described as a trusted advisor. As early as February, Mittleman discussed with Jefferies the idea of a private placement as one possible financing vehicle. Aimia describes the most significant events leading up to those discussions, and eventually resulting in the October completion of the private placement, as follows:

a. In late 2022, Aimia began to pursue two separate investment opportunities – Tufropes Private Limited, a manufacturer based in India, and Giovanni Bozzetto S.p.A., an Italian-based provider of specialty chemicals. At the time, Aimia had approximately $550 million in cash and liquid investments. It planned to use a combination of cash and debt financing to make these acquisitions.

b. In November 2022, Aimia began trying to secure debt financing for the Tufropes transaction. Aimia and its consultant contacted 105 potential lenders. Most lenders who responded said they were not interested. Of the twenty-four who signed a non-disclosure agreement, four presented non-binding potential terms for a financing. Three of the four withdrew quickly. Aimia began negotiations with the one remaining lender.

c. On January 31, 2023, Aimia announced that it had signed definitive agreements to acquire all of Tufropes's shares for approximately $250 million. Paladin Private Equity LLC, the firm that had approached Aimia with this opportunity, obtained an option to acquire up to 19.9% of Tufropes within a year of the closing of the transaction.

d. On March 6, Aimia announced that it had signed definitive agreements to acquire approximately 94% of the shares of Bozzetto (the other opportunity) for approximately $328 million. Paladin obtained an option to acquire up to 19.9% of Bozzetto within one year.

e. Paladin has not exercised either option. Had Paladin exercised both, as Aimia expected it would, Paladin would have paid Aimia approximately $115 million.

[20] *Hecla* at para 97

f. On March 17, Aimia closed the Tufropes transaction, for a total cost of approximately $253 million. At the time, Aimia had approximately $505 million in cash, which was less than the approximately $584 million Aimia expected to need to close the Tufropes and Bozzetto transactions.

g. As of March 31, Aimia had $244 million in cash. That amount included cash held at its subsidiaries, which Aimia could not easily access.

h. On May 9, Aimia closed the Bozzetto transaction, for a total cost of approximately $219 million. As part of the transaction, Aimia had to repay approximately $84 million of debt that Bozzetto owed. Aimia secured some debt financing through Bozzetto, as a result of which Aimia's net cash outlay was approximately $215 million.

i. Mittleman, Aimia's CEO, testified that shortly after May 25, the date on which Mithaq Capital announced that it had acquired additional shares of Aimia, the potential lender with whom Aimia had been negotiating advised that it was not willing to provide financing.

j. Shortly thereafter, Aimia began to pursue a private placement.

k. On June 6, Aimia retained Clarus Securities to provide an independent opinion about: (i) whether Aimia required funds from a potential private placement for liquidity and investment purposes; (ii) whether the potential private placement featured a relatively low cost of capital; and (iii) whether the potential private placement would result in Aimia having strong strategic shareholders who would gain board representation.

l. On June 26, Aimia formally retained Jefferies. Jefferies was to be Aimia's sole agent for a private placement, and was to identify and negotiate with potential investors.

m. As of June 30, Aimia had approximately $64 million in cash, of which approximately $7 million, $21 million and $36 million was held at each of Aimia, Bozzetto and Tufropes, respectively. Aimia could not access the cash at Bozzetto and Tufropes due to covenants with lenders and significant withholding tax exposure.

n. On July 11, Aimia announced that it had made another corporate acquisition for approximately $27 million in cash, an acquisition that had to be accelerated because of interest from other potential buyers. This resulted in a cash expenditure that had not been planned for that time.

o. On August 10, Clarus presented its preliminary opinion to Aimia's board. Its view was that Aimia required a capital injection. It canvassed various potential methods of financing, including debt financing, but concluded that debt financing would be a more expensive and restrictive source of capital than an equity financing at that time, due to market conditions.

p. On September 8, Clarus presented its final opinion to Aimia's board. It confirmed that Aimia required additional capital. It noted that Aimia had an available cash balance of approximately $7 million as of July 31. It calculated that Aimia would have a cash outflow of approximately $3 million over the next 12 months and a further $23 million over the succeeding 12 months. These outflows would result in an expected cash deficit of approximately $19 million by the end of the 24-month period.

q. Clarus noted other potential significant expenses in the near term. Taking those into account and assuming Aimia liquidated all the funds and public securities it held, there could still be a funding gap of more than $80 million. It confirmed that the most accessible source of capital for Aimia was a private placement of equity, due to Aimia's inability to access debt financing, and the disadvantages of selling existing investments.

r. In early October, immediately following the announcement of Mithaq's bid, the Aimia board formed a Special Committee. That committee retained Canaccord Genuity Corp. to provide financial advice. On October 9, Canaccord concluded that a near-term capital injection was warranted. Aimia had readily available cash of $8.2 million as of September 30, but was projected to have a negative cash balance of $8.3 million by the end of 2023. That result could be avoided only by deviating from Aimia's investment strategy and accepting the risk that cash might not be available as required. Even that approach would leave unaddressed contingent liabilities of approximately $133 million.

[83] Mithaq challenges, on several grounds, Aimia's assertion that it had a serious and immediate need for financing.

[84] First, Mithaq submits that the credibility of Aimia's purported need for financing is undermined by Aimia's statements that it had ample cash and that it intended to buy back some of its shares. For example:

a. On March 6, Aimia announced its intention to repurchase some of its shares through a renewal of its normal course issuer bid, which was due for renewal in June. We agree with Aimia that there is no inconsistency, since the news release announcing its intention to repurchase shares provided that any buybacks were conditional

upon Aimia "closing one or both external debt financings, both of which are actively progressing, for the… Bozzetto and Tufropes acquisitions."

b. In a press release and Q1 earnings call on May 12, Aimia management stated that the company expected to have approximately $126 million of cash and liquid investments on hand after the closing of the Bozzetto acquisition, and that "We're confident we will have plenty of cash to execute what we need to execute". Aimia advised of its intention to renew its normal course issuer bid when it expired in June 2023. Again, we see no inconsistency, since these statements were made shortly before the anticipated debt financing fell through.

c. Aimia's September 27 "Investor Day Presentation" advised that Aimia would re-initiate its normal course issuer bid and would engage in "aggressive" share buybacks "on closing of Tufropes financing". The presentation gives no details about what that pending financing was, but it must be different than the failed financing described above, given the date of this presentation. While the disclosure may have been overly optimistic about the prospects of concluding financing for the Tufropes transaction, we see no inconsistency between this statement and the purported need for financing through the private placement, since the mention of share buybacks was explicitly conditional on the successful closing of an unspecified financing.

[85] Second, Mithaq submits that if the need for debt financing were so material, it would have been raised at the meeting of the board of directors in early 2023. There is no evidence of that having happened. We share Mithaq's concern on this point, to some extent. However, we cannot conclude from the absence of any record of such a discussion that the need for financing did not exist as described. There are other possible explanations, including that the issue was discussed but not recorded, or that the issue was not canvassed by the board. Neither of these possibilities would be satisfying from a corporate governance perspective, but that is not the issue. What is most important is that Mithaq has not persuaded us that the most likely inference is that the need for financing did not exist or was exaggerated.

[86] Third, Mithaq made some submissions about other possible sources of financing, including a potential rights offering. There was no evidence about possible sources not pursued. It is clear that the environment was challenging for capital raising generally. It would be too speculative for us to draw conclusions adverse to Aimia from the fact that it did not explore a rights offering.

[87] Fourth, Mithaq questioned the "immediacy" of Aimia's need, although in its written submissions, Mithaq conceded that a need over the next 12 months could fairly be described as "immediate". We agree with that view, despite Staff's contrary submission that implied an equivalency between "immediate" and "financial distress". The panel in *Hecla* used the word "immediate" in formulating this criterion, but did not explore the meaning of the word in that context. On the facts of that case, it was likely unnecessary to do so. In any event, in our view the word "immediate" does not necessarily imply urgency. It does imply that the need currently exists, as opposed to being speculative.

[88] While we agree with Mithaq's characterization of immediacy, we reject Mithaq's suggestion that we should disapprove of the amount Aimia raised. Canaccord projected that Aimia would have a deficit of $8.3 million at the end of 2023, growing to deficits of $18.7 million and $43.5 million by the ends of 2024 and 2025, respectively. The amount raised through the private placement was not disproportionate to the information that Aimia had at the time.

[89] Mithaq also attempted to have us confine our analysis to the bid period, *i.e.*, only from the commencement of the bid on October 5 until its expiry on January 18, 2024. We do not accept that approach. The terms of the private placement were negotiated before Mithaq announced its bid and its expiry date. We must assess the "immediacy" contemplated by this element of the test in the context of Aimia's circumstances, not the external and independent circumstances that Mithaq later added by making its bid.

[90] Finally, Mithaq submitted that we should find that there was no serious and immediate need for financing, for the following reasons:

a. *Aimia disclosed no specifics about its intended use of the funds.* We rejected this submission because: (i) such specifics may reasonably have been unknown at the time, and/or confidential; and (ii) the fact that in *Hecla*, for example, the issuer had a quantified need does not mean that quantification is essential in all cases.

b. *Aimia never raised its funding concerns with Mithaq Capital.* We rejected this submission because Aimia was under no obligation to do so, particularly given the fraught environment between Aimia and Mithaq Capital at the time.

c. *There is no evidence that Paladin actually decided, or when it decided, not to exercise its options.* We rejected this submission because Paladin had not yet exercised its options, so it had not contributed to Aimia's cash position. Further, the options were to remain open until early 2024.

d. *Given that a principal of Paladin is the son of a principal of Eagle, Paladin may have deliberately chosen not to exercise its options, to support Aimia's defence against Mithaq's bid.* We rejected this submission because it

was speculative and lacked any supporting evidence. Further, this suggestion was not put to Aimia's CEO in cross-examination. It would be an impermissible leap to infer, without further evidence, that Aimia's need for financing was manufactured with Paladin's willing assistance.

e. *Neither Clarus nor Canaccord independently confirmed Aimia's funding concerns, and Canaccord's report was designed to help Aimia's board resist Mithaq's offer rather than to provide an independent analysis.* We rejected these submissions because Mithaq neither led evidence, nor successfully challenged existing evidence, so as to undermine the factual basis on which those firms reached their conclusions, especially with respect to Aimia's near-term cash requirements.

f. *Aimia obtained the Clarus opinion to help block Mithaq's bid, and the changes between Clarus's preliminary and final opinions may have resulted from instructions to revise its opinion.* We rejected these submissions because there was no evidence that directly supports them, and the existing circumstantial evidence did not reasonably lead to either of those inferences.

g. *The Canaccord opinion does not help Aimia, because it was delivered after the bid.* We rejected this submission even though it was factually accurate, because that timing does not undermine the Canaccord opinion's value in corroborating a pre-existing need for financing, as opposed to it being the sole authority for a new conclusion about a need for financing.

[91] We had concerns about some of Mittleman's testimony, which was occasionally evasive or excessively self-serving. For example, Mittleman sometimes resisted adopting words that he himself had used in affidavits that he swore. Further, his antagonism toward Mithaq was evident. However, our concerns about some of his testimony do not dislodge the material facts. Mithaq neither contradicted nor otherwise undermined Mittleman's testimony. In the elements that matter, Mittleman's testimony was largely corroborated by testimony from Karen Basian, chair of the Special Committee. Basian was a candid and straightforward witness, and we have no reason to reject any of her testimony.

[92] To summarize, none of Mithaq's concerns sufficiently undermined Aimia's contention that it had a serious and immediate need for financing. We therefore concluded that Aimia successfully demonstrated that at the relevant time, it did have a serious and immediate need for financing.

5.5.3.c Was the private placement planned or modified in response to, or in anticipation of, a bid?

[93] The next factor in assessing whether the private placement was a defensive tactic is whether it was planned or modified in response to, or in anticipation, of a take-over bid. Mithaq submitted that the private placement was designed in anticipation of, and to block, Mithaq's offer. We disagree.

[94] One indicator of whether Aimia took any steps "in anticipation of" a bid would be whether Aimia's board had "reason to believe that a bid might be imminent", wording that NP 62-202 uses in this context. To evaluate whether Aimia's board had reason to believe that a bid might be imminent, we review the following events:

a. In February, Mithaq Capital increased its Aimia shareholding and filed early warning reports.

b. In April, Mithaq Capital began its shareholder activism, including its vote "no" campaign leading up to Aimia's annual general meeting.

c. On April 19, Mithaq Capital filed an early warning report that included a take-over bid as one of many possible next steps.

d. Also in or around April, Aimia began a comprehensive process of considering available financing options (according to Aimia's October 13 announcement about the private placement).

e. On May 15, Eagle signed a non-disclosure agreement with Aimia and hired a financial analyst to conduct further due diligence.

f. On May 25, Mithaq Capital announced that it had increased its shareholding to 30.96%, and filed an early warning report that included a take-over bid as one of many possible next steps.

g. On June 5, Mithaq Capital issued a news release that it says put Aimia on notice that it would defend against tactics that Mithaq Capital regarded as potentially abusive and entrenching.

h. Aimia management prepared a draft report, dated June 5, to the board about a potential $63 million private placement. That draft report described one of the purposes of the private placement as being "to establish a strong moat to protect [Aimia] against the distracting attacks of opportunistic raiders, allowing the company to

transact, raise debt, and operate its businesses without the damaging effects of such attacks that have hindered those efforts."

i. On June 6, Mithaq Capital's counsel wrote a letter to Aimia that stated that Mithaq Capital was "presently contemplating a number of alternatives with respect to its investment in Aimia (including requisitioning a shareholder meeting to replace the board or acquiring additional shares by way of take-over bid or otherwise)". The letter also cautioned that "any private placement that dilutes Mithaq [Capital]'s holdings can only be viewed as an improper defensive tactic solely designed to manipulate the outcome of a proxy contest or take-over bid, particularly in light of the fact that Aimia does not require new equity financing and management has recently stated that the Company has ample cash."

j. On June 7, Aimia announced its adoption of the shareholder rights plan in response to "Mithaq [Capital]'s attempts to acquire effective control of Aimia through share acquisitions (i.e. a creeping bid)".

k. According to Eagle, in the summer of 2023 it suggested the investment opportunity to potential investors, some of whom pursued negotiations with Jefferies or Aimia.

l. According to Aimia, Aimia began robust arm's-length negotiations with potential investors in or around July, culminating in the private placement (according to Aimia's October 13 announcement). Mithaq neither contradicted nor successfully challenged this evidence.

m. On September 15, Eagle and Aimia entered into a non-binding term sheet that anticipated a closing date of September 28.

n. On September 28, the TSX conditionally approved the private placement.

o. On October 3, Mithaq announced its intention to make a take-over bid. Mithaq commenced the bid on October 5.

[95] The question of when a board has reason to believe a bid is "imminent" requires consideration of how likely it is that any specific bid will be made. Too low a bar could effectively freeze a business's capital-raising activities. For an issuer like Aimia, with its high dependency on having capital available to make acquisitions, the consequences of too low a bar would be particularly acute.

[96] We concluded that it was not until October 3, when Mithaq announced its intention to make a take-over bid, that the Aimia board had sufficient reason to believe that a bid was imminent. There had been indications that a take-over bid was possible. However, we must consider these indications in context, *i.e.*, that a take-over bid was one among a range of options. For example, Mithaq submits that the early warning reports made clear as early as April that Mithaq Capital was considering making a take-over bid. While those reports did identify a take-over bid as a possibility, that falls short of "making clear" that Mithaq Capital was "considering" making a bid. This is so because the reports contain lengthy, largely boilerplate text designed to preserve Mithaq Capital's ability to pursue a long list of very disparate options. A take-over bid is only one such option, and it gets no more than a mention.

[97] Almost six months passed between the first indication that a take-over bid was a possibility and Mithaq's announcement. Similarly, almost four months passed between Mithaq Capital's June 6 warning letter to Aimia and Mithaq's announcement. Those periods of time are too long for Aimia to have refrained from pursuing its legitimate need for capital due to the possibility, without any time limitation, that Mithaq Capital would make a take-over bid. In this case, it would not be reasonable to conclude that a bid was imminent for that long a period of time.

[98] We therefore conclude that the private placement was not planned in response to, or in anticipation of, a bid. That leaves the question of whether it was modified in response to Mithaq's bid. It was, but only to increase the price of the shares and the exercise price of the warrants. These changes had only positive effects for Aimia shareholders, and Mithaq did not suggest that they constituted a defensive tactic.

5.5.3.d Good faith, non-defensive, business strategy

[99] The last criterion we considered in assessing whether the private placement is clearly not a defensive tactic was whether it was part of a good faith, non-defensive, business strategy. We concluded that it was, for two reasons.

[100] The first is our conclusion, explained above, that the private placement directly responded to Aimia's need for financing.

[101] Second, according to Aimia, the private placement supported its strategy of strengthening its board. Aimia added what it considered to be two experienced public company directors, both of whom are independent of Aimia and of Eagle.

[102] The private placement was therefore part of a good faith, non-defensive, business strategy, but it was not exclusively so. It came to have multiple purposes, because as Mithaq Capital's activism increased, Aimia was content that the private placement strategy already being pursued might help Aimia resist that activism. Even though no bid was imminent in the summer of 2023, Mithaq Capital had contemplated a bid as one among many options. If a bid were to materialize, the private placement would serve the additional purpose of making it more difficult for Mithaq Capital to successfully complete its bid.

[103] This additional purpose neither negated nor overrode the original and still extant legitimate purposes of the private placement. However, we still considered it as part of our assessment of whether Aimia showed that the private placement was clearly not a defensive tactic.

[104] We do not conclude that the private placement was primarily designed as a defensive measure. However, once the Mithaq bid was announced, the private placement more clearly took on a defensive character. Accordingly, it cannot be said that the private placement was "clearly not" a defensive tactic.

5.5.3.e Conclusion

[105] The private placement's original and main purposes related to a need for financing rather than any existing or anticipated bid. However, as time went on, the private placement acquired a defensive character. Aimia failed to discharge its onus of showing that the private placement was clearly not a defensive tactic. We therefore turn to additional factors we had to consider in deciding whether to cease trade the private placement or grant other relief.

5.6 Is the private placement clearly abusive?

5.6.1 Introduction

[106] Because Aimia did not establish that the private placement was clearly not a defensive tactic, the principles of NP 62-202 are engaged, and we must apply those principles in deciding whether to cease trade the private placement.[21] In doing so, we must assess whether the private placement constitutes "a clear abuse" of the Aimia shareholders or the capital markets.[22] In making that assessment, we considered:

a. whether the private placement would benefit Aimia's shareholders;

b. the extent to which the private placement alters the pre-existing bid dynamics;

c. whether the private placement investors are related to Aimia, or to each other, in such a way as to enable Aimia's board to summarily reject Mithaq's bid or a competing bid;

d. whether the views of other Aimia shareholders should influence our decision; and

e. whether Aimia's board appropriately considered the interplay between the private placement and Mithaq's bid.[23]

[107] We address each of these in turn, all the while balancing the corporate objectives served by the private placement against the facilitation of shareholder choice.[24]

5.6.2 Benefit to Aimia shareholders

[108] First, would the private placement benefit Aimia's shareholders? We concluded that it would, despite Mithaq's submission to the contrary.

[109] Mithaq focused exclusively on the period of the bid, and submitted that Aimia did not require the funds during that time. We have already rejected that position. The private placement addressed Aimia's need for financing. A flow of capital to the issuer will not always be of benefit to shareholders, perhaps because it results from an issuance of shares that causes excessive dilution. However, on balance here, the private placement was beneficial to Aimia's shareholders.

[110] In reaching that conclusion, we rejected Mithaq's submission that the consideration that Aimia received under the private placement did not create value for Aimia and its shareholders. Mithaq pointed to the Ernst & Young report and, in particular, the report's conclusions about the discount at which the shares were issued.

[111] We did not find either the Ernst & Young report or the KSV Soriano report to be compelling. We prefer Ernst & Young's methodology, because the Black-Scholes method is well established, and Ernst & Young's approach better aligns with

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[21] *Hecla* at para 98
[22] *Hecla* at para 89
[23] *Hecla* at para 100
[24] *Hecla* at para 82

the generally accepted approach to valuing units made up of shares and warrants. However, despite our preference for that methodology, we were not prepared to adopt Mithaq's suggested conclusion.

[112] In private placements, shares are commonly issued at a discount to market. The Ernst & Young report did not provide a sufficient basis for us to conclude that the discount in this case was so far out of market as to render the private placement of no value, or unfair, to Aimia or its shareholders. In particular, we noted two issues:

a. First, the amount to be allocated to each share varied appreciably depending on the point in time at which the valuation was made.

b. Second, the Ernst & Young witness testified that with a valuation where first the warrant is valued, and then the remaining amount is attributed to the share, one should not adopt the result of that valuation unless the resulting value of the share remains fair. Despite this, Ernst & Young conducted no fairness analysis in preparing its valuation. We were, therefore, not comfortable relying on the report's conclusions.

5.6.3 Effect on pre-existing bid dynamics

[113] The second of the five factors considers the extent to which the private placement alters the pre-existing bid dynamics. We considered this question above in the context of determining the evidentiary onus. As we concluded, the private placement materially interfered with Mithaq's ability to achieve the minimum tender condition under its bid.

[114] In addition, as we concluded above, the warrant exercise price could be a discouraging factor to other potential bidders for Aimia.

[115] However, the significance of these findings was, for us, overwhelmed by the fact that almost every step involved in the private placement, including conditional approval by the TSX, preceded Mithaq's October 3 announcement of its intention to make a take-over bid. We therefore attach little weight to Mithaq's arguments about the impact of the private placement on pre-existing bid dynamics.

5.6.4 Nature of relationship between Aimia and the private placement investors

[116] The third factor required us to consider whether the private placement investors were related to Aimia, or to each other, in such a way as to enable Aimia's board to summarily reject Mithaq's bid or a competing bid.

[117] Mithaq did not seriously contend that the private placement investors were "related" to Aimia or one another, or that they were otherwise acting jointly and in concert with Aimia or with one another, within the legal meaning of those terms. Instead, Mithaq highlighted facts about how Eagle and others in the investor group became aware of the investment opportunity, and about the investors' stated intention not to tender to Mithaq's bid. We understood Mithaq to be asking us to infer that Mittleman recruited the private placement investors due to their willingness to just say "no" to Mithaq Capital's shareholder activism and to any forthcoming bid.

[118] We declined to draw that inference. In his testimony at the hearing, Roger Crandall, a principal of Eagle, denied that the private placement investors are a group of related parties or otherwise acting jointly and in concert. Crandall also testified that while Eagle did not intend to tender to the Mithaq bid as it then existed, Eagle had no obligation to Aimia or otherwise to maintain this position, and the position might change if the bid were amended. Mithaq neither seriously challenged Crandall's testimony nor adduced persuasive evidence to the contrary.

[119] While Aimia's board might have been comforted by the private placement investors' intention not to tender to Mithaq's then-existing bid, the basis for that comfort might have evaporated if Mithaq modified its bid or another offeror made a bid. In any event, this tenuous degree of support was insufficient for us to conclude that we should cease trade the private placement.

5.6.5 Views of Aimia shareholders

[120] The fourth of the five factors refers to the views of shareholders.

[121] Both Mithaq and Aimia filed unsworn letters and emails from Aimia shareholders. We attributed no weight to those. We did not find these limited samples to be quantitatively persuasive either way.

5.6.6 Board's consideration of the interplay between the private placement and Mithaq's bid

[122] The fifth factor required us to consider whether Aimia's board appropriately considered the interplay between the private placement and Mithaq's bid. Mithaq raised concerns of two kinds: first, about the terms of engagement of Canaccord, the Special Committee's adviser; and second, about the advice that Canaccord gave and the extent to which the Special Committee followed that advice.

[123] With respect to the terms of the engagement, Mithaq relied on the Tribunal's decision in *HudBay Minerals Inc (Re)* to argue that we should accord no deference to the work and conclusions of the Special Committee because Canaccord's fee structure favoured an outcome in which Mithaq's offer expired or was withdrawn, and no other transaction had occurred. We did not accept this submission, because we read the engagement letter as providing that the highest potential fee was payable to Canaccord if a transaction were completed during the term of the engagement at a price higher than that of the Mithaq bid. This distinguishes the terms of the Canaccord engagement from those of the financial advisor in *HudBay*, which were designed to promote only the result preferred by the HudBay board.

[124] As for the advice that Canaccord provided, and the Special Committee's actions or inaction, Mithaq asserted that Canaccord's work was "results-driven", designed to help the board show the deficiencies of Mithaq's offer and secure approval of the private placement. As an example, Mithaq pointed to the fact that Canaccord's advice and recommendations regarding proceeding with the private placement preceded the completion of its analysis of Mithaq's offer. Mithaq argued that the board ought to have focused on the impact the private placement would have on the likelihood of Mithaq's bid succeeding and the ability of shareholders to accept the bid and have it succeed.

[125] In response, Aimia submitted that the Special Committee considered anew whether the private placement was appropriate in light of Mithaq's bid. In its own submissions, the Special Committee asserted that its mandate included a review and reconsideration of the private placement in light of the announcement of Mithaq's bid. The Special Committee engaged Canaccord to advise it about the Mithaq bid, and Canaccord advised Aimia to proceed with the private placement, subject to negotiating potentially amended terms. Among the factors Canaccord considered when giving this advice was the fact that the private placement and Mithaq's bid were not mutually exclusive. In other words, even if the private placement were to be completed, shareholders could still tender to the bid, and the bid could still succeed. Relying on this advice, the Special Committee determined at its October 9 meeting that Aimia should continue to pursue the proposed private placement expeditiously. It recommended this to the Aimia Board.

[126] The Special Committee's work was not as comprehensive as it might have been. For example, the Special Committee does not appear to have considered, seriously or at all:

a. the data that Canaccord provided about the extent to which the private placement might affect, as opposed to eliminate, shareholder choice;

b. that one of the conditions of the Mithaq bid was that there could be no intervening equity financing; or

c. whether there were ways in which the private placement could be amended to make it more compatible with the existing Mithaq bid, an improved Mithaq bid, or a competing bid.

[127] While we share some of Mithaq's concerns about the work of the Special Committee, and the Aimia board's follow-up actions, we must proceed cautiously. The Tribunal noted in *Hecla* that when we balance the business judgment of a board against the securities law principle of facilitating shareholder choice, we should give "significant deference" to directors who are "following appropriate governance processes".[25] Deficiencies in the governance processes that the directors followed may well undermine the deference that would otherwise be accorded to the directors, but even if so, it remains the Tribunal's responsibility to assess whether the private placement is "abusive" because it denies shareholders the ability to participate in an offer or it improperly alters bid dynamics.[26]

[128] We give our own analysis of that question in the next section. For the purposes of this fifth factor, though, we cannot conclude that the deficiencies in the Special Committee's and board's work are consequential enough to overcome the compelling facts of Aimia's need for financing and the chronology of the private placement preceding, almost entirely, Mithaq's bid.

5.6.7 Summary

[129] To summarize, two of the above five factors (the relationship between Aimia and the private placement investors, and the views of the Aimia shareholders) were neutral in our analysis. On the remaining three factors, we concluded that:

a. the private placement benefited Aimia's shareholders;

b. the private placement altered the pre-existing bid dynamics; and

c. there were deficiencies in the Aimia board's consideration of the interplay between the private placement and Mithaq's bid.

[130] The result of the last of these three is that we did not defer to the Special Committee's work, as we might normally have. Instead, we reached our own conclusion independently, by weighing the impact on Aimia and its shareholders against

[25] *Hecla* at paras 82, 88
[26] *Hecla* at para 83

the impact on the bid environment. We concluded that, while the private placement did have an impact on the bid environment, that impact was outweighed by the benefit to Aimia shareholders. We therefore concluded that the private placement was not “clearly abusive”.

5.7 The private placement in the context of Mithaq Capital’s shareholder activism

[131] In our analysis above about whether the private placement was “clearly not” a defensive tactic, it was significant that it was negotiated and largely completed before Mithaq’s bid was announced.

[132] When we raised that timing issue, Mithaq directed us back to Mithaq Capital’s shareholder activist campaign in the spring of 2023. Mithaq submitted that we should look at this case not only in the context of an imminent or existing bid (as in *Hecla*), but also in the context of Mithaq Capital’s activism as shareholder, even without a bid. Mithaq urged us to rely on the Tribunal’s decision in *Eco Oro*,[27] which was an application for a review of a TSX decision. The case did not involve a take-over bid, but the Tribunal did refer to the general principles set out in NP 62-202, and contemplated the possibility that, in the right case, the Tribunal might make an order under s. 127 of the *Act* even in the absence of a bid.

[133] In *Eco Oro*, the TSX conditionally approved an issuance of common shares to four recipients shortly before a shareholders’ meeting to reconstitute the company’s board. The TSX had approved the transaction without requiring prior shareholder approval. The applicants, who were two shareholders, sought to set aside the TSX decision. They said the TSX had deprived them of the opportunity to register their objections with the TSX before the transaction closed.

[134] In setting aside the TSX decision, the Tribunal found that the impugned share issuance materially affected control of Eco Oro. It concluded that a shareholder vote was required on the transaction.

[135] Mithaq points to the Tribunal’s statement in *Eco Oro* that “[i]ssuances of shares as a defensive measure in the face of a contest for control of a public company to influence the outcome in management’s favour are subject to review by the [Tribunal].”[28] While the reasons focus on what jurisdiction the Tribunal has in substituting its own decision for that of the TSX, the reasons explicitly contemplate that a person “may also [*i.e.*, in addition to seeking a review of a TSX decision] seek to invoke the [Tribunal’s] public interest jurisdiction under section 127 of the Act … as the Applicants did here.”[29]

[136] Ultimately, the Tribunal decided not to consider the applicants’ alternative request for relief under s. 127, because the Tribunal’s grant of relief in connection with its review of the TSX decision made the s. 127 request unnecessary. *Eco Oro* therefore does not establish guidelines for considering such a request, beyond the uncontroversial observation that, as is true in bid cases, fairness and market integrity are central considerations.[30]

[137] *Eco Oro* arguably contemplates a case where the Tribunal’s public interest jurisdiction may be engaged in the context of a shareholder activism dispute. However, the case involved a proxy contest and a transaction that materially affected control of the issuer.

[138] Neither of those two factors was present in this case. First, Mithaq Capital’s court challenge to the validity of proxies used at a previous shareholder meeting differs significantly from a proxy contest in anticipation of an upcoming vote, as was the case in *Eco Oro*. This is so in part because of the contrast between the urgency normally associated with a proxy contest on the one hand, and the uncertain and often extended timeline associated with litigation on the other.

[139] Second, the dispute in *Eco Oro* was about a transaction that the Tribunal found materially affected control of Eco Oro,[31] a description that does not apply to the private placement in this case.

5.8 Conclusion about the request to cease trade the private placement

[140] The analytical framework that the Tribunal has applied when reviewing defensive tactics in the context of contested take-over bids (as in *Hecla*) would not necessarily govern cases that involve shareholder activism but no bid. Further, Mithaq did not persuade us that if we focus not on its bid in this case, but rather on Mithaq Capital’s shareholder activism, we should read *Eco Oro* as providing a basis for s. 127 relief in this case. *Eco Oro* is distinguishable in material respects, including because here, unlike in *Eco Oro*, there was no proxy contest and no transaction that materially affected control.

[141] Mithaq did not establish that the private placement was abusive, let alone clearly abusive (the standard set in *Hecla* for cases involving a take-over bid). The *Hecla* test aside, Mithaq did not persuade us that the circumstances surrounding the private placement were otherwise sufficient to justify the exercise of our s. 127 public interest jurisdiction, applying the principles in *Eco Oro*. We therefore dismissed Mithaq’s request that we cease trade the private placement.

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[27] *Eco Oro Minerals Corp (Re)*, 2017 ONSEC 23 (***Eco Oro***)
[28] *Eco Oro* at para 246
[29] *Eco Oro* at para 247
[30] *Eco Oro* at para 249
[31] *Eco Oro* at para 12

6. TSX DECISION

6.1 Introduction

[142] Mithaq asked us, as an alternative to cease trading the private placement, to set aside the TSX's decision to approve the private placement without requiring shareholder approval.

[143] The TSX submitted that we need not deal with this request at all, because if we were to find (as we have) that the private placement is not an improper defensive tactic, it follows that the private placement had a legitimate business purpose. The TSX argued that since some of the considerations relevant to that determination are the same as those that the TSX considered, there would be no basis to set aside the TSX decision. We disagree. The inquiries are not identical, and our conclusion about the legitimacy of the private placement does not preclude us from finding that the TSX should have required shareholder approval. We therefore proceed to consider Mithaq's request.

[144] The TSX made its decision pursuant to the *TSX Company Manual*, which contains the rules that apply to TSX-listed issuers such as Aimia. The manual requires issuers to notify the TSX of any transaction involving the issuance of any of its securities (with limited exceptions not applicable here). The TSX may approve or reject the notice of the transaction, or it may impose conditions or allow exemptions from certain requirements.

[145] In making its decision, the TSX must consider the effect of the proposed transaction on the "quality of the marketplace", a concept that this Tribunal has described as "a broad concept of market quality and integrity"[32] and that includes several factors we discuss below.

[146] The manual also provides that if the transaction "materially affects control" of the issuer, shareholder approval will be required.[33]

[147] In this case, Aimia gave the TSX notice of its intention to carry out a private placement. Through that notice, and through later communications between Aimia and the TSX, Aimia provided information about the intended transaction. Ultimately, the TSX decided that shareholder approval would not be required.

[148] Mithaq brought this application under s. 21.7 of the *Act*, which allows anyone directly affected by a decision of the TSX to apply to this Tribunal for a review of the decision. Subsection 8(3) of the *Act* authorizes us to confirm the TSX's decision or to make such other decision as we consider proper.

6.2 Background

[149] Aimia's first notification to the TSX of its intention to carry out the private placement was on August 15, by way of a price protection form that Aimia filed with the TSX. Aimia filed an amended form on September 14.

[150] On September 20, the TSX asked Aimia to explain the lead investor's seemingly disproportionate representation on the board. The TSX also asked for a copy of the Clarus report. Aimia answered those requests and provided further information on September 22 and 27.

[151] On September 28, the Listings Committee of the TSX met and decided to conditionally approve the private placement, with no requirement for shareholder approval.

[152] When on October 3, Mithaq announced its intention to launch its bid, the TSX viewed this development as possibly material. It invited Aimia to make submissions about the private placement in the context of the bid. On October 10, Aimia did so.

[153] On October 11, the Listings Committee met again. It concluded that the private placement should be conditionally approved, but with a new condition requiring Aimia to issue a press release announcing the private placement at least five days before closing. Aimia announced the private placement on October 13.

[154] The initial hearing in this proceeding took place on October 19. Aware of the Tribunal's order of that day, the Listings Committee met again on October 20 and decided to release its conditional approval letter.

[155] It was common ground before us that we should treat the Listings Committee's decisions of September 28, October 11 and October 20 together as the TSX decision for the purpose of Mithaq's application.

[156] We begin our analysis by describing the test for us to interfere with that decision. We then review Mithaq's submissions that the decision is deficient. In summary, Mithaq contended that the TSX proceeded on incorrect principles, in that the TSX did not properly consider the effect of the private placement on the quality of the marketplace, including whether the

32 *TSX Company Manual*, s 603; *HudBay* at para 212
33 *TSX Company Manual*, s 604(a)

private placement would "materially affect control" of Aimia. Mithaq also argued that there is new and compelling evidence before us that was not presented to the TSX. We disagree with Mithaq's assessment of the TSX decision and disagree that there was evidence before us that was "new and compelling", so we dismissed the request that we interfere with the TSX decision.

6.3 Test for review

[157] This Tribunal has consistently chosen to adopt a restrained approach when asked to interfere with a decision of a self-regulatory organization, or of a recognized exchange such as the TSX. That approach is particularly appropriate where, as here, the decision at issue was a discretionary one that is squarely within the decision maker's expertise.[34] The Tribunal has said that to avoid creating excessive regulatory uncertainty, it will intervene only where the applicant meets the heavy burden of demonstrating that its case falls squarely within one of the following grounds:

a. the decision maker proceeded on an incorrect principle;

b. the decision maker erred in law;

c. the decision maker overlooked material evidence;

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

e. the Tribunal's perception of the public interest conflicts with that of the decision maker.[35]

[158] Even where one or more of those criteria is met, the Tribunal may choose not to set aside the decision.

6.4 Alleged deficiencies

6.4.1 Introduction

[159] Mithaq contended that the TSX proceeded on incorrect principles in interpreting and applying the "materially affect control" standard. Mithaq identified three principal issues that it said the TSX failed to adequately consider:

a. the impact of the private placement on Mithaq's offer, including on the economics of that offer;

b. the ongoing litigation between Mithaq Capital and Aimia; and

c. the Aimia board's pattern of not seeking shareholder approval for defensive measures.

[160] Mithaq said the TSX was deficient in four additional respects, and that it again proceeded on incorrect principles as a result:

a. it incorrectly relied on Aimia's governance process with respect to the private placement;

b. it determined that it lacked the jurisdiction to consider whether the private placement was an abusive tactic;

c. it failed to consider the shareholder complaints; and

d. it too easily accepted Aimia's assertions about:

   i. joint actorship;

   ii. the effect of the private placement on control of Aimia;

   iii. the lead investors' board nomination rights; and

   iv. whether the private placement was on favourable terms.

[161] Finally, Mithaq contended that there is "new and compelling evidence" that the TSX did not take into account in its decision. Specifically, Aimia's director's circular reported that the private placement investors did not intend to tender to Mithaq's bid.

[162] We address each of these in turn.

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[34] *HudBay* at paras 103-104

[35] *Canada Malting Co (Re)*, (1986) 9 OSCB 3565 at para 24; *Wilks Brothers, LLC (Re)*, 2021 ONSEC 25 at para 57; *HudBay* at para 114

6.4.2 Impact on Mithaq's offer

[163] The *TSX Company Manual* defines "materially affect control" to include "the ability to block significant transactions."[36] Mithaq submitted that in order to determine whether the private placement could block the offer, one must assess how the private placement affected the economics of the offer. Mithaq contended that the TSX did not sufficiently address this issue, and that the TSX did not adequately consider whether the private placement would effectively block the offer by making it uneconomic for Mithaq to proceed, and thereby deny shareholders the opportunity to tender to the offer. We disagree.

[164] A private placement's impact on the economics of the offer may well be relevant to whether the private placement materially affects control of the issuer. However, we are not aware of any authority that supports the proposition that the impact on the economics of the offer should be a dominant consideration. It is but one factor among many.

[165] In any event, the TSX was alive to this issue, as is evident from its statement that the private placement would indeed impact the economics of the offer. The TSX noted that despite an impact on the economics, there would be no impact on any voting blocks of shares. We reject Mithaq's submission that the TSX's reference to the absence of an impact on any voting blocks reflected a misunderstanding of "materially affect control". Given that "materially affect control" includes "the ability to block significant transactions", the reference to voting blocks is directly relevant.

[166] The TSX correctly recognized the limitations on its authority, specifically the fact that it did not have jurisdiction to determine the critical question of whether the private placement was a defensive tactic. On this point, we disagree with Mithaq's submission that the TSX incorrectly determined it lacked this jurisdiction. The TSX's jurisdiction in the context of a private placement is to consider the effect on the quality of the marketplace.

[167] In recognition that it would be some other body (*e.g.*, this Tribunal) that would determine whether the private placement was a defensive tactic, the TSX added a condition to its approval, by requiring that Aimia give notice to the market of the transaction before closing. By doing this, and consistent with this Tribunal's comments in *Eco Oro*,[37] the TSX ensured that there was an opportunity for market participants to raise any concerns with the appropriate body, as Mithaq soon did before this Tribunal. The TSX explicitly contemplated that such concerns might relate to the dilutive nature of the private placement and its impact on the economics of the offer.

[168] We also do not accept Mithaq's submission that the TSX erred in principle by failing to consider the impact of the private placement on the minimum tender condition. The TSX submits that by the time it issued its final approval on October 20, we had issued our October 19 order, which eliminated the private placement's impact on the minimum tender condition. While we disagree that the undertakings Aimia had given were a complete answer to the impact on the minimum tender condition, we could have modified the requirements of the minimum tender condition if we decided it was appropriate to do so. The TSX decision was correct in saying that this Tribunal was engaged and had jurisdiction.

[169] Mithaq also submitted that the TSX erred by failing to analyze what would happen if the private placement investors rejected Mithaq's offer. We disagree. The TSX was not required to engage in the significant speculation that would have been needed to assess those consequences.

[170] In context, the TSX's treatment of the impact on Mithaq's offer was sufficient. It did not constitute an error in principle.

6.4.3 Court proceedings

[171] Mithaq submitted that the TSX should have considered the relief Mithaq Capital was seeking in the court litigation with Aimia and how that relief might affect the "materially affects control" threshold. In summary, Mithaq said that the TSX should have, but did not, consider the questions of whether the Aimia board was properly elected, and the serious dilutive impact of the private placement on upcoming votes about the shareholder rights plan or at any meeting ordered by the court. Moreover, said Mithaq, the TSX should have considered the facts underlying the litigation and how they were relevant to Aimia's motives for proceeding with the private placement.

[172] Aimia countered that not only did the TSX expressly consider the existence of the litigation, Mithaq failed to explain how the litigation ought to have affected the TSX decision. Aimia submitted that the TSX was not in a position to conduct a comprehensive review of the litigation and the merits of Mithaq's position; that would be outside its jurisdiction and its mandate.

[173] Staff added that the outcome of the litigation was uncertain, and any reliance by the TSX on the litigation might have significantly delayed its decision. Both the TSX and Staff submitted that requiring the TSX to consider potential litigation outcomes in this context would be detrimental to its role and process in approving the issuance of securities and could have a significant detrimental impact on legitimate capital raising activity.

[36] *TSX Company Manual*, s 1
[37] *Eco Oro* at paras 3, 105

[174] We agree with the submissions of Aimia, Staff and the TSX, substantially for the reasons set out beginning at paragraph [47] above about our own reluctance to assess the litigation. We reject Mithaq Capital's submission that the TSX ought to have given greater consideration to the litigation in determining the question of "materially affects control".

6.4.4 Board's alleged pattern of not seeking shareholder approval

[175] The third main issue that Mithaq said the TSX failed to adequately consider in assessing whether the private placement would materially affect control of Aimia is the Aimia board's alleged pattern of not seeking shareholder approval for defensive measures. Mithaq submitted that the TSX knew by October 20 that Aimia had taken no steps to ensure that by December 7 there would be an opportunity for shareholders to approve the shareholder rights plan. Mithaq argued that the TSX should have considered that the Aimia board was again seeking to implement a defensive tactic in the form of the private placement, without shareholder approval.

[176] Staff countered that Aimia's decision to implement a shareholder rights plan without shareholder approval did not reflect a pattern of problematic behaviour germane to the issue of whether the private placement materially affected control of Aimia. Staff submitted that, even if relevant, it would not be a basis to interfere with the TSX decision.

[177] The TSX added that at the time of the private placement, Aimia was still within the six-month period to seek shareholder approval for the shareholder rights plan and Aimia was entitled to seek the TSX's authorization for the private placement without prior disclosure to the market. The TSX submitted that it would have been speculative and premature for it to conclude that Aimia would not comply with its obligations.

[178] Aimia submitted that, in any event, the shareholder rights plan was irrelevant to whether the private placement would materially affect control of Aimia. Mithaq's offer was a permitted bid under the shareholder rights plan then in effect, and Aimia submitted that the plan had no impact on the offer. We disagree, because while the Mithaq bid was a permitted bid, the plan did restrict further stock accumulation by a bidder. Our disagreement is inconsequential, though, because that fact is also irrelevant to whether the private placement would materially affect control of Aimia.

[179] We agree with the TSX that it would not have been appropriate for it to conclude that Aimia would fail to seek shareholder approval within the six-month window. One could reasonably draw a range of inferences about Aimia's intentions. We were not persuaded that the facts supported a conclusion that Aimia was engaging in a pattern of conduct to defeat shareholder choice, and we cannot say that the TSX erred in principle in treating this issue the way it did.

6.4.5 Three additional alleged deficiencies

[180] Mithaq cited three additional ways in which it said the TSX decision was deficient. Mithaq argued that had the TSX not so erred, it would have concluded that a shareholder vote was required.

[181] First, Mithaq submitted that the TSX concluded that Aimia's governance process with respect to the private placement was sound and adequate without assessing that process, including the Special Committee's process and the nature of the advice delivered in the Clarus opinion.

[182] Despite our misgivings about the Special Committee's process, it was not unreasonable, given the timing of the TSX's decision and the record before it, for the TSX to have adopted its Compliance Department's conclusion that the governance process surrounding the private placement was sound and adequate. In any event, any disagreement we have with the TSX's assessment would not lead us to conclude that the TSX erred in principle or that we would be justified in interfering with the TSX decision.

[183] Second, Mithaq submitted that the TSX failed to consider shareholder complaints. We disagree. The TSX considered not only Mithaq's submissions, but also the correspondence received from shareholders both in support of and against the private placement. We have already explained our reasons for not attributing any weight to the correspondence. The TSX need not have done anything differently.

[184] Third, Mithaq submitted that despite the TSX's obligation not to rely on "unverifiable discussions"[38] with respect to material facts, the TSX too easily accepted Aimia's assertions in four areas. We did not share Mithaq's concerns in any of those areas, which were as follows:

a. *whether the private placement investors were joint actors of Aimia's* – we did not share Mithaq's concern because, for the reasons set out above beginning at paragraph [117], we found insufficient evidence to conclude that the investors were joint actors;

b. *whether the private placement would materially affect control of Aimia* – we did not share Mithaq's concern because the TSX decision addresses this question directly;

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[38] *Eco Oro* at para 96

c. *the lead investors' disproportionate board nomination rights* – we did not share Mithaq's concern because the TSX itself raised concerns with Aimia, following which Aimia adjusted the board representation rights; and

d. *whether the private placement was on "very favourable terms"* – we did not share Mithaq's concern for the reasons set out above beginning at paragraph [112], where we concluded that Ernst & Young did not provide a sufficient basis for us to conclude that the discount associated with the private placement shares was so far out of market as to suggest unfairness to Aimia shareholders.

[185] In addition to those reasons for dismissing the concerns, we disagree that the TSX merely accepted Aimia's assertions at face value. The TSX engaged with these issues at the outset and again as appropriate after Aimia announced and made the offer. The TSX asked questions of Aimia, reviewed the correspondence from Mithaq and other shareholders, and considered this proceeding and our October 19 order. In our view, the TSX's actions easily met the standard in *HudBay*, in which the Tribunal held that the TSX "does not generally have an obligation to conduct an investigation or carry out due diligence when it is considering the exercise of its discretion under a provision of the TSX Manual".[39]

[186] We see none of the three additional grounds raised by Mithaq as supporting a conclusion that the TSX erred in principle in making its decision.

6.4.6 New and compelling evidence

[187] Mithaq submitted that there is new and compelling evidence that the TSX did not consider, and that we should interfere with the TSX decision on that basis as well. According to Mithaq, there were two kinds of new evidence.

[188] The first is the Ernst & Young report valuing the shares and warrants that would be issued under the private placement. The report is dated November 17, almost a month after the TSX issued its final decision. The report is therefore new, but we have already explained (at paragraphs [111] and [112] above) that we did not find it compelling. There is therefore no basis to conclude that even if the TSX had the report at the time, the report would have influenced the TSX's decision. We do not think it should have.

[189] The second kind of new evidence, according to Mithaq, was the private placement investors' stated intention (as reflected in Aimia's directors' circular) not to tender to Mithaq's bid. Mithaq submitted that this evidence was directly relevant to the TSX's inquiry about whether the private placement materially affected control of Aimia.

[190] Even though the directors' circular was issued early on October 20, and the TSX decision was issued later that day, the parties agree that the TSX did not have the directors' circular. There is no evidence that the TSX otherwise knew about the private placement investors' stated intention, and there was no suggestion that the TSX ought to have discovered that through reasonable diligence. Mithaq did suggest that Aimia ought to have conveyed this information to the TSX promptly, but that is irrelevant to this issue even if true. We had no evidence about when the investors communicated this intention to Aimia.

[191] The evidence is therefore new, but again we did not find it compelling. As we discussed above, the private placement resulted from arms' length negotiations over several months. While the investors did not intend to tender to the then-existing bid, they made no similar statement about a revised or competing bid. The lead investor confirmed that it was not required to support management nor to vote its shares in any particular manner. There was no agreement, commitment or understanding to effect any particular result.

[192] The central issue before the TSX was whether the private placement would "materially affect control" of Aimia. Because there was insufficient evidence that the investors were acting jointly with one another or with Aimia, and because the private placement investors' stated intention not to tender as reflected in the directors' circular was non-binding and related only to the then-existing bid, we decided that evidence of that intention would be insufficient to cause the TSX to come to a different conclusion about "materially affect control". Without that potential causal relationship between the evidence and the TSX's decision, the evidence is not compelling.

[193] Mithaq also submitted that the new evidence would influence a decision about "materially affect control" in a less direct way. Mithaq argued that the evidence was compelling because the private placement materially affected the likelihood of success of the Mithaq bid given its prejudicial impact on the minimum tender condition, and therefore, in turn, affected the likelihood of a change in control. On this point, the TSX noted that this Tribunal had decided on October 19 not to cease trade the private placement, and in so deciding had relied on Aimia's undertakings, including the undertaking that until Mithaq's application was resolved, any shares issued under the private placement would not be included for the purpose of Mithaq satisfying the minimum tender condition. Accordingly, there is no basis to conclude that the TSX would have decided the issue of "materially affect control" differently than it did.

[39] *HudBay* at para 139

6.5 Conclusion

[194] None of the concerns that Mithaq raised about the TSX's process or its decision constituted, by itself, an error in principle. We reached the same conclusion about all of those concerns taken together. We found little to criticize about the process or decision.

[195] As for new evidence, while both items of evidence that Mithaq pointed to were indeed new, we found neither to be a compelling reason to overturn the TSX's decision.

[196] Mithaq failed to meet the heavy burden associated with persuading us to interfere with the TSX decision on either basis. We therefore declined to do so.

7. RELIEF RELATING TO THE MINIMUM TENDER CONDITION, THE MINORITY SHAREHOLDER APPROVAL REQUIREMENT FOR A SECOND STEP BUSINESS COMBINATION, AND THE 5% EXEMPTION

7.1 Introduction

[197] Mithaq made an alternative request, should we decline both to cease trade the private placement and to require shareholder approval. Mithaq submitted that, in that event, we should order that shares issued under the private placement not be counted in the number of outstanding Aimia shares for purposes of satisfying either the minimum tender condition or any minority shareholder approval requirement under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* for a second step business combination.

[198] Mithaq also sought an order confirming that it could rely on the exemption in section 2.2(3) of NI 62-104 permitting it to buy up to 5% of the outstanding Aimia shares while the offer is outstanding. Aimia in turn sought an order prohibiting Mithaq from relying on that exemption.

[199] We decided not to grant any of the above relief.

7.2 Minimum tender or minority shareholder approval relief

[200] We turn first to Mithaq's requested relief regarding the minimum tender condition and minority shareholder approval requirements. Mithaq argued that there was a material risk its bid would fail, given the dilutive effect of the private placement and the private placement investors' intention not to tender. Mithaq submitted that minimum tender relief would ensure that shareholders could tender to the offer.

[201] Aimia and Eagle both opposed Mithaq's request. They submitted that the private placement investors were arm's length to Aimia, were not party to any voting support or other arrangements requiring them to oppose the offer, and were legitimate Aimia shareholders entitled to the same rights as all shareholders, including the right not to tender to the offer. They argued that the dilutive effect of the private placement did not mean the offer would necessarily fail. They also observed that the private placement investors may decide to tender to an improved offer or an alternative offer.

[202] As for any potential second stage business combination, Aimia submitted that the request was premature and lacking in detail, but for the same reasons, the private placement investors should have full participation in any related required vote.

[203] As this Tribunal has previously held, predictability is important, and we must be cautious in granting relief that alters the carefully calibrated bid regime. We should grant the kind of relief sought here only if there are "exceptional circumstances or abusive or improper conduct that undermined minority shareholder choice".[40]

[204] As we have discussed at length, Aimia's conduct in this case does not fit that description. Despite the effect of the private placement on the bid environment, we had no basis to conclude that it would deny shareholders the opportunity to tender to the offer. Consistent with the objective of protecting the integrity of the bid regime, we dismissed Mithaq's request that we vary the minimum tender condition.

[205] We also agreed that it is premature to consider granting relief from the minority shareholder approval requirements in the context of a potential future second stage business combination. As a result, we declined to grant that alternative relief as well.

7.3 The 5% exemption

[206] Turning next to the order Mithaq seeks confirming its ability to rely on the so-called 5% exemption, we declined to make any such order as we do not have the jurisdiction to do so.

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[40] *ESW* at paras 10, 81

[207] The Tribunal is a statutory tribunal with no inherent jurisdiction. It can order only what it is empowered to order. The Tribunal is not empowered to issue a declaration that a person or company is entitled to rely on an existing exemption.

[208] However, the Tribunal does have the jurisdiction to grant an order of the type that Aimia sought, denying Mithaq the ability to rely on the 5% exemption. To make such an order, we must conclude that it is in the public interest to do so.

[209] Aimia did not persuade us that we should reach that conclusion.

[210] Aimia argued that Mithaq should not be entitled to rely on the 5% exemption because Mithaq's offer was too conditional, containing 20 conditions and 27 subconditions. Aimia submitted that allowing Mithaq to rely on the exemption would allow Mithaq to acquire what is effectively negative control over Aimia, even though Mithaq can withdraw its bid at any time. According to Aimia, Mithaq's offer could not be considered to have been made in good faith, and Aimia shareholders could not rely on it. Aimia submitted that Mithaq should not be able to use the highly conditional offer as a shield to increase its ownership share in Aimia to almost 36%.

[211] After this proceeding was underway, Mithaq removed from its offer two conditions to which Aimia had taken strong exception – one relating to a resolution of the litigation between Mithaq and Aimia and one relating to rights of due diligence.

[212] Staff submitted that with these conditions removed, we should not find the offer to be too conditional to have been made in good faith. Staff also noted that the take-over bid regime does not prescribe what conditions are and are not appropriate, except for the minimum tender condition requirements and a prohibition on financing conditions in connection with cash bids.

[213] We agree that the nature of the conditions in the offer does not make the offer so conditional that it cannot be considered to have been made in good faith. In addition, as Staff submitted, if Mithaq does not exercise its discretion regarding the offer's conditions in a reasonable manner, there is the prospect of regulatory intervention.

[214] Accordingly, we concluded that it would not be in the public interest to deny Mithaq access to the 5% exemption.

8. REQUEST TO CEASE TRADE THE SHAREHOLDER RIGHTS PLAN

[215] In its application, Mithaq also asked us to cease trade the shareholder rights plan that then existed, or any replacement plan. The plan that existed at the time of Mithaq's application expired on its own terms on December 7. Aimia adopted the replacement plan on December 6 and announced it on December 7.

[216] In its written submissions, Aimia undertook to withdraw the plan upon the issuance of our decision. Accordingly, the plan ceased to have effect from December 14, the date of our order. Mithaq's request to cease trade the plan is therefore moot, so we do not need to address it.

9. CONCLUSION

[217] For the above reasons, we dismissed Mithaq's application and Aimia's cross-application.

Dated at Toronto this 8th day of March, 2024

"Timothy Moseley"

"James D. G. Douglas"

"Dale R. Ponder"

B. Ontario Securities Commission

B.1
Notices

B.1.1 Notice of Ministerial Approval of Amendments to Implement an Access Model for Prospectuses, Generally, of Non-Investment Fund Reporting Issuers

NOTICE OF MINISTERIAL APPROVAL OF
AMENDMENTS TO
IMPLEMENT AN ACCESS MODEL FOR PROSPECTUSES, GENERALLY,
OF NON-INVESTMENT FUND REPORTING ISSUERS

Ministerial Approval

On March 5, 2024, the Ontario Minister of Finance approved the following amendments made by the Ontario Securities Commission (the **Commission**) to implement an access model for prospectuses of non-investment fund reporting issuers:

- amendments to National Instrument 41-101 *General Prospectus Requirements*,
- amendments to National Instrument 44-101 *Short Form Prospectus Distributions*,
- amendments to National Instrument 44-102 *Shelf Distributions*, and
- amendments to National Instrument 44-103 *Post-Receipt Pricing*

(collectively, the **Final Amendments**).

In connection with the Final Amendments, the Commission has also made changes to:

- Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirement*s,
- Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions*,
- Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing*,

as well as related consequential changes to National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means* (collectively, the **Final Changes**).

The above material was published on January 11, 2024 in the Bulletin. See (2024), 47 OSCB 323.

The text of the Final Amendments and the Final Changes is published in Chapter B.5 of this Bulletin.

Effective Date

The Final Amendments and the Final Changes have an effective date of April 16, 2024.

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B.2
Orders

B.2.1 Playmaker Capital Inc.

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).

March 7, 2024

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

AND

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

AND

IN THE MATTER OF
PLAYMAKER CAPITAL INC.
(the Filer)

ORDER

Background

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

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

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

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, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.

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

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

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

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

OSC File #: 2024/0070

B.2.2 Q4 Inc. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Applicable Legislative Provisions

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

**IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT
(ONTARIO),
R.S.O. 1990, c. B.16,
AS AMENDED
(the OBCA)**

AND

**IN THE MATTER OF
Q4 INC.
(the Applicant)**

**ORDER
(Subsection 1(6) of the OBCA)**

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in subsection 1(1) of the OBCA;

2. The Applicant has no intention to seek public financing by way of an offering of securities; and

3. On February 21, 2024 the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction in Canada in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*. The representations set out in the Reporting Issuer Order continue to be true.

AND UPON the Commission being satisfied that to grant this order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant is deemed to have ceased to be offering its securities to the public.

DATED at Toronto on this 11th day of March, 2024.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0060

B.2.3 Logistec Corporation

Headnote

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

Applicable Legislative Provisions

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

[Original text in French]

February 27, 2024

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

AND

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

AND

**IN THE MATTER OF
LOGISTEC CORPORATION
(the Filer)**

ORDER

Background

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

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

a) the Autorité des marchés financiers is the principal regulator for this application,

b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System* (Regulation 11-102) is intended to be relied upon Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador and Saskatchewan, 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 *Regulation 14-101 respecting Definitions*, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions* 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 *Regulation 51-105 respecting 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 *Regulation 21-101 respecting 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.

“Marie-Claude Brunet-Ladrie”
Directrice de la surveillance des émetteurs et initiés
Autorité des marchés financiers

OSC File #: 2024-0033

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B.3
Reasons and Decisions

B.3.1 Desjardins Global Asset Management Inc. and Desjardins Investments Inc.

Headnote

Policy Statements 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from conflict of interest/self-dealing and reporting provisions in section 13.5 of Regulation 31-103, and section 4.1 of Regulation 81-102 to facilitate investment by investment funds subject to Regulation 81-102 into a related limited partnership that is not a reporting issuer – relief subject to certain conditions.

Applicable Legislative Provisions

Pursuant to 3.3 of Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions and Regulation 11-102 respecting Passport System.
Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(a) and 15.1.
Regulation 81-102 respecting Investment Funds, ss. 4.1(2) and 19.1.

February 9, 2024

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

AND

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

AND

IN THE MATTER OF
DESJARDINS GLOBAL ASSET MANAGEMENT INC.

AND

DESJARDINS INVESTMENTS INC.
(the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application (the **Application**) from the Filers on their own behalf and on behalf of each existing investment fund that is a reporting issuer and to which *Regulation 81-102 respecting Investment Funds* (**Regulation 81-102**) and *Regulation 81-107 respecting Independent Review Committee for Investment Funds* (**Regulation 81-107**) apply, for which a Filer or an affiliate of a Filer acts as manager (the **Existing 81-102 Funds**), and each investment fund to be established in the future, that will be a reporting issuer and to which Regulation 81-102 and Regulation 81-107 will apply, for which a Filer or an affiliate of a Filer will act as manager (the **Future 81-102 Funds** and together with the Existing 81-102 Funds the **81-102 Funds**), which invest or will invest in DGAM Global Private Infrastructure Fund II, L.P. (the **Master Infrastructure Fund**) and DGAM Global Private Infrastructure Fund, L.P. (the **Feeder Infrastructure Fund** and collectively with the Master Infrastructure Fund, the **Infrastructure Funds**) (the **Proposed Investment**), for a decision under the securities legislation of the Jurisdictions (the **Legislation**) pursuant to:

a) section 15.1 of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**) exempting the Filers from the restriction contained in section 13.5(2)(a) of Regulation 31-103 which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, from making an investment in any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director unless this fact is disclosed to the client and the written consent of the client is obtained before the investment is made (the **31-103 Restriction**); and

b) section 19.1 of Regulation 81-102, exempting the 81-102 Funds from the restriction contained in subsection 4.1(2) of Regulation 81-102 which prohibits a dealer managed investment fund to knowingly make an investment in a class of securities of an issuer of which a partner, director, officer or employee of the dealer manager of the investment fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer, unless the partner, director, officer or employee (a) does not participate in the formulation of investment decisions made on behalf of the dealer managed investment fund; (b) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed investment fund; and (c) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed investment fund (the **81-102 Restriction**);

in order to allow the 81-102 Funds to make the Proposed Investment (the **Exemptions Sought**).

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

a) the Autorité des marchés financiers (the **AMF**) is the principal regulator for the Application,

b) the Filers have provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (**Regulation 11-102**) is intended to be relied upon in every jurisdiction in 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 *Regulation 14-101 respecting Definitions*, Regulation 11-102, Regulation 31-103, Regulation 81-102 and Regulation 81-107 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

DGAM

1. Desjardins Global Asset Management Inc. (**DGAM**) is a corporation incorporated under the *Business Corporation Act* (Québec).

2. DGAM's head office is located at 1 Complexe Desjardins, 20th Floor, South Tower, Montréal, Québec, Canada, H5B 1B2.

3. DGAM is a member of a group of entities which fall under Fédération des caisses Desjardins du Québec's ("**FCDQ**") umbrella (the "**Desjardins Group**"), a financial services cooperative established under the *Act respecting financial services cooperatives* (Québec) and is a wholly-owned indirect subsidiary of FCDQ. As such, DGAM is an affiliate of DII (as defined below).

4. DGAM is registered as portfolio manager ("**PM**") and as exempt market dealer in all jurisdictions of Canada. DGAM is also registered as investment fund manager in Alberta, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador. In addition, DGAM is registered as adviser in Manitoba, commodity trading manager in Ontario and as derivatives portfolio manager in Québec.

5. DGAM, or an affiliate of DGAM, is, or will be, the PM of the 81-102 Funds. DGAM, or an affiliate of DGAM, is or will be, the investment fund manager of the 81-102 Funds that are exchange traded funds (ETF).

6. The Infrastructure Funds are managed and advised by DGAM.

7. A partner, director, officer or employee of DGAM, or a partner, director, officer or employee of an associate or an affiliate of DGAM, may also be a partner, director or officer of an Infrastructure Fund. Consequently, as an 81-102 Fund may be

a "dealer managed investment fund", the restrictions in subsection 4.1(2) of Regulation 81-102 may apply to an investment by an 81-102 Fund in an Infrastructure Fund.

8. The proposed investment structure may also result in an 81-102 Fund investing in an Infrastructure Fund in which a responsible person or an associate of a responsible person is a partner, officer or director, or performs a similar function or occupies a similar position.

9. DGAM is a "dealer manager" as such term is defined under Regulation 81-102.

10. DGAM is not a reporting issuer in any jurisdiction of Canada.

11. DGAM is not in default of the legislation in any jurisdiction of Canada.

DII

12. Desjardins Investments Inc. (**DII**) is a corporation incorporated under the *Business Corporation Act* (Québec).

13. DII's head office is located at 1 Complexe Desjardins, 25th Floor, South Tower, Montréal, Québec, Canada, H5B 1B2.

14. DII is a member of the Desjardins Group and is a wholly-owned indirect subsidiary of FCDQ. As such, DII is an affiliate of DGAM.

15. DII, or an affiliate of DII, will be the investment fund manager and the promoter of the 81-102 Funds.

16. DII, or an affiliate of DII, will be the registrar and transfer agent of the 81-102 Funds, other than the 81-102 Funds that are ETFs.

17. DII is duly registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador.

18. DII is not a reporting issuer in any jurisdiction of Canada.

19. DII is not in default of the legislation in any jurisdiction of Canada.

The 81-102 Funds

20. Each 81-102 Fund is, or will be, an "investment fund" to which Regulation 81-102 applies, as such term is defined under the Legislation.

21. An 81-102 Fund may be a "dealer managed investment fund" as such term is defined under Regulation 81-102.

22. Each 81-102 Fund has, or will have, as applicable, a prospectus, a simplified prospectus, ETF facts, and/or fund facts, prepared in accordance with *Regulation 41-101 respecting General Prospectus Requirements*, or *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure*, as applicable.

23. Securities of each 81-102 Fund are, or will be, qualified for distribution in one or more jurisdictions of Canada and therefore each 81-102 Fund is or will be a reporting issuer in those jurisdictions.

24. None of the Existing 81-102 Funds are in default of the legislation in any jurisdiction of Canada.

25. To the extent that an 81-102 Fund wishes to invest in an Infrastructure Fund, its investment objective and strategies will permit such an investment.

26. No 81-102 Fund will actively participate in the business or operations of the Infrastructure Funds.

27. Each 81-102 Fund is subject to Regulation 81-107 and the Filers have established an independent review committee (an "**IRC**") in order to review conflict of interest matters pertaining to the 81-102 Funds as required by Regulation 81-107.

The Infrastructure Funds

28. The Master Infrastructure Fund is an investment vehicle established as a limited partnership governed under the laws of the Province of Quebec. The general partner of the Master Infrastructure Fund is DGAM Global Private Infrastructure II Inc., a wholly-owned subsidiary of DGAM.

29. The investment objective of the Infrastructure Funds is to achieve favourable risk-adjusted returns over the long-term by assembling a diversified portfolio of infrastructure assets through direct, co-investment and fund investments.

30. The Feeder Infrastructure Fund seeks to achieve such investment objective by investing all or substantially all its assets in the Master Infrastructure Fund.

31. The Master Infrastructure Fund seeks to invest (i) directly in infrastructure assets, (ii) directly in infrastructure assets, pursuant to a transaction lead by a third-party co-investor, and (iii) indirectly in infrastructure assets through investments in one or more infrastructure fund managed by third-party managers.

32. The Master Infrastructure Fund seeks to invest in essential infrastructure assets in the energy, transportation, telecommunication, social infrastructure, utility and other infrastructure subsectors. The Master Infrastructure Fund targets a global diversification with a focus toward Canada and the United States and prioritizes jurisdictions that are politically stable, and have mature legal, regulatory, tax and accounting frameworks.

33. The Feeder Infrastructure Fund is a feeder vehicle set up for tax purposes and established as a limited partnership governed under the laws of the Province of Quebec. The general partner of the Feeder Infrastructure Fund is DGAM Global Private Infrastructure Inc., a wholly-owned subsidiary of DGAM.

34. The Infrastructure Funds are not considered to be “investment funds” (as such term is defined under the Legislation) but, in certain respects, operate in a manner similar to an investment fund. The Infrastructure Funds are administered by DGAM, as manager. Their assets are managed by DGAM, as PM. The net asset value that is used for purposes of determining the purchase and redemption price of an interest in the Infrastructure Funds is calculated quarterly by a party that is independent of the Filers.

35. Each Infrastructure Fund is not a reporting issuer in any jurisdiction of Canada. Interests in the Infrastructure Funds are sold pursuant to exemptions from the prospectus requirements in accordance with Regulation 45-106 – *Prospectus Exemptions*.

36. The Infrastructure Funds are not in default of the legislation of any jurisdiction of Canada.

37. The investments of the Infrastructure Funds which consist primarily of infrastructure assets (or in the case of the Feeder Infrastructure Fund, interests in the Master Infrastructure Fund) are primarily illiquid and the interests of the Infrastructure Funds will therefore have limited liquidity.

38. The Infrastructure Funds are valued and redeemable quarterly.

39. The value of the portfolio assets of the Master Infrastructure Fund is independently determined on a quarterly basis by one or more internationally recognized accounting firms and/or appraisal firms that is arm's length to the Filers, the Infrastructure Funds, and all other investment funds or vehicles managed by DGAM (Independent Appraiser). The value of the portfolio assets is determined on the basis of, among others, documents such as audited financial statements, models or valuations of the portfolio assets. The value of the portfolio assets of the Master Infrastructure Fund may be refreshed by an Independent Appraiser during an interim period if DGAM determines that a significant valuation event has occurred. The auditor of the Infrastructure Funds will not act as an Independent Appraiser. The Feeder Infrastructure Fund invests in the Master Infrastructure Fund at the net asset value of the Master Infrastructure Fund, which is based on the valuation prepared by the Independent Appraiser.

Fund-on-Underlying Fund Structure

40. The 81-102 Funds will not invest directly in the Master Infrastructure Fund; all investments by the 81-102 Funds in the Infrastructure Funds will be made by way of an investment in the Feeder Infrastructure Fund.

41. An investment by an 81-102 Fund in the Feeder Infrastructure Fund will be compatible with the investment objective and strategies of the 81-102 Fund.

42. The Feeder Infrastructure Fund directly acquires and holds interests of the Master Infrastructure Fund. The Feeder Infrastructure Fund is not considered to be an “investment fund” (as such term is defined under the Legislation).

43. The majority of the assets of the Feeder Infrastructure Fund are invested in the Master Infrastructure Fund. The remainder of the Feeder Infrastructure Fund’s portfolio is liquid, comprised of cash and cash equivalents.

44. The Feeder Infrastructure Fund is redeemable on a quarterly basis. Interests held in the Feeder Infrastructure Fund is considered an “illiquid asset” within the meaning of Regulation 81-102.

45. If the Exemptions Sought are granted, an 81-102 Fund will acquire securities of the Infrastructure Funds, in compliance with section 2.4 of Regulation 81-102. As a result, an 81-102 Fund will not be able to purchase an interest of the Infrastructure Funds if, immediately after purchase, more than 10% of the net asset value of the 81-102 Fund would be made up of “illiquid assets”.

46. The IRC of the 81-102 Funds will review and provide its approval, including by way of standing instructions, for the purchase of interests of the Infrastructure Funds by the 81-102 Funds, in accordance with section 5.2(2) of Regulation 81-107.

Generally

47. An 81-102 Fund will not invest in an Infrastructure Fund if, immediately after the purchase, the 81-102 Fund would hold securities representing more than 10% of: (i) the votes attaching to the outstanding voting securities of the Infrastructure Fund; or (ii) the outstanding equity securities of the Infrastructure Fund.

48. The Filers do not anticipate that any fees or sales charges would be incurred by an 81-102 Fund with respect to an investment in an Infrastructure Fund.

49. In the absence of relief of the Regulation 31-103 Restriction, DGAM or its affiliates would be precluded from causing an 81-102 Fund to invest in an Infrastructure Fund in these circumstances unless the consent of each investor in the 81-102 Fund is obtained. Each 81-102 Fund may have a large number of investors and, as a result, obtaining the consent of each such investor is not practical.

50. Subsection 6.2(3) of Regulation 81-107 provides an exemption for investment funds from the "investment fund conflict of interest investment restrictions" (as defined in Regulation 81-102) for purchases of related issuer securities if the purchase is made on an exchange. However, the exemption in subsection 6.2(3) of Regulation 81-107 does not apply to purchases of non-exchange-traded securities and therefore does not apply to purchases of an Infrastructure Fund by an 81-102 Fund.

51. Section 6.2(3) of Regulation 81-107 also does not provide an exemption from the restrictions in subsection 4.1(2) of Regulation 81-102, and therefore relief from the 81-102 Restriction is required in the circumstances.

52. An 81-102 Fund's investment in an Infrastructure Fund will represent the business judgment of a responsible person uninfluenced by considerations other than the best interests of the 81-102 Fund.

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 Exemptions Sought are granted provided that:

(a) an investment by an 81-102 Fund in an Infrastructure Fund will be included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of Regulation 81-102;

(b) at the time of each investment, the purchase is consistent with, or is necessary to meet, the investment objective of the 81-102 Fund and represents the business judgment of the portfolio adviser of the 81-102 Fund uninfluenced by considerations other than the best interests of the 81-102 Fund and is in fact in the best interests of the 81-102 Fund;

(c) the PM of the 81-102 Funds remains subject to suitability obligations when investing in the Infrastructure Funds;

(d) in respect of an investment by an 81-102 Fund in an Infrastructure Fund, no sales or redemption fees will be paid as part of the investment in the Infrastructure Fund;

(e) in respect of an investment by an 81-102 Fund in an Infrastructure Fund, no management fees or incentive fees will be payable by the 81-102 Fund that, to a reasonable person, would duplicate a fee payable by an Infrastructure Fund for the same service;

(f) in respect of an investment by an 81-102 Fund in an Infrastructure Fund, no incentive or additional remuneration will be provided to the portfolio manager of the 81-102 Fund;

(g) an 81-102 Fund will not invest at the net asset value of the Infrastructure Funds unless the net asset value of the Infrastructure Funds is independently calculated by an arm's length third party and the annual financial statements of the Infrastructure Funds are audited and made available to the 81-102 Fund.

(h) where applicable, an 81-102 Fund's investment in an Infrastructure Fund will be disclosed to investors in such 81-102 Fund's quarterly portfolio holding reports, financial statements and/or fund facts/ETF facts documents;

(i) the prospectus of the 81-102 Fund discloses, or will disclose in the next renewal or amendment thereto following the date of a decision evidencing the Exemptions Sought, the fact that the 81-102 Fund may invest in an Infrastructure Fund, which are investment vehicles managed by DGAM, the nature of the conflict of interest and how it is mitigated or avoided,

the approximate or maximum percentage of the net asset value that is intended to be invested in the Infrastructure Fund, and the fees and expenses payable;

(j) the IRC of the 81-102 Fund will review and provide its approval, including by way of standing instructions, prior to the purchase of securities of an Infrastructure Fund by the 81-102 Fund, in accordance with section 5.2(2) of Regulation 81-107;

(k) the manager of the 81-102 Fund complies with Section 5.1 of Regulation 81-107 and the manager and the IRC of the 81-102 Fund comply with Section 5.4 of Regulation 81-107 for any standing instructions the IRC provides in connection with the transactions;

(l) where an investment is made by an 81-102 Fund in an Infrastructure Fund, the annual and interim management reports of fund performance for the 81-102 Fund disclose the name of the related person in which an investment is made, being an Infrastructure Fund;

(m) where an investment is made by an 81-102 Fund in an Infrastructure Fund, the records of portfolio transactions maintained by the 81-102 Fund include, separately for every portfolio transaction effected by an 81-102 Fund through any affiliate of a Filer, the name of the related person in which an investment is made, being an Infrastructure Fund;

(n) the securities of an Infrastructure Fund held by a 81-102 Fund will not be voted at any meeting of the security holders of the Infrastructure Fund, except that the 81-102 Fund may arrange for the securities of the Infrastructure Fund it holds to be voted by the beneficial holders of securities of the 81-102 Fund;

(o) If the IRC becomes aware of an instance where a Filer or an affiliate of a Filer, in its capacity as manager of an 81-102 Fund, did not comply with the terms of this decision, or a condition imposed by the Legislation or the IRC in its approval, the IRC of the 81 102 Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the 81-102 Fund is organized; and

(p) DGAM will provide upon request to the Canadian securities regulatory authorities concerned the particulars of any investments made in reliance on the Exemptions Sought.

"Eric Jacob"
Superintendent, Client Services and Distribution Oversight
Autorité des marchés financiers

Application File #: 2023/0580
SEDAR+ File #: 6051395

B.3.2 Desjardins Global Asset Management Inc. and Desjardins Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from conflict of interest/self-dealing and reporting provisions in sections and sections 111 and 117 of the Securities Act (Ontario) to facilitate investment by investment funds subject to NI 81-102 into a related limited partnership that is not a reporting issuer – relief not required in filer's principal regulator's jurisdiction – relief subject to certain conditions.

Applicable Legislative Provisions

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.
Securities Act, R.S.O. 1990, c. S.5, ss. 111, 113 and 117.

February 9, 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
DESJARDINS GLOBAL ASSET MANAGEMENT INC.**

AND

**DESJARDINS INVESTMENTS INC.
(the Filers)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filers on their own behalf and on behalf of each existing investment fund that is a reporting issuer and to which National Instrument 81-102 *respecting Investment Funds* (**NI 81-102**) and National Instrument 81-107 *respecting Independent Review Committee for Investment Funds* (**NI 81-107**) apply, for which a Filer or an affiliate of a Filer acts as manager, (the **Existing 81-102 Funds**), and each investment fund to be established in the future, that will be a reporting issuer and to which NI 81-102 and NI 81-107 will apply, for which a Filer or an affiliate of a Filer will act as manager, (the **Future 81-102 Funds** and together with the Existing 81-102 Funds the **81-102 Funds**), which invest or will invest in DGAM Global Private Infrastructure Fund II, L.P. (the **Master Infrastructure Fund**) and DGAM Global Private Infrastructure Fund, L.P. (the **Feeder Infrastructure Fund** and collectively with the Master Infrastructure Fund, the **Infrastructure Funds**) (the **Proposed Investment**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) pursuant to:

1. section 113 of the *Securities Act* (Ontario) (the **OSA**) exempting the 81-102 Fund from the restriction contained in section 111(2) of the OSA, and the corresponding sections in the securities legislation applicable in the Other Jurisdictions (as defined below), which prohibit an investment fund from knowingly making an investment in:

   (a) any person or company who is a substantial security holder of the investment fund, its management company or its distribution company;

   (b) any person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder; or

   (c) an issuer in which any of the following has a significant interest:

      (i) any officer or director of the investment fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the investment fund, its management company or its distribution company;

(the **Local Investment Restrictions**)

2. section 117(2) of the OSA, exempting the Filers with respect to the 81-102 Funds from the requirement contained in subsection 117(1) of the OSA, and the corresponding sections in the securities legislation applicable in the Other Jurisdictions, which require every management company, in respect of each investment fund to which it provides services or advice, to prepare and file a report prepared in accordance with the requirements of the Legislation of every transaction of purchase or sale of securities between the investment fund and any related person or company (the **Local Reporting Requirements**);

in order to allow the 81-102 Funds to make the Proposed Investment (the **Exemptions Sought**).

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

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

b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *respecting Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia and Newfoundland and Labrador (collectively, the **Other Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in the Legislation, MI 11-102 and National Instrument 14-101 *respecting 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 Filers:

DGAM

1. Desjardins Global Asset Management Inc. (**DGAM**) is a corporation incorporated under the *Business Corporation Act* (Québec).

2. DGAM's head office is located at 1 Complexe Desjardins, 20th Floor, South Tower, Montréal, Québec, Canada, H5B 1B2.

3. DGAM is a member of a group of entities which fall under Fédération des caisses Desjardins du Québec's (**FCDQ**) umbrella (the **Desjardins Group**), a financial services cooperative established under the *Act respecting financial services cooperatives* (Québec) and is a wholly-owned indirect subsidiary of FCDQ. As such, DGAM is an affiliate of DII (as defined below).

4. DGAM is registered as portfolio manager (**PM**) and as exempt market dealer in all jurisdictions of Canada. DGAM is also registered as investment fund manager in Alberta, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador. In addition, DGAM is registered as adviser in Manitoba, commodity trading manager in Ontario and as derivatives portfolio manager in Québec.

5. DGAM, or an affiliate of DGAM, is, or will be, the PM of the 81-102 Funds. DGAM, or an affiliate of DGAM, is, or will be, the investment fund manager of the 81-102 Funds that are exchange-traded funds (ETFs).

6. The Infrastructure Funds are managed and advised by DGAM.

7. An officer and/or director of DGAM, or an affiliate of DGAM, may have a "significant interest" (as such term is defined in section 110(2)(a) of the OSA in an Infrastructure Fund from time to time. A person or company who is a substantial security holder of an 81-102 Fund, DGAM, or an affiliate of DGAM, may also have a significant interest in an Infrastructure Fund from time to time.

8. The proposed investment structure may also result in an 81-102 Fund investing in an Infrastructure Fund in which a responsible person or an associate of a responsible person is a partner, officer or director, or performs a similar function or occupies a similar position.

9. DGAM is not a reporting issuer in any jurisdiction of Canada.

10. DGAM is not in default of the legislation in any jurisdiction of Canada.

DII

11. Desjardins Investments Inc. (**DII**) is a corporation incorporated under the *Business Corporation Act* (Québec).

12. DII's head office is located at 1 Complexe Desjardins, 25th Floor, South Tower, Montréal, Québec, Canada, H5B 1B2.

13. DII is a member of the Desjardins Group and is a wholly-owned indirect subsidiary of FCDQ. As such, DII is an affiliate of DGAM.

14. DII, or an affiliate of DII, will be the investment fund manager and the promoter of the 81-102 Funds.

15. DII, or an affiliate of DII, will be the registrar and transfer agent of the 81-102 Funds, other than the 81-102 Funds that are ETFs.

16. DII is duly registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador.

17. DII is not a reporting issuer in any jurisdiction of Canada.

18. DII is not in default of the legislation in any jurisdiction of Canada.

The 81-102 Funds

19. Each 81-102 Fund is, or will be, an "investment fund" to which NI 81-102 applies, as such term is defined under the Legislation.

20. Each 81-102 Fund has, or will have, as applicable, a prospectus, a simplified prospectus, ETF facts, and/or fund facts, prepared in accordance with National Instrument 41-101 *respecting General Prospectus Requirements* or National Instrument 81-101 *respecting Mutual Fund Prospectus Disclosure*, as applicable.

21. Securities of each 81-102 Fund are, or will be, qualified for distribution in one or more Jurisdictions and therefore each 81-102 Fund is or will be a reporting issuer in those Jurisdictions.

22. None of the Existing 81-102 Funds are in default of the legislation in any jurisdiction of Canada.

23. To the extent that an 81-102 Fund wishes to invest in an Infrastructure Fund, its investment objective and strategies will permit such an investment.

24. No 81-102 Fund will actively participate in the business or operations of the Infrastructure Funds.

25. Each 81-102 Fund is subject to NI 81-107 and the Filers have established an independent review committee (an **IRC**) in order to review conflict of interest matters pertaining to the 81-102 Funds as required by NI 81-107.

The Infrastructure Funds

26. The Master Infrastructure Fund is an investment vehicle established as a limited partnership governed under the laws of the Province of Quebec. The general partner of the Master Infrastructure Fund is DGAM Global Private Infrastructure II Inc., a wholly-owned subsidiary of DGAM.

27. The investment objective of the Infrastructure Funds is to achieve favourable risk-adjusted returns over the long-term by assembling a diversified portfolio of infrastructure assets through direct, co-investment and fund investments.

28. The Feeder Infrastructure Fund seeks to achieve such investment objective by investing all or substantially all its assets in the Master Infrastructure Fund.

29. The Master Infrastructure Fund seeks to invest (i) directly in infrastructure assets, (ii) directly in infrastructure assets, pursuant to a transaction lead by a third-party co-investor, and (iii) indirectly in infrastructure assets through investments in one or more infrastructure fund managed by third-party managers.

30. The Master Infrastructure Fund seeks to invest in essential infrastructure assets in the energy, transportation, telecommunication, social infrastructure, utility and other infrastructure subsectors. The Master Infrastructure Fund targets a global diversification with a focus toward Canada and the United States and prioritizes jurisdictions that are politically stable, and have mature legal, regulatory, tax and accounting frameworks.

31. The Feeder Infrastructure Fund is a feeder vehicle set up for tax purposes and established as a limited partnership governed under the laws of the Province of Quebec. The general partner of the Feeder Infrastructure Fund is DGAM Global Private Infrastructure Inc., a wholly-owned subsidiary of DGAM.

32. The Infrastructure Funds are not considered to be “investment funds” (as such term is defined under the Legislation) but, in certain respects, operate in a manner similar to an investment fund. The Infrastructure Funds are administered by DGAM, as manager. Their assets are managed by DGAM, as PM. The net asset value that is used for purposes of determining the purchase and redemption price of an interest in the Infrastructure Funds is calculated quarterly by a party that is independent of the Filers.

33. Each Infrastructure Fund is not a reporting issuer in any jurisdiction of Canada. Interests in the Infrastructure Funds are sold pursuant to exemptions from the prospectus requirements in accordance with National Instrument 45-106 – *Prospectus Exemptions*.

34. The Infrastructure Funds are not in default of the legislation of any jurisdiction of Canada.

35. The investments of the Infrastructure Funds which consist primarily of infrastructure assets (or in the case of the Feeder Infrastructure Fund, interests in the Master Infrastructure Fund) are primarily illiquid and the interests of the Infrastructure Funds will therefore have limited liquidity.

36. The Infrastructure Funds are valued and redeemable quarterly.

37. The value of the portfolio assets of the Master Infrastructure Fund is independently determined on a quarterly basis by one or more internationally recognized accounting firms and/or appraisal firms that is arm's length to the Filers, the Infrastructure Funds, and all other investment funds or vehicles managed by DGAM (Independent Appraiser). The value of the portfolio assets is determined on the basis of, among others, documents such as audited financial statements, models or valuations of the portfolio assets. The value of the portfolio assets of the Master Infrastructure Fund may be refreshed by an Independent Appraiser during an interim period if DGAM determines that a significant valuation event has occurred. The auditor of the Infrastructure Funds will not act as an Independent Appraiser. The Feeder Infrastructure Fund invests in the Master Infrastructure Fund at the net asset value of the Master Infrastructure Fund, which is based on the valuation prepared by the Independent Appraiser.

Fund-on-Underlying Fund Structure

38. The 81-102 Funds will not invest directly in the Master Infrastructure Fund; all investments by the 81-102 Funds in the Infrastructure Funds will be made by way of an investment in the Feeder Infrastructure Fund.

39. An investment by an 81-102 Fund in the Feeder Infrastructure Fund will be compatible with the investment objective and strategies of the 81-102 Fund.

40. The Feeder Infrastructure Fund directly acquires and holds interests of the Master Infrastructure Fund. The Feeder Infrastructure Fund is not considered to be an “investment fund” (as such term is defined under the Legislation).

41. The majority of the assets of the Feeder Infrastructure Fund are invested in the Master Infrastructure Fund. The remainder of the Feeder Infrastructure Fund’s portfolio is liquid, comprised of cash and cash equivalents.

42. The Feeder Infrastructure Fund is redeemable on a quarterly basis. Interests held in the Feeder Infrastructure Fund is considered an “illiquid asset” within the meaning of NI 81-102.

43. If the Exemptions Sought are granted, an 81-102 Fund will acquire securities of the Infrastructure Funds, in compliance with section 2.4 of NI 81-102. As a result, an 81-102 Fund will not be able to purchase an interest of the Infrastructure Funds if, immediately after purchase, more than 10% of the net asset value of the 81-102 Fund would be made up of “illiquid assets”.

44. The IRC of the 81-102 Funds will review and provide its approval, including by way of standing instructions, for the purchase of interests of the Infrastructure Funds by the 81-102 Funds, in accordance with section 5.2(2) of NI 81-107.

The Local Investment Restrictions

45. An 81-102 Fund will not invest in an Infrastructure Fund if, immediately after the purchase, the 81-102 Fund would hold securities representing more than 10% of: (i) the votes attaching to the outstanding voting securities of the Infrastructure Fund; or (ii) the outstanding equity securities of the Infrastructure Fund.

46. The amount invested from time to time in an Infrastructure Fund by an 81-102 Fund, together with one or more other 81-102 Funds (collectively, the **Other 81-102 Funds**), may exceed 20% of the outstanding voting securities of such Infrastructure Fund. As a result, an 81-102 Fund could, together with one or more Other 81-102 Funds, become a

substantial security holder of an Infrastructure Fund. Each 81-102 Fund and the Other 81-102 Funds are "related investment funds", as such term is defined in section 106(1) of the OSA by virtue of common management by the Filers.

47. The Proposed Investments structure may result in an 81-102 Fund investing in an Infrastructure Fund, in which an officer or a director of the Filers or an affiliate thereof has a significant interest and/or an 81-102 Fund investing in an Infrastructure Fund in which a person or company who is a substantial security holder of the 81-102 Fund, the Filers or an affiliate thereof has a significant interest.

48. The Filers do not anticipate that any fees or sales charges would be incurred by an 81-102 Fund with respect to an investment in an Infrastructure Fund.

49. In the absence of relief from the Local Investment Restriction, each 81-102 Fund would be precluded from purchasing and holding securities of an Infrastructure Fund.

The Local Reporting Requirements

50. According to the Local Reporting Requirements, every management company shall, in respect of each investment fund to which it provides services or advice, file a report of every transaction of purchase or sale of securities between the investment fund and any related person or company within 30 days after the end of the month in which it occurs.

51. In the absence of relief from the Local Reporting Requirement, the Filers, or an affiliate of the Filers acting as the management company (as defined in the applicable securities laws) of the 81-102 Funds would be required to file a report of every purchase and sale of securities of the Infrastructure Fund by the 81-102 Funds or every purchase or sale effected by the 81-102 Funds through any related person or company with respect to which the related person or company received a fee either from the 81-102 Funds or from the other party to the transaction or from both within 30 days after the end of the month in which such purchase or sale occurs.

52. It would be costly and time-consuming for the 81-102 Funds to comply with the Local Reporting Requirement, the costs of which will ultimately be borne by the investors.

53. National Instrument 81-106 – *Investment Fund Continuous Disclosure* requires the 81 102 Funds to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the 81-102 Funds. Such disclosure is similar to that required under the Local Reporting Requirement and fulfills its objective to inform the general public about the transactions involving related parties to the 81-102 Funds.

Generally

54. Subsection 6.2(3) of NI 81-107 provides an exemption for investment funds from the "investment fund conflict of interest investment restrictions" (as defined in NI 81-102) for purchases of related issuer securities if the purchase is made on an exchange. However, the exemption in subsection 6.2(3) of NI 81-107 does not apply to purchases of non-exchange-traded securities and therefore does not apply to purchases of an Infrastructure Fund by an 81-102 Fund.

55. An 81-102 Fund's investment in an Infrastructure Fund will represent the business judgment of a responsible person uninfluenced by considerations other than the best interests of the 81-102 Fund.

Decision

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

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

(a) an investment by an 81-102 Fund in an Infrastructure Fund will be included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of Regulation 81-102;

(b) at the time of each investment, the purchase is consistent with, or is necessary to meet, the investment objective of the Fund and represents the business judgment of the portfolio adviser of the 81-102 Fund uninfluenced by considerations other than the best interests of the 81-102 Fund and is in fact in the best interests of the 81-102 Fund;

(c) the PM of the 81-102 Funds remains subject to suitability obligations when investing in the Infrastructure Funds;

(d) in respect of an investment by an 81-102 Fund in an Infrastructure Fund, no sales or redemption fees will be paid as part of the investment in the Infrastructure Fund;

(e) in respect of an investment by an 81-102 Fund in an Infrastructure Fund, no management fees or incentive fees will be payable by the 81-102 Fund that, to a reasonable person, would duplicate a fee payable by an Infrastructure Fund for the same service;

(f) in respect of an investment by an 81-102 Fund in an Infrastructure Fund, no incentive or additional remuneration will be provided to the portfolio manager of the 81-102 Fund;

(g) an 81-102 Fund will not invest at the net asset value of the Infrastructure Funds unless the net asset value of the Infrastructure Funds is independently calculated by an arm's length third party and the annual financial statements of the Infrastructure Funds are audited and made available to the 81-102 Fund.

(h) where applicable, an 81-102 Fund's investment in an Infrastructure Fund will be disclosed to investors in such 81-102 Fund's quarterly portfolio holding reports, financial statements and/or fund facts/ETF facts documents;

(i) the prospectus of the 81-102 Fund discloses, or will disclose in the next renewal or amendment thereto following the date of a decision evidencing the Exemptions Sought, the fact that the 81-102 Fund may invest in an Infrastructure Fund, which are investment vehicles managed by DGAM, the nature of the conflict of interest and how it is mitigated or avoided, the approximate or maximum percentage of the net asset value that is intended to be invested in the Infrastructure Fund, and the fees and expenses payable;

(j) the IRC of the 81-102 Fund will review and provide its approval, including by way of standing instructions, prior to the purchase of securities of an Infrastructure Fund by the 81-102 Fund, in accordance with section 5.2(2) of NI 81-107;

(k) the manager of the 81-102 Fund complies with Section 5.1 of NI 81-107 and the manager and the IRC of the 81-102 Fund comply with Section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

(l) where an investment is made by an 81-102 Fund in an Infrastructure Fund, the annual and interim management reports of fund performance for the 81-102 Fund disclose the name of the related person in which an investment is made, being an Infrastructure Fund;

(m) where an investment is made by an 81-102 Fund in an Infrastructure Fund, the records of portfolio transactions maintained by the 81-102 Fund include, separately for every portfolio transaction effected by an 81-102 Fund through any affiliate of a Filer, the name of the related person in which an investment is made, being an Infrastructure Fund;

(n) the securities of an Infrastructure Fund held by a 81-102 Fund will not be voted at any meeting of the security holders of the Infrastructure Fund, except that the 81-102 Fund may arrange for the securities of the Infrastructure Fund it holds to be voted by the beneficial holders of securities of the 81-102 Fund;

(o) If the IRC becomes aware of an instance where a Filer or an affiliate of a Filer, in its capacity as manager of an 81-102 Fund, did not comply with the terms of this decision, or a condition imposed by the Legislation or the IRC in its approval, the IRC of the 81 102 Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the 81-102 Fund is organized; and

(p) DGAM will provide upon request to the Canadian securities regulatory authorities concerned the particulars of any investments made in reliance on the Exemptions Sought.

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

Application File #: 2023/0580
SEDAR+ File #: 6051395

B.3.3 Newton Crypto Ltd.

Headnote

Application for time-limited relief from certain registrant obligations, prospectus requirement and trade reporting requirements – suitability relief to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling, depositing, withdrawing and staking of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, account appropriateness, disclosure and reporting requirements – relief is time-limited and will expire on the date that is 12 months from the date of the decision – relief granted based on the particular facts and circumstances of the application with the objective of fostering capital raising by innovative businesses in Canada – decision should not be viewed as precedent for other filers in the jurisdictions of Canada.

Statute cited

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

Instrument, Rule or Policy cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 13.3.
OSC Rule 91-506 Derivatives: Product Determination, ss. 2 and 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

March 8, 2024

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

AND

ALBERTA,
BRITISH COLUMBIA,
MANITOBA,
NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES,
NOVA SCOTIA,
NUNAVUT,
PRINCE EDWARD ISLAND,
QUÉBEC,
SASKATCHEWAN,
AND
YUKON

AND

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

AND

IN THE MATTER OF
NEWTON CRYPTO LTD.
(the Filer)

DECISION

Background

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**Staff Notice 21-327**) and Joint CSA/Investment Industry Regulatory Organization of Canada (**IIROC**) Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**Staff Notice 21-329**), securities legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or

contracts involving anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token (a **Crypto Asset**) because the user's contractual right to the Crypto Asset may itself constitute a security and/or a derivative (a **Crypto Contract**).

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

The Filer is currently registered in the category of restricted dealer in all provinces and territories of Canada. In connection with its registration as a restricted dealer, the Filer previously applied for and received exemptive relief in a decision dated August 15, 2022 on terms substantially similar to this decision (the **Decision**). The Filer has also applied for exemptive relief providing for additional terms and conditions in relation to the Filer's application for the provision of staking services.

Under the terms and conditions of the decision *In the Matter of Newton Crypto Ltd.* dated August 15, 2022 (the **Prior Decision**), the Filer has operated, and continues to operate, on an interim basis, a platform (the **Platform**) that permits clients resident in Canada to enter into Crypto Contracts to purchase, hold, sell, deposit and withdraw Crypto Assets, and has applied for exemptive relief with respect to the provision of staking services on the Platform.

The exemptive relief granted under the Prior Decision expires on August 15, 2024, and required the Filer to submit an application to its Principal Regulator and the Autorité des marchés financiers (**AMF**) to become registered as an investment dealer no later than August 15, 2023, and to submit an application with the Canadian Investment Regulatory Organization (**CIRO**), formerly the Investment Industry Regulatory Organization of Canada, to become a dealer member by August 15, 2023.

Since early 2023, the Filer has been working with CIRO to confirm all documents and information which are required to be included in its membership application, and liaising with various service providers to complete all requirements. The Filer has not yet completed all requirements necessary for the CIRO membership application; however, the Filer expects to do so within the next six to twelve months.

The Filer has submitted an application to extend its existing exemptive relief in order to continue to operate the Platform on an interim basis, and to incorporate the terms and conditions related to the Filer's provision of staking services and the Filer's offering of Crypto Contracts based on Value-Referenced Crypto Assets (as defined below) into this Decision.

This Decision has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Applicable Jurisdictions (as defined below) will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction has received an application from the Filer (the **Passport Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) extending the time-limited exemption of the Filer from:

(a) the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold, sell, deposit, withdraw and stake Crypto Assets (the **Prospectus Relief**); and

(b) the requirement in section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), before it opens an account, takes investment action for a client, or makes a recommendation or exercises discretion to take investment action, to determine on a reasonable basis that the action is suitable for the client (the **Suitability Relief**).

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

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

(a) the Ontario Securities Commission is the principal regulator for the Application (the **Principal Regulator**);

(b) in respect of the Prospectus Relief and the Suitability Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to

be relied upon in each of the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**); and

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

Interpretation

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

For the purposes of this Decision, the following terms have the following meaning:

(a) "Acceptable Third-party Custodian" means an entity that:

a. is one of the following:

i. a Canadian custodian or Canadian financial institution, as those terms are defined in NI 31-103;

ii. a custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 [*Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada*] of National Instrument 81-102 *Investment Funds*;

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

iv. a foreign custodian (as defined in NI 31-103) for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s); or

v. an entity that does not meet the criteria for a qualified custodian (as defined in NI 31-103) and for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);

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

c. has obtained audited financial statements within the last twelve months which

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

ii. are accompanied by an auditor's report that expresses an unqualified opinion; and

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

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

(b) "Act" means the *Securities Act* (Ontario).

(c) "App" means the iOS and Android application that provides access to the Platform.

(d) "CIPF" means the Canadian Investor Protection Fund.

(e) "Crypto Asset Statement" means the statement described in representation 30(e)(v).

(f) "IOSCO" means the International Organization of Securities Commissions.

(g) "Promoter" has the meaning ascribed to that term in Canadian securities legislation.

(h) "Proprietary Token" means, with respect to a person or company, a Crypto Asset that is not a Value-Referenced Crypto Asset, and for which the person or company or an affiliate of the person or company acted as the issuer (and mints or burns the Crypto Asset) or a promoter.

(i) "Specified Crypto Asset" means the Crypto Assets listed in Appendix B to this Decision.

(j) "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, the Republic of Korea, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and any other jurisdiction that the Principal Regulator may advise.

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

(l) "Validator" means, in connection with a particular proof of stake consensus algorithm blockchain, an entity that operates one or more nodes that meet protocol requirements for a Crypto Asset and participates in consensus by broadcasting votes and committing new blocks to the blockchain.

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

(n) "Website" means the website www.newton.co or such other website as may be used to host the Platform from time to time.

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

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

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

Representations

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

The Filer

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

2. The Filer operates under the business name of "Newton".

3. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.

4. The Filer is registered as a dealer in the category of restricted dealer with the Applicable Jurisdictions.

5. The Filer is registered as a money services business (**MSB**) under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* (**Canadian AML/ATF Law**).

6. The Filer's personnel consist of software engineers, compliance professionals and client support representatives who each have experience operating in a regulated financial services environment as an MSB and expertise in blockchain technology. All of the Filer's personnel have passed criminal records checks and new personnel joining the Filer after August 15, 2022 will have passed criminal records and credit checks. The Filer does not have any dealing representatives.

7. Except for not submitting an application to (i) its Principal Regulator and the AMF to become registered as an investment dealer, and (ii) CIRO to become a dealer member, the Filer is not in default of securities legislation of any jurisdictions of Canada.

8. The Filer has been actively and diligently working with CIRO to submit its application to become a dealer member.

9. The Filer has been advised by CIRO that the following items are required to be included in the Filer's membership application:

   (a) the Filer's SOC 1, Type 1 report and SOC 2, Type 1 "readiness" report;

(b) the Filer's audited CIRO Form 1, the time period for which has not yet been finalized by CIRO;

(c) auditor's comfort letter regarding the Filer's books and records; and

(d) updating the Filer's policies and procedures, if necessary, to reflect comments received during the SOC 1 or SOC 2 readiness phase or from CIRO.

The Filer has engaged auditors to complete the required audits and prepare the reports for submission to CIRO; however, the auditors have indicated that each process will take within the range of one to three months to complete, and the auditors have not yet had capacity to commence the engagements. In addition, the Filer is in the process of implementing certain changes to its accounting system which will be necessary for CIRO membership, which will take several months to complete.

Newton Crypto

10. The Filer operates under the business name of "Newton". The Filer operates the Platform for the trading of crypto assets in Canada that enables clients of the Filer to buy, sell, hold, deposit, withdraw and stake Crypto Assets through the Filer.

11. To use the Platform, each client must open an account (a **Client Account**) using the Filer's Website or App. Client Accounts are governed by the Filer's terms of use (the **Newton TOU**) that are accepted by clients at the time of account opening. The Newton TOU governs all activities in Client Accounts, including with respect to all Crypto Assets purchased on, or transferred to, the Platform (**Client Assets**). While clients are entitled to transfer certain Client Assets out of their Client Accounts immediately after purchase, clients may choose to leave their Client Assets in their Client Accounts.

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

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

14. The Filer may buy, sell, borrow, stake or hold Crypto Assets in its inventory for operational purposes, such as payment of network/transaction fees required to transfer Crypto Assets and testing, or to provide staking liquidity for the Staking Services (as defined below in representation 79). Otherwise, the Filer does not and will not hold any proprietary positions in Crypto Assets for itself and it does not take a long or short position in a Crypto Asset with any party, including clients. The Filer does not allow Clients to enter into a short position with respect to any Crypto Asset.

15. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not offer or provide discretionary investment management services relating to Crypto Assets.

16. The Filer is not a member firm of CIPF and the Crypto Assets custodied do not qualify for CIPF coverage.

17. The Risk Statement (defined below) includes disclosure that there is no CIPF coverage for the Crypto Assets and clients must acknowledge that they have received, read and understood the Risk Statement before opening an account with the Filer.

OTC Trading

18. Newton OTC Inc. (**Newton OTC**), an Affiliate of the Filer, operates an over-the-counter (**OTC**) crypto asset desk for orders of a minimum size of C$30,000. Crypto Assets purchased from Newton OTC are "immediately delivered", as described in Staff Notice 21-327, to the blockchain wallet address specified by the purchaser which is not under the ownership, possession or control of Newton OTC or the Filer.

    Newton OTC will only sell Crypto Assets that the Filer has reasonably determined are not securities or derivatives following the procedures set out in representations 19 to 23 of this Decision. The Filer and Newton OTC acknowledge that any determination made by the Filer as set out in representations 19 to 23 of this Decision does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that Newton OTC may sell is a security and/or derivative.

Crypto Assets Made Available Through the Platform

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

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

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

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

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

20. The Filer only offers and only allows clients the ability to enter into Crypto Contracts based on Crypto Assets that (a) are not each themselves a security and/or a derivative, or (b) are Value-Referenced Crypto Assets, in accordance with condition E of this Decision.

21. The Filer does not allow clients to enter into a Crypto Contract to buy, sell or stake Crypto Assets unless the Filer has taken steps to:

(a) assess the relevant aspects of each Crypto Asset pursuant to the KYP Policy and, as described in representation 19, to determine whether it is appropriate for its clients;

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

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

22. The Filer is not engaged, and will not engage without the prior written consent of the Principal Regulator, in trades that are part of, or designed to facilitate, the design, creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or Affiliates or associates of such persons.

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

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

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

24. The Filer monitors ongoing developments related to the Crypto Assets available on its Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYP Policy and as described in representations 19 to 23 above to change.

25. The Filer acknowledges that any determination made by the Filer as set out in representations 19 to 23 of this Decision does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell is a security and/or derivative.

26. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate in an orderly manner their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

Know-Your-Client and Account Appropriateness Assessment

27. Each client must open a Client Account using the Website or App to access the Platform.

28. The Filer has adopted eligibility criteria for the onboarding of all clients. All clients on the Platform must successfully complete the Filer's know-your-client (**KYC**) process which satisfies the identity verification requirements applicable to reporting entities under Canadian AML/ATF Law. Each client who is an individual, and each individual who is authorized

to give instructions for a Canadian client that is a legal entity, must be: a Canadian citizen or permanent resident; and 18 years or older.

29. The Filer does not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but rather performs account appropriateness assessments and applies Client Limits (as defined in representation 30(d) below).

30. As part of the account-opening process:

(a) The Filer complies with the applicable KYC account-opening requirements under applicable legislation and under Canadian AML/ATF Laws by collecting KYC information which satisfies the identity verification requirements applicable to reporting entities.

(b) The Filer assesses “account appropriateness.” Specifically, prior to opening a Client Account, the Filer uses electronic questionnaires to collect information that the Filer will use to determine whether and to what extent it is appropriate for a prospective client to enter into Crypto Contracts with the Filer to buy, sell and/or stake Crypto Assets. The account appropriateness assessment conducted by the Filer considers the following factors (the **Account Appropriateness Factors**):

(i) the client’s experience and knowledge in investing in Crypto Assets;

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

(iii) the client’s risk tolerance; and

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

(c) The Account Appropriateness Factors are used by the Filer to evaluate whether and to what extent entering into Crypto Contracts with the Filer is appropriate for a prospective Client before the opening of a Client Account. After completion of the account appropriateness assessment, a prospective client receives appropriate messaging about using the Platform to enter into Crypto Contracts, which, in circumstances where the Filer has evaluated that entering into Crypto Contracts with the Filer is not appropriate for the client, will include prominent messaging to the client that this is the case and that the client will not be permitted to open a Client Account.

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

(e) The Filer provides a prospective client with a separate statement of risk (the **Risk Statement**) that clearly explains the following in plain language:

(i) the Crypto Contracts;

(ii) the risks associated with the Crypto Contracts;

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

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

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

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

(vii) the location and the manner in which Crypto Assets are held for the client, and the risks and benefits to the client of the Crypto Assets being held in that location and in that manner including the impact of insolvency of the Filer or the Acceptable Third-party Custodian;

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

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

(x) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

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

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

32. A copy of the Risk Statement acknowledged by a client is made available to the client in the same place as the client's other statements on the Platform. The most recent Risk Statement is available on the Platform.

33. The Filer applies written policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, crypto assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, clients of the Filer will be promptly notified of the update and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, clients of the Filer will be promptly notified, with links to the updated Crypto Asset Statement.

34. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer provides instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or App.

35. Each Crypto Asset Statement includes:

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

(b) a description of the Crypto Asset, including the background of the creation of the Crypto Asset, including the background of the developer(s) that first created the Crypto Asset, if applicable;

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

(d) any risks specific to the Crypto Asset;

(e) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and the Crypto Assets made available through the Platform;

(f) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

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

36. The Filer monitors Client Accounts after opening to identify activity inconsistent with the client's account, the account appropriateness assessment and Crypto Asset assessment. If warranted, the client may receive further messaging about the Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer monitors compliance with the Client Limits established by the Filer as described in representation 30(d). If warranted, the client will receive warnings when their Client Account is approaching its Client Limit, which will include information on steps the client may take to prevent the client from incurring further losses.

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

Platform Operations

38. All Crypto Contracts entered into by clients to buy and sell Crypto Assets are placed with the Filer through the Website or App.

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

40. The Filer establishes, maintains and ensures compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the Platform and its related services, including conflicts between the interests of its owners, its commercial interests and the responsibilities and sound functioning of the Platform and related services.

41. The Filer relies upon multiple crypto asset trading firms (**Liquidity Providers**) to act as sellers of Crypto Assets that may be purchased by the Filer for its clients. Liquidity Providers also buy any Crypto Assets from the Filer that clients wish to sell.

42. One of the Filer's significant Liquidity Providers is DV Chain (Canada) Inc. (**DV Chain Canada**), a subsidiary of DVX CM, which is a significant shareholder of the Filer.

    (a) DV Chain Canada is a corporation incorporated in Canada under the laws of the Province of Ontario with its principal and head office in Toronto, Ontario.

    (b) DV Chain Canada is an over-the-counter liquidity provider that trades Crypto Assets on a proprietary basis, as principal, with institutional counterparties in Canada.

    (c) The Filer has verified that DV Chain Canada is not in default under securities laws in the Jurisdictions.

43. The Filer evaluates the prices obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to its clients.

44. The Filer has taken or will take reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions. The Filer will cease using a Liquidity Provider upon the direction of the Principal Regulator when the Principal Regulator has concerns relating to the Liquidity Provider

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

46. A Crypto Contract is a bilateral contract between the client and the Filer. Accordingly, the Filer is the counterparty to all trades entered by the client on the Platform. For each client transaction, the Filer will be a counterparty to a corresponding Crypto Asset buy or sell transaction with a Liquidity Provider. For each buy or sell transaction initiated by a client, the Filer buys or sells Crypto Assets with Liquidity Providers.

47. After an order has been placed by a client, the Filer obtains a price for the Crypto Asset from a Liquidity Provider, after which the Filer incorporates a fee to compensate the Filer, and presents this total cost to the client. If the client is agreeable, the client confirms that it wishes to proceed and the client's market order at the quoted price will be filled on the Platform. If the client does not accept the quoted price within the time indicated in the displayed countdown timer, the quoted price will be refreshed based on new pricing from the Liquidity Provider, the timer will be reset, and the client will be able to transact against the new price for the time indicated in the timer. The quoted price will continue to be refreshed when the timer counts down to zero unless the client transacts against the quoted price. The countdown timer will be approximately five to ten seconds, subject to each Liquidity Provider's specific requirements. The Filer confirms the transaction with the Liquidity Providers and records in its books and records the particulars of the trade.

48. Clients can enter orders to the Platform in two ways: (i) a market order which specifies the desired trading pair and quantity; (ii) a limit order (including for clarity stop orders) which specifies the desired trading pair, quantity and price at which the client wishes to transact. Clients can also enter a recurring buy which allows a client to specify the desired trading pair, quantity, and frequency, and automatically enters a market order at the set frequency.

49. When a client enters a limit order, the Platform will not process the trade until such future time as when the price from the Liquidity Provider plus the ‘spread’ meets the price entered by the client, then the client’s order will automatically be executed.

50. For each client limit order, the limit order may be partially or completely filled if the client’s specified limit price is met. If the market price plus the ‘spread’ does not meet the price specified in the limit order, the limit order remains open in the Client Account until it is cancelled by the client or filled. If the order remains open for 90 days, the order is automatically canceled by the system. Clients are given notification of the cancellation and may re-create the order if they wish. If a limit order is partially filled, the rest of the order remains open in the Client Account. Open limit orders entered by clients are displayed on the Platform; however, they are not available to trade against other client orders.

Pre-trade Controls and Settlement

51. The Filer does not allow clients to enter into a Crypto Contract to buy, sell or stake Crypto Assets unless the Filer has taken steps:

    (a) to review the Crypto Asset, including the information specified in representation 19;

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

    (c) as set out in representation 24, to monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

52. The Filer’s books and records record all of the trades executed on the Platform. No order will be accepted by the Filer unless there are sufficient cash or Crypto Assets available in the Client Account to complete the trade.

53. The Filer does not, and will not, extend margin, credit or other forms of leverage to clients in connection with trading Crypto Assets on the Platform, and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts.

54. The Filer promptly, and no later than two business days after the trade, settles transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets with a Liquidity Provider, the Filer arranges for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer arranges for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider.

55. All fees earned by the Filer are clearly disclosed on the Newton Platform, and the Filer’s Clients can check the quoted prices for Crypto Assets on the Newton Platform against the prices available on other registered CTPs in Canada.

56. Clients receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their Client Account. Clients are able to view their transaction history and account balances in real time by accessing their Client Account using the Website or App.

57. In addition to the Risk Statement, the Crypto Asset Statement, the account appropriateness assessment described in representations 30 to 37, the KYP assessments described in representations 19 to 24, the Client Limits described in representations 30(d) and 36, and the ongoing education initiatives described in representations 30 to 37, the Filer also monitors client activity, and contacts clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a client’s account.

Custody of Crypto Assets

58. The Filer holds clients’ Crypto Assets (i) in blockchain wallets or accounts clearly designated for the benefit of clients or in trust for clients, and (ii) separate and apart from its own assets (including crypto assets held in inventory by the Filer for operational purposes) and from the assets of any custodial service provider. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.

59. The Filer is proficient and experienced in holding Crypto Assets and has established and applies policies and procedures that manage and mitigate custodial risks, including an effective system of controls and supervision to safeguard Crypto Assets. The Filer also maintains appropriate policies and procedures related to information technology security, cyber-resilience, disaster recovery capabilities and business continuity plans.

60. The Filer has expertise in and has developed anti-fraud and anti-money laundering monitoring systems, for both fiat and Crypto Assets, to reduce the likelihood of fraud, money laundering, or client error in sending or receiving Crypto Assets to incorrect wallet addresses.

61. The Filer has and will retain the services of third-party custodians to hold not less than 80% of the total value of Crypto Assets held on behalf of clients. The Filer primarily uses Coinbase Custody Trust Company LLC as custodian (the **Custodian**) and will use other custodians as necessary after reasonable due diligence. Up to 20% of the Filer's total Client Crypto Assets may be held online in hot wallets secured by Fireblocks LLC (**Fireblocks**).

62. The Filer maintains its own hot wallets to hold limited amounts of Crypto Assets that will be used to facilitate client deposit and withdrawal requests and to facilitate trade settlement with Liquidity Providers. However, the majority of Crypto Assets are held with the Custodian.

63. The Custodian is licensed as a limited purpose trust company with the New York Department of Financial Services (**NYDFS**).

64. The Custodian has completed a Service Organization Controls (**SOC**) report under the SOC 1 – Type 2 and SOC 2 – Type 2 standards from a leading global audit firm.

65. The Filer has conducted due diligence on the Custodian, including, among others, the Custodian's policies and procedures for holding Crypto Assets and a review of the Custodian's SOC 2 – Type 2 examination reports. The Filer has not identified any material concerns. The Filer has also assessed whether the Custodian meets the definition of an Acceptable Third-party Custodian.

66. The Custodian operates a custody account for the Filer to use for the purpose of holding the clients' Crypto Assets in trust for clients of the Filer.

67. Those Crypto Assets that the Custodian holds in trust for clients of the Filer are held in segregated omnibus accounts in the name of the Filer in trust for or for the benefit of the Filer's clients and are held separate and distinct from the assets of the Filer, the Filer's Affiliates, the Custodian and the Custodian's other clients.

68. The Custodian has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents. The Custodian has established and applies written disaster recovery and business continuity plans.

69. The Filer has assessed the risks and benefits of using the Custodian and has determined that in comparison to a Canadian custodian (as that term is defined in NI 31-103), it is more prudent and beneficial to use the Custodian, a U.S. custodian, to hold the Crypto Assets the Custodian supports with the Custodian than using a Canadian custodian.

70. All client cash that is being held by the Filer is and will be held by a Canadian financial institution in a designated trust account, in the name of the Filer in trust for clients of the Filer and separate and apart from the Filer's fiat currency balances.

71. Coinbase Global Inc., the parent company of the Custodian, maintains US$320 million of insurance (per-incident and overall) which covers losses of assets held by the Custodian, on behalf of its clients due to third-party hacks, copying or theft of private keys, insider theft or dishonest acts by the Custodian employees or executives and loss of keys. The Filer has assessed the Custodian's insurance policy and has determined, based on information that is publicly available and on information provided by the Custodian and considering the scope of the Custodian's business, that the amount of insurance is appropriate.

72. The Filer confirms on a daily basis that clients' Crypto Assets held with the Custodian and held by the Filer reconcile with the Filer's books and records to ensure that all clients' Crypto Assets are accounted for. Clients' Crypto Assets held in trust for their benefit in hot wallets and with the Custodian are deemed to be the clients' Crypto Assets in case of the insolvency and/or bankruptcy of the Filer or of the Custodian.

73. Clients are permitted to transfer into their Client Account with the Filer, Crypto Assets they obtained outside the Platform or withdraw from their Client Account with the Filer, Crypto Assets they have purchased pursuant to their Crypto Contracts with the Filer or previously deposited with the Filer. The Filer may not support transfers for all Crypto Assets. Upon request by a client, the Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client, subject to first satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements and anti-fraud controls.

74. The Filer licenses software from Fireblocks which includes a crypto asset wallet that stores private and public keys and interacts with various blockchains to send and receive crypto assets and monitor balances. Fireblocks uses secure

multiparty computation to share signing responsibility for a particular blockchain address among multiple independent persons.

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

76. Fireblocks has insurance coverage in the amount of US$30 million in aggregate which, in the event of theft of crypto assets from hot wallets secured by Fireblocks due to an external cyber breach of Fireblocks' software or any malicious or intentional misbehaviour or fraud committed by employees, will be distributed among applicable Fireblocks customers, which could include the Filer, pursuant to an insurance settlement agreement.

77. The Filer has licensed software from Digital Assets Services Limited (trading as Coincover) (**Coincover**) to provide additional security for keys to Crypto Assets held by the Filer using Fireblocks, including key pair creation, key pair storage, device access recovery and account access recovery. Coincover is based in the United Kingdom and is regulated by the U.K. Financial Conduct Authority. Unless otherwise approved by the Principal Regulator, Newton will maintain CoinCover security coverage.

78. The insurance obtained by the Filer includes coverage for loss or theft of the Crypto Assets, in accordance with the terms of the Filer's insurance policy and the Filer has assessed the insurance coverage to be sufficient to cover the loss of Crypto Assets, whether held directly by the Filer or indirectly through the Custodian.

Staking Services

79. The Filer will also offer staking services to its clients resident in each of the provinces and territories of Canada by which the Filer arranges to stake Crypto Assets and earn staking rewards for participating clients (the **Staking Services**).

80. Unless the Principal Regulator provides its prior written consent, the Filer will offer clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (**Stakeable Crypto Assets**).

81. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

82. The Filer itself does not act as a Validator, unless the Principal Regulator has provided its prior written consent. The Filer has entered into written agreements with the Custodian and/or with third party Validators to provide services in respect of staking Stakeable Crypto Assets. The Custodian and Validators are proficient and experienced in staking Stakeable Crypto Assets.

83. Before engaging a Validator, the Filer conducts due diligence on the Validator, with consideration for the Validator's management, infrastructure and internal control documentation, security measures and procedures, reputation of operating nodes, use by others, measures to operate nodes securely and reliably, amount of crypto assets staked by the Validator on its own nodes, quality of work, including any slashing incidents or penalties, financial status and insurance, and registration, licensing or other compliance under applicable laws, particularly securities laws. Where the Filer engages the Custodian to provide staking services, the Filer conducts due diligence on how the Custodian provides the staking services and selects the Validators.

84. The Filer will offer the Staking Services in respect of the Ethereum and Cardano blockchains. The Filer may offer the Staking Services in respect of other Stakeable Crypto Assets in the future.

85. The Filer, as part of its KYP Policy, reviews the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer or the Filer's Custodian, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

(ii) the Validator's reputation and use by others,

(iii) the amount of Crypto Assets the Validator has staked on its own nodes,

(iv) the measures in place by the Validator to operate the nodes securely and reliably,

(v) the financial status of the Validator,

(vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

(vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

(viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

86. The Filer, as part of its account appropriateness assessment, evaluates whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

87. If, after completion of an account appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will include prominent messaging to the client that this is the case and the Filer will not make available the Staking Services to the client.

88. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

89. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in representation 90 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

90. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which includes:

(a) the details of the Staking Services and the role of all third parties involved;

(b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Stakeable Crypto Asset for which the Filer provides the Staking Services;

(c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

(d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Stakeable Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

(e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

(f) whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

(g) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Crypto Asset protocol, custodian or Validator, where such Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

(h) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

91. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

(a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

(b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

(c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

(d) that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

(e) whether rewards may be changed at the discretion of the Filer;

(f) unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

(g) if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

(h) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

92. The Staking Services are currently only available by using the App. The Filer may make the Staking Services available through the Website in the future.

93. To stake Stakeable Crypto Assets, a client may use the App to instruct the Filer to stake a specified amount of Stakeable Crypto Assets held by the client on the Platform.

94. For certain Stakeable Crypto Assets, the Filer also allows clients to automatically stake those Stakeable Crypto Assets when purchasing more of the asset. If a client turns on this "auto-stake" feature, Stakeable Crypto Assets are automatically staked upon being purchased by the client. The client can disable this feature at any time.

95. Immediately before each time a client buys Stakeable Crypto Assets that are automatically staked, the Filer provides prominent disclosure to the client that the Stakeable Crypto Asset the client is about to buy will be automatically staked.

96. Subject to any Lock-up Periods that may apply, the client may at any time use the App to instruct the Filer to unstake a specified amount of Stakeable Crypto Assets that the client had previously staked.

97. The Filer stakes and unstakes Crypto Assets on an omnibus basis by calculating the total amount of a Stakeable Crypto Asset that clients wish to stake or unstake and adjusting the amount actually staked to reconcile with the net amount that clients have, in total, instructed the Filer to stake or unstake.

98. The Filer holds the staked Stakeable Crypto Assets in trust for or for the benefit of its clients in one or more omnibus Locations (as defined below) in the name of the Filer for the benefit of the Filer's clients with the Custodian separate and distinct from (i) the assets of the Filer, the Custodian and the Custodian's other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets. A **Location** is an address or wallet (or group of addresses or wallets) that is (are) subject to a distinct pre-set governance policy within the private key management solution employed by the Filer or the Custodians. For greater certainty, the Filer (or the Custodians) will not stake customer Crypto Assets from the same Location in which it holds unstaked customer Crypto Assets

99. To stake clients' Stakeable Crypto Assets, the Filer instructs a Custodian to transfer Stakeable Crypto Assets to an omnibus Location and to sign a blockchain transaction confirming that assets in that wallet are to be staked with a Validator.

100. Similarly, when unstaking Stakeable Crypto Assets, the Filer instructs a Custodian to sign a blockchain transaction confirming that assets in a staking Location are no longer staked. After expiry of any Lock-up Periods that may prevent

the assets from being transferred, the Filer instructs the Custodian to transfer the unstaked assets from the staking Location to cold storage wallets holding unstaked Stakeable Crypto Assets.

101. The Filer and the Custodian remain in possession, custody and control of the staked Stakeable Crypto Assets at all times. At all times, the Custodian continues to hold the private keys or other cryptographic key material required to stake or unstake clients' Stakeable Crypto Assets or to access staking rewards. Custody, possession and control of staked Stakeable Crypto Assets are not transferred to Validators or any other third parties in connection with the Staking Services.

102. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

103. Staking rewards are issued periodically and automatically by the blockchain protocol of the Stakeable Crypto Asset and received directly into the staking wallets with the Custodian. Other than any "validator commission" that may be received by a Validator under the rules of the blockchain protocol, Validators do not receive or otherwise have control over staking rewards earned by clients.

104. Staking rewards are typically issued for a specific time period, often referred to as an "epoch". For each "epoch", the Filer promptly determines the amount of staking rewards earned by each client that had staked Stakeable Crypto Assets under the Staking Services.

105. When staking rewards for a Stakeable Crypto Asset are received into staking wallets, the Filer promptly calculates the amount of the staking reward earned by each client using the Staking Services in respect of that asset and credits each client's account accordingly. Staking reward distributions are shown in the App and on clients' account statements.

106. For certain Stakeable Crypto Assets, staking rewards are automatically staked by the blockchain protocol to compound rewards. Clients must unstake some or all of these rewards if they wish to sell or transfer them.

107. Where staking rewards are not compounded by the blockchain protocol, the Filer instructs the Custodian to transfer staking rewards from the staking wallets to other omnibus wallets holding client Crypto Assets.

108. Certain Stakeable Crypto Assets are subject to a so-called "warm-up" or "bonding" period after being staked, during which time the Stakeable Crypto Assets do not earn any staking rewards. A client will not receive staking rewards in respect of any of their staked Stakeable Crypto Assets that are still subject to "warm-up" periods.

109. Similarly, a client will not receive staking rewards in respect of Stakeable Crypto Assets that have been unstaked by the client but are still subject to Lock-up Periods.

110. The Filer does not promise or guarantee its clients a specific staking reward rate for any Stakeable Crypto Asset. The Filer does not exercise any discretion to change reward rates.

111. The Filer may show in the App or Website the current estimated reward rate for Stakeable Crypto Assets. This estimated reward rate is based on data derived from the blockchain for the Stakeable Crypto Asset and adjusted for any applicable validator commission or fees payable to the Filer.

112. The Filer charges a fee to clients using Staking Services based on a percentage of the client's staking rewards. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

113. When staking rewards are received into staking wallets each epoch, the Filer promptly calculates the total amount of the fee payable by clients using the Staking Services for that epoch and transfers an amount of Stakeable Crypto Assets equal to the fee to a separate wallet exclusively holding Crypto Assets belonging to the Filer.

114. For certain Stakeable Crypto Assets, a Validator can, as part of the blockchain consensus protocol, set a percentage of the staking rewards earned by Stakeable Crypto Assets staked with the Validator to be received by the Validator. This is typically referred to as the "validator commission". The validator commission is deducted automatically by the underlying blockchain protocol from staking rewards and transferred by the protocol directly to the Validator. Where a "validator commission" applies, the Filer clearly discloses the existence and amount of the validator commission to clients using the Staking Services.

115. Under the commercial agreements between the Filer and Validators, Validators may pay some of the validator commission to the Filer for arranging the staking of clients' Stakeable Crypto Assets with the Validators. The Filer discloses to clients that it receives a share of validator commissions. Further, the Filer has adopted policies and procedures for the selection of Validators and staking of clients' Stakeable Crypto Assets to Validators to ensure that these decisions are based on factors other than the Filer's financial considerations under these commercial agreements.

116. For Stakeable Crypto Assets that do not have “validator commissions”, the Filer pays a fee to the Validator and/or a Custodian for activating and operating nodes for the Filer’s clients using the Staking Services. This fee is included in the fee paid by clients to the Filer in connection with the Staking Services.

117. Certain proof of stake blockchain protocols impose penalties where a validator fails to comply with protocol rules. This penalty is often referred to as “slashing” or “jailing”. If a Validator is “slashed” or “jailed”, a percentage of the tokens staked with that Validator and/or a percentage of staking rewards earned by clients staking to that Validator is permanently lost and/or the Validator will not be selected to participate in transaction validation and any Stakeable Crypto Assets staked with that Validator will not be eligible to earn staking rewards. Accordingly, if a Validator fails to comply with protocol rules, a percentage of Crypto Assets staked or earned by the Filer’s clients may be lost (i.e., the balance of the staking wallet will be reduced automatically by the blockchain protocol) and/or the Filer’s clients will not earn staking rewards for a period of time.

118. For certain Stakeable Crypto Assets, the Filer may agree to reimburse clients for slashing penalties. The Client Account Agreement clearly provides for the circumstances the Filer will provide this reimbursement in respect of a Stakeable Crypto Asset. The availability of any reimbursement, and any conditions or limits on the reimbursement, are also described in the Risk Statement or the relevant Crypto Asset Statement.

119. To mitigate the risk of slashing or jailing to clients, the Filer may, where feasible, arrange to stake Stakeable Crypto Assets across multiple Validators, so that any penalty resulting from the actions or inaction of a specific Validator does not affect all staked Crypto Assets and the Filer can, if appropriate, re-stake with alternative Validators.

120. In addition, the Filer monitors its Validators for, among other things, downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

121. For certain Stakeable Crypto Assets that are subject to Lock-up Periods, the Filer may provide clients using the Staking Services with the ability to sell or withdraw assets immediately after unstaking the assets, even though the newly unstaked assets are subject to a Lock-up Period and cannot yet be transferred from the staking wallet.

122. Where the Filer provides this service in connection with a Stakeable Crypto Asset, the Filer provides the liquidity necessary for clients to sell or withdraw Crypto Assets prior to the expiry of Lock-up Periods from the Filer’s own inventory of Stakeable Crypto Assets in accordance with its liquidity management policies and procedures. When the Lock-up Period applicable to a clients’ unstaked Crypto Assets expires, the Filer returns the now freely transferable assets to its inventory.

123. Where the Filer does not provide this liquidity for a Stakeable Crypto Asset, a client that unstakes Stakeable Crypto Assets must wait until the applicable Lock-up Period expires before the client can sell or transfer those assets.

Capital Requirements

124. The Filer will exclude from the excess working capital calculation all the Crypto Assets, including Proprietary Tokens and all Value-Referenced Crypto Assets, it holds for which there is no offsetting by a corresponding current liability, such as Crypto Assets held for its clients as collateral to guarantee obligations under Crypto Contracts, included on line 1, Current assets, of Form 31-103F1. This will result in the exclusion of all the Crypto Assets inventory, including Proprietary Tokens inventory and all of the Value-Referenced Crypto Assets inventory, held by the Filer from Form 31-103F1 (Schedule 1, line 9).

Marketplace and Clearing Agency

125. The Filer does not and will not operate a “marketplace” as that term is defined in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and in Ontario, subsection 1(1) of the Act.

126. The Filer does not and will not operate a “clearing agency” or a “clearing house” as the terms are defined or referred to in securities legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of a CTP. Any activities of the Filer that may be considered the activities of a clearing agency or clearing house are related to the Filer arranging or providing for settlement of obligations resulting from agreements entered into on a bilateral basis and without a central counterparty.

Decision

The Principal Regulator is satisfied that the Decision satisfies the test set out in the Legislation for the Principal Regulator to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief, as applicable, satisfies the tests set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief, as applicable.

The Decision of the Principal Regulator under the Legislation is that the Prior CSA Decision is revoked and the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation in its jurisdiction is that the Trade Reporting Relief, as applicable, is granted, provided that and for so long as the Filer complies with the following terms and conditions:

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

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

C. The Filer will continue to work actively and diligently with the OSC, AMF and CIRO to transition the Filer's registration to investment dealer registration and obtain CIRO membership.

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

E. The Filer will only trade in Crypto Assets or Crypto Contracts based on Crypto Assets that (i) are not securities or derivatives, or (ii) are Value-Referenced Crypto Assets, provided that:

   (a) by December 29, 2023, the Filer will no longer allow clients to buy or deposit, or enter into Crypto Contracts to buy or deposit, Value-Referenced Crypto Assets that do not satisfy the conditions set out in section 1 of Appendix C;

   (b) by April 30, 2024, the Filer will no longer allow clients to buy or deposit Value-Referenced Crypto Assets, that do not comply with the terms and conditions set out in Appendix C.

F. The Filer will not operate a "marketplace" as the term is defined in NI 21-101 and in Ontario, in subsection 1(1) of the Act or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities legislation.

G. The Filer has and will continue to confirm that it is not liable for the debt of an Affiliate or Affiliates that could have a material negative effect on the Filer. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of the Filer's or its Affiliate's system of controls or supervision that could have a material impact on the Filer. If a breach or failure does occur, the Filer will notify the Principal Regulator of what steps have been taken to address such breach or failure.

H. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with one or more custodians that meets the definition of an "Acceptable Third-party Custodian", unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with an Acceptable Third-party Custodian or has obtained the prior written approval of the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions to hold at least 80% of the total value of the Crypto Assets with an entity that does not meet certain criteria of an Acceptable Third-party Custodian .

I. Before the Filer holds Crypto Assets with an Acceptable Third-party Custodian, the Filer will take reasonable steps to verify that the custodian:

   (a) will hold the Crypto Assets for the Filer's clients (i) in an account clearly designated for the benefit of the Filer's clients or in trust for the Filer's clients, (ii) separate and apart from the assets of the Filer, the Filer's Affiliates, and the custodian's other clients, and (iii) separate and apart from the custodian's own assets and from the assets of any custodial service provider;

   (b) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;

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

   (d) meets each of the requirements to be an Acceptable Third-party Custodian, except for those criteria in respect of which the custodian does not meet and the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions have provided prior written approval for use of the custodian.

J. The Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, the New York State Department of Financial Services or any other regulatory authority applicable to a custodian of the Filer makes a determination that (i) the custodian is not permitted by that regulatory authority to hold client Crypto Assets, or (ii) if there is a change in the status of the custodian as a regulated financial institution. In such a case, the Filer will identify a suitable alternative custody provider that meets the definition of an Acceptable Third-party Custodian to hold the Crypto Assets.

K. For the Crypto Assets held by the Filer, the Filer will:

(a) hold the Crypto Assets for the benefit of and in trust for its clients, and separate and distinct from the assets of the Filer;

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

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

L. The Filer will only use Liquidity Providers that it has verified are registered and/or licensed, to the extent required in their respective home jurisdictions, to execute trades in the Crypto Assets and are not in default of securities legislation in any of the Applicable Jurisdictions, and will promptly stop using a Liquidity Provider if (i) the Filer is made aware that the Liquidity Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined it to be, not in compliance with securities legislation.

M. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.

N. The Filer will assess liquidity risk and concentration risk posed by its Liquidity Providers. The liquidity and concentration risks assessment will consider trading volume data (as provided in paragraph 1(e) of Appendix E) and complete a historical analysis of each Liquidity Provider and a relative analysis between the Liquidity Providers. Consideration should be given to whether the Liquidity Provider has issued its own Proprietary Tokens and to consider limiting reliance on those Liquidity Providers.

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

P. The Risk Statement delivered as set out in condition O will be prominent and separate from other disclosures given to the client as part of the account opening process, and the acknowledgement will be separate from other acknowledgements by the client as part of the account opening process.

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

R. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website and in the App and includes the information set out in representation 35.

S. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Assets and:

(a) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement; and

(b) in the event of any update to a Crypto Asset Statement, will promptly notify clients through App and Website disclosures with links to the updated Crypto Asset Statement.

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

U. For each client, the Filer will perform an appropriateness assessment as described in representation 30 prior to opening a Client Account, on an ongoing basis and at least every twelve months.

V. The Filer has established and will apply and monitor the Client Limits as set out in representation 30(d).

W. The Filer will monitor client activity and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required.

X. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets, that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may purchase and sell on the Platform (calculated on a net basis and is an amount not less than $0) in the preceding 12 months does not exceed a net acquisition cost of $30,000.

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

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

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

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

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

BB. The Filer will only trade Crypto Assets or Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.

CC. The Filer will evaluate Crypto Assets as set out in representations 19 to 24.

DD. The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a client in an Applicable Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Applicable Jurisdiction, where the Crypto Assets were issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, fine, or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of AML laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct.

EE. Except to allow clients to liquidate their positions in an orderly manner in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts where the underlying asset is a Crypto Asset that (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, (i) a security and/or derivative, or (ii) a Value-Referenced Crypto Asset that does not satisfy the conditions set out in condition E.

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

GG. The Filer will exclude from the excess working capital calculation all the Crypto Assets, including Proprietary Tokens and all Value-Referenced Crypto Assets, it holds for which there is no offsetting by a corresponding current liability, as described in representation 124.

Staking

HH. The Filer will comply with the terms and conditions in Appendix D in respect of the Staking Services.

Reporting

II. The Filer will deliver the reporting as set out in Appendix E.

JJ. Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Applicable Jurisdictions, a report of all Client Accounts for which the Client Limits established pursuant to representation 30(d) were exceeded during that month.

KK. The Filer will provide certain reporting in respect of the preceding calendar quarter to its Principal Regulator within 30 days of the end of March, June, September and December in connection with the Staking Services, including, but not limited to:

(a) the total number of clients to which the Filer provides the Staking Services;

(b) the Crypto Assets for which the Staking Services are offered;

(c) for each Crypto Asset that may be staked:

(i) the amount of Crypto Assets staked,

(ii) the amount of each such Crypto Assets staked that is subject to a Lock-up Period and the length of the Lock-up Period,

(iii) the amount of Crypto Assets that clients have requested to unstake, and

(iv) the amount of rewards earned by the Filer and the clients for the Crypto Assets staked under the Staking Services;

(d) the names of any third parties used to conduct the Staking Services;

(e) any instance of slashing, jailing or other penalties being imposed for validator error and the details of why these penalties were imposed; and

(f) any reporting regarding the Filer's liquidity management as requested by the Principal Regulator.

LL. The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either (i) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets, and authorizations to access the wallets) previously delivered to the Principal Regulator, or (ii) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

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

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

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

Time Limited Relief

PP. The Filer will, if it intends to operate the Platform in Ontario and Québec after the expiry of the Decision, take the following steps:

(a) submit an application to the Principal Regulator and the Autorité des marchés financiers (**AMF**) to become registered as an investment dealer no later than 12 months after the date of the Decision;

(b) submit an application with CIRO to become a dealer member no later than 12 months after the date of the Decision;

(c) work actively and diligently with the OSC, AMF and CIRO to transition the Platform to investment dealer registration and obtain CIRO membership.

QQ. This Decision shall expire on the date that is 12 months after the date of the Decision.

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

In respect of the Prospectus Relief:

Dated: March 8, 2024

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

In respect of the Suitability Relief:

Dated: March 8, 2024

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

In respect of the Trade Reporting Relief:

Dated: March 8, 2024

"Kevin Fine"
Director, Derivatives
Ontario Securities Commission

Application File #: 2023/0390

APPENDIX A

LOCAL TRADE REPORTING RULES

In this Decision, "**Local Trade Reporting Rules**" collectively means each of the following:

(a) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507)**;

(b) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**); and

(c) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**).

APPENDIX B

SPECIFIED CRYPTO ASSETS

- Bitcoin
- Ether
- Bitcoin Cash
- Litecoin
- A Value-Referenced Crypto Asset that complies with condition E

APPENDIX C

TERMS AND CONDITIONS FOR TRADING VALUE-REFERENCED CRYPTO ASSETS WITH CLIENTS

(1) The Filer establishes that all of the following conditions are met:

(a) The Value-Referenced Crypto Asset references, on a one-for-one basis, the value of a single fiat currency (the "reference fiat currency");

(b) The reference fiat currency is the Canadian dollar or United States dollar;

(c) The Value-Referenced Crypto Asset entitles a Value-Referenced Crypto Asset holder who maintains an account with the issuer of the Value-Referenced Crypto Asset to a right of redemption, subject only to reasonable publicly disclosed conditions, on demand directly against the issuer of the Value-Referenced Crypto Asset or against the reserve of assets, for the reference fiat currency on a one-to-one basis, less only any fee that is publicly disclosed by the issuer of the Value-Referenced Crypto Asset, and payment of the redemption proceeds within a reasonable period as disclosed by the issuer of the Value-Referenced Crypto Asset;

(d) The issuer of the Value-Referenced Crypto Asset maintains a reserve of assets that is:

(i) in the reference fiat currency and is comprised of any of the following:

1. cash;

2. investments that are evidence of indebtedness with a remaining term to maturity of 90 days or less and that are issued, or fully and unconditionally guaranteed as to principal and interest, by the government of Canada or the government of the United States;

3. securities issued by one or more Money Market Funds licensed, regulated or authorized by a regulatory authority in Canada or the United States of America; or

4. such other assets that the principal regulator of the Filer and the regulator or securities regulatory authority in each Canadian jurisdiction where clients of the Filer reside has consented to in writing;

(e) all of the assets that comprise the reserve of assets are:

(i) measured at fair value in accordance with Canadian GAAP for publicly accountable enterprises or U.S. GAAP at the end of each day,

(ii) held with a Qualified Custodian,

(iii) held in an account clearly designated for the benefit of the Value-Referenced Crypto Asset holders or in trust for the Value-Referenced Crypto Asset holders,

(iv) held separate and apart from the assets of the issuer of the Value-Referenced Crypto Asset and its Affiliates and from the reserve of assets of any other Crypto Asset, so that, to the best of the knowledge and belief of the Filer after taking steps that a reasonable person would consider appropriate, including consultation with experts such as legal counsel, no creditors of the issuer other than the Value-Referenced Crypto Asset holders in their capacity as Value-Referenced Crypto Asset holders, will have recourse to the reserve of assets, in particular in the event of insolvency, and

(v) not encumbered or pledged as collateral at any time; and

(f) the fair value of the reserve of assets is at least equal to the aggregate nominal value of all outstanding units of the Value-Referenced Crypto Asset at least once each day.

(2) The issuer of the Value-Referenced Crypto Asset makes all of the following publicly available:

(a) details of each type, class or series of the Value-Referenced Crypto Asset, including the date the Value-Referenced Crypto Asset was launched and key features and risks of the Value-Referenced Crypto Asset;

(b) the quantity of all outstanding units of the Value-Referenced Crypto Asset and their aggregate nominal value at least once each business day;

(c) the names and experience of the persons or companies involved in the issuance and management of the Value-Referenced Crypto Asset, including the issuer of the Value-Referenced Crypto Asset, any manager of the reserve of assets, including any individuals that make investment decisions in respect of the reserve of assets, and any custodian of the reserve of assets;

(d) the quantity of units of the Value-Referenced Crypto Asset held by the issuer of the Value-Referenced Crypto Asset or any of the persons or companies referred to in paragraph (c) and their nominal value at least once each business day;

(e) details of how a Value-Referenced Crypto Asset holder can redeem the Value-Referenced Crypto Asset, including any possible restrictions on redemptions such as the requirement for a Value-Referenced Crypto Asset holder to have an account with the issuer of the Value-Referenced Crypto Asset and any criteria to qualify to have an account;

(f) details of the rights of a Value-Referenced Crypto Asset holder against the issuer of the Value-Referenced Crypto Asset and the reserve of assets, including in the event of insolvency or winding up;

(g) all fees charged by the issuer of the Value-Referenced Crypto Asset for distributing, trading or redeeming the Value-Referenced Crypto Asset;

(h) whether Value-Referenced Crypto Asset holders are entitled to any revenues generated by the reserve of assets;

(i) details of any instances of any of the following:

(i) the issuer of the Value-Referenced Crypto Asset has suspended or halted redemptions for all Value-Referenced Crypto Asset holders, and

(ii) the issuer of the Value-Referenced Crypto Asset has not been able to satisfy redemption rights at the price or in the time specified in its public policies;

(j) within 45 days of the end of each month, an assurance report from a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America, and that meets the professional standards of that jurisdiction, that complies with all of the following:

(i) provides reasonable assurance in respect of the assertion by management of the issuer of the Value-Referenced Crypto Asset that the issuer of the Value-Referenced Crypto Asset has met the requirements in paragraphs (1)(d)-(f) as at the last business day of the preceding month and at least one randomly selected day during the preceding month,

(ii) the randomly selected day referred to in subparagraph (i) is selected by the public accountant and disclosed in the assurance report,

(iii) for each day referred to in subparagraph (i), management's assertion includes all of the following:

1. details of the composition of the reserve of assets,

2. the fair value of the reserve of assets in subparagraph (1)(e)(i), and

3. the quantity of all outstanding units of the Value-Referenced Crypto Asset in paragraph (b), and

(iv) the assurance report is prepared in accordance with the Handbook, International Standards on Assurance Engagements or attestation standards established by the American Institute of Certified Public Accountants; and

(k) starting with the first financial year ending after December 1, 2023, within 120 days of the issuer of the Value-Referenced Crypto Asset's financial year end, annual financial statements of the issuer of the Value-Referenced Crypto Asset that comply with all of the following:

(i) the annual financial statements include all of the following:

1. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any,

2. a statement of financial position, signed by at least one director of the issuer of the Value-Referenced Crypto Asset, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any, and

3. notes to the financial statements;

(ii) the statements are prepared in accordance with one of the following accounting principles:

1. Canadian GAAP applicable to publicly accountable enterprises, and

2. U.S. GAAP;

(iii) the statements are audited in accordance with one of the following auditing standards:

1. Canadian GAAS,

2. International Standards on Auditing,

3. U.S. PCAOB GAAS;

(iv) the statements are accompanied by an auditor's report that:

1. if (iii)(1) or (2) applies, expresses an unmodified opinion,

2. if (iii)(3) applies, expresses an unqualified opinion,

3. identifies the auditing standards used to conduct the audit, and

4. is prepared and signed by a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America.

(3) The Crypto Asset Statement includes all of the following:

(a) a prominent statement that no securities regulatory authority or regulator in Canada has evaluated or endorsed the Crypto Contracts or any of the Crypto Assets made available through the platform;

(b) a prominent statement that the Value-Referenced Crypto Asset is not the same as and is riskier than a deposit in a bank or holding cash with the Filer;

(c) a prominent statement that although Value-Referenced Crypto Assets may be commonly referred to as "stablecoins", there is no guarantee that the Value-Referenced Crypto Asset will maintain a stable value when traded on secondary markets or that the reserve of assets will be adequate to satisfy all redemptions;

(d) a prominent statement that, due to uncertainties in the application of bankruptcy and insolvency law, in the event of the insolvency of [Value-Referenced Crypto Asset issuer], there is a possibility that creditors of [Value-Referenced Crypto Asset issuer] would have rights to the reserve assets that could outrank a Value-Referenced Crypto Asset holder's rights, or otherwise interfere with a Value-Referenced Crypto Asset holder's ability to access the reserve of assets in the event of insolvency;

(e) a description of the Value-Referenced Crypto Asset and its issuer;

(f) a description of the due diligence performed by the Filer with respect to the Value-Referenced Crypto Asset;

(g) a brief description of the information in section (2) and links to where the information in that section is publicly available;

(h) a link to where on its website the issuer of the Value-Referenced Crypto Asset will disclose any event that has or is likely to have a significant effect on the value of the Value-Referenced Crypto Asset or on the reserve of assets;

(i) a description of the circumstances where the secondary market trading value of the Value-Referenced Crypto Asset may deviate from par with the reference fiat currency and details of any instances where the secondary market trading value of the Value-Referenced Crypto Asset has materially deviated from par with the reference fiat currency during the last 12 months on the Filer's platform;

(j) a brief description of any risks to the client resulting from the trading of a Value-Referenced Crypto Asset or a Crypto Contract in respect of a Value-Referenced Crypto Asset that may not have been distributed in compliance with securities laws;

(k) any other risks specific to the Value-Referenced Crypto Asset, including the risks arising from the fact that the Filer may not, and a client does not, have a direct redemption right with the issuer of the Value-Referenced Crypto Asset;

(l) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the platform;

(m) a statement that the statutory rights in section 130.1 of the Act and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in the Decision; and

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

(4) If the Filer uses the term “stablecoin” or “stablecoins” in any information, communication, advertising or social media related to the Platform and targeted at or accessible by Canadian investors, the Filer will also include the following statement (or a link to the following statement when impractical to include):

> “Although the term “stablecoin” is commonly used, there is no guarantee that the asset will maintain a stable value in relation to the value of the reference asset when traded on secondary markets or that the reserve of assets, if there is one, will be adequate to satisfy all redemptions.”

(5) The issuer of the Value-Referenced Crypto Asset has filed an undertaking acceptable to the CSA in substantially the same form as set out in Appendix B of CSA Notice 21-333 *Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients* (**CSA SN 21-333**).

(6) The KYP Policy of the Filer requires the Filer to assess whether the Value-Referenced Crypto Asset or the issuer of the Value-Referenced Crypto Asset satisfies the criteria in sections (1), (2) and (5) of this Appendix on an ongoing basis.

(7) The Filer has policies and procedures to facilitate halting or suspending deposits or purchases of the Value-Referenced Crypto Asset, or Crypto Contracts in respect of the Value-Referenced Crypto Asset, as quickly as is commercially reasonable, if the Value-Referenced Crypto Asset no longer satisfies the criteria in sections (1), (2) and (5) of this Appendix.

In this Appendix, terms have the meanings set out in Appendix D of CSA SN 21-333.

APPENDIX D – STAKING TERMS AND CONDITIONS

1. The Staking Services are offered in relation to the Stakeable Crypto Assets that are subject to a Crypto Contract between the Filer and a client.

2. Unless the Principal Regulator provides its prior written consent, the Filer will offer clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (i.e., Stakeable Crypto Assets).

3. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

4. The Filer itself does not act as a Validator. The Filer has entered into written agreements with third parties to stake Stakeable Crypto Assets and each such third party is proficient and experienced in staking Stakeable Crypto Assets.

5. As part of its KYP Policy, reviews the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

   a. the Stakeable Crypto Assets that the Filer proposes to offer for staking;

   b. the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

   c. the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

   d. the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

   e. the Validators engaged by the Filer or the Filer's Custodian, including, but not limited to, information about:

      i. the persons or entities that manage and direct the operations of the Validator,

      ii. the Validator's reputation and use by others,

      iii. the amount of Stakeable Crypto Assets the Validator has staked on its own nodes,

      iv. the measures in place by the Validator to operate the nodes securely and reliably,

      v. the financial status of the Validator,

      vi. the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

      vii. any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

      viii. any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

6. The Filer has policies and procedures to assess account appropriateness for a client includes consideration of the Staking Services to be made available to that client.

7. The Filer applies the account appropriateness policies and procedures to evaluate whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

8. If, after completion of an account-level appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will include prominent messaging to the client that this is the case and the Filer will not make available the Staking Services to the client.

9. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

10. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in condition 11 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

11. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which includes:

    a. the details of the Staking Services and the role of all third parties involved;

    b. the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Crypto Asset for which the Filer provides the Staking Services;

    c. the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

    d. the details of whether and how the custody of staked Stakeable Crypto Assets differs from Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

    e. the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

    f. whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

    g. whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Stakeable Crypto Asset protocol, custodian or Validator, where such Stakeable Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

    h. how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

12. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

    a. that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

    b. that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

    c. how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

    d. that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

    e. whether rewards may be changed at the discretion of the Filer;

    f. unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

    g. if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

    h. that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

13. Immediately before each time a client buys or deposits Stakeable Crypto Assets that are automatically staked, the Filer provides prominent disclosure to the client that the Stakeable Crypto Asset it is about to buy or deposit will be automatically staked.

14. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Staking Services and/or Stakeable Crypto Assets.

15. In the event of any update to the Risk Statement, for each existing client that has agreed to the Staking Services, the Filer will promptly notify the client of the update and deliver to them a copy of the updated Risk Statement.

16. In the event of any update to a Crypto Asset Statement, for each existing client that has agreed to the Staking Services in respect of the Stakeable Crypto Asset for which the Crypto Asset Statement was updated, the Filer will promptly notify the client of the update and deliver to the client a copy of the updated Crypto Asset Statement.

17. The Filer and the Custodian remain in possession, custody and control of the staked Stakeable Crypto Assets at all times.

18. The Filer holds the staked Stakeable Crypto Assets in trust or for the benefit of its clients in one or more omnibus staking wallets in the name of the Filer for the benefit of the Filer's clients with the Custodian and the staked Stakeable Crypto Assets are held separate and distinct from (i) the assets of the Filer, the Custodian and the Custodian's other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets.

19. The Filer has established policies and procedures that manage and mitigate custodial risks for staked Stakeable Crypto Assets, including but not limited to, an effective system of controls and supervision to safeguard the staked Stakeable Crypto Assets.

20. If the Filer permits clients to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-up Period, the Filer establishes and applies appropriate liquidity management policies and procedures to fulfill withdrawal requests made, which may include using the Stakeable Crypto Assets it holds in inventory, setting aside cash for the purpose of purchasing such inventory, and/or entering into agreements with its Liquidity Providers that permit the Filer to purchase any required Crypto Assets. The Filer holds Stakeable Crypto Assets in trust for its clients and will not use Stakeable Crypto Assets of those clients who have not agreed to the Staking Services for fulfilling such withdrawal requests.

21. If the Filer provides a guarantee to clients from some or all of the risks related to the Staking Services, the Filer has established, and will maintain and apply, policies and procedures to address any risks arising from such guarantee.

22. In the event of bankruptcy or insolvency of the Filer, the Filer will assume and will not pass to clients any losses arising from slashing or other penalties arising from the performance or non-performance of the Validator.

23. The Filer monitors its Validators for downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

24. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

25. The Filer regularly and promptly determines the amount of staking rewards earned by each client that has staked Stakeable Crypto Assets under the Staking Services and distributes each client's staking rewards to the client promptly after they are made available to the Filer.

26. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

APPENDIX E – DATA REPORTING

1. Commencing with the quarter ending June 30, 2023, the Filer will deliver the following information to the Principal Regulator and each of the Coordinated Review Decision Makers in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers with respect to Clients residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December.

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

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

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

      iii. number of Client Account applications rejected by the platform each month in the quarter based on the account appropriateness factors described in representation 30(b);

      iv. number of trades each month in the quarter;

      v. average value of the trades in each month in the quarter;

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX F

DATA ELEMENT DEFINITIONS, FORMATS AND ALLOWABLE VALUES

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

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

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

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

B.3.4 CIBC Asset Management Inc. and CIBC Ares Strategic Income Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual funds that are not reporting issuers granted 90-day extension of the annual financial statement filing and delivery deadlines and 60-day extension of the interim financial statement filing and delivery deadlines under NI 81-106 – Funds invest the majority of their assets in Underlying Funds with later financial reporting deadlines.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 2.2, 2.4, 5.1(2) and 17.1.

March 8, 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
CIBC ASSET MANAGEMENT INC.
(the Filer)

AND

CIBC ARES STRATEGIC INCOME FUND
(the Initial Top Fund)

DECISION

Background

The principal regulator of the Jurisdiction has received an application from the Filer and its affiliates on behalf of the Initial Top Fund and any other existing or future mutual fund that is not and will not be a reporting issuer, that is or will be organized under the laws of the Province of Ontario or another jurisdiction of Canada, and that is or will be managed by the Filer and invests or will invest in underlying funds or other collective investment vehicles as part of its investment strategy (the **Future Top Funds** and together with the Initial Top Fund, the **Top Funds),** for a decision under the securities legislation of the Jurisdiction (the **Legislation)** exempting the Filer and the Top Funds from:

(a) the requirement in section 2.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) that the Top Funds file their audited annual financial statements and auditor's report on or before the 90th day after the Top Funds' most recently completed financial year (the **Annual Filing Deadline**);

(b) the requirement in paragraph 5.1(2)(a) of NI 81-106 that the Top Funds deliver to securityholders their audited annual financial statements and auditor's report by the Annual Filing Deadline (the **Annual Delivery Requirement**);

(c) the requirement in section 2.4 of NI 81-106 that the Top Funds file their interim financial report on or before the 60th day after the Top Funds' most recently completed interim period (the **Interim Filing Deadline**); and

(d) the requirement in paragraph 5.1(2)(b) of NI 81-106 that the Top Funds deliver to securityholders their interim financial report by the Interim Filing Deadline (the **Interim Delivery Requirement**);

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

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

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

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

Definitions

Unless expressly defined herein, terms used have the respective meanings given to them in MI 11-102, National Instrument 14-101 *Definitions,* National Instrument 81-102 *Investment Funds* and NI 81-106.

Representations

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

The Filer

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

2. The Filer is registered as an investment fund manager (**IFM**) in each of Ontario, Québec and Newfoundland and Labrador, as a portfolio manager in each of the Canadian Jurisdictions, as a commodity trading manager in Ontario, and as a derivatives portfolio manager in Québec.

3. The Filer or an affiliate is or will be the IFM and portfolio manager of the Top Funds.

4. The Filer and its affiliates are not in default of securities legislation in any of the Canadian Jurisdictions.

The Top Funds

5. The Initial Top Fund is a trust formed under the laws of the Province of Ontario. Each Future Top Fund will be formed as a trust or limited partnership under the laws of the Province of Ontario or another Canadian Jurisdiction.

6. The Initial Top Fund is, and each Future Top Fund will be a "mutual fund" for purposes of the securities legislation of the Canadian Jurisdictions.

7. Securities of the Initial Top Fund are, and securities of the Future Top Funds will be, offered for sale only to qualified investors in provinces and territories of Canada pursuant to exemptions from the prospectus requirements under National Instrument 45-106 *Prospectus Exemptions* or other available exemptions.

8. None of the existing Top Funds is in default of the securities legislation in any of the Canadian Jurisdictions.

9. None of the Top Funds is, or will be, a reporting issuer in any of the Canadian Jurisdictions.

10. Each Top Fund has, or will have a financial year-end of December 31.

11. Each of the Top Funds' investment objective will require the Top Funds to invest primarily in private asset classes.

12. Each of the Top Funds will seek to achieve its investment objective by investing in securities of one or more underlying investment funds or other collective investment vehicles (each, an **Underlying Fund**), either directly or through another Underlying Fund (each, a **Master Fund**) managed by an independent manager or by the Filer or an affiliate of the Filer (the Filer, together with its affiliates, **CIBC**).

13. The Underlying Funds will be managed by independent managers, except for certain Master Funds which will be managed by CIBC (each, a **CIBC Master Fund**) and will invest in Underlying Funds managed by independent managers.

14. The Filer believes that the Top Funds' investment in the Underlying Funds offers benefits not available through a direct investment in the companies, other issuers or assets held by the Underlying Funds.

15. Securities of the Top Funds typically will be redeemable at various intervals, as will securities of certain Underlying Funds, but securities of other Underlying Funds will not be redeemable until the termination of such Underlying Funds. As each Top Fund will have a medium to long-term investment horizon, each Top Fund will be able to manage its own liquidity requirements taking into consideration the frequency at which securities of the Underlying Funds may be redeemed.

16. The net asset value of each Top Fund will be calculated on a monthly basis and securityholders of each Top Fund will be provided with the net asset value of the Top Fund on a monthly basis.

17. Certain holdings of each Top Fund may be disclosed in the Top Fund's annual financial statements and interim financial reports.

Financial Statement Filing and Delivery Requirements

18. Generally, section 2.2 and paragraph 5.1(2)(a) of NI 81-106 require a Top Fund to file and deliver its audited annual financial statements and auditor's report by the Annual Filing Deadline. As the Initial Top Fund's financial year-end is December 31, the Initial Top Fund has a filing and delivery deadline of March 30 or March 31 (depending on the year).

19. Generally, section 2.4 and paragraph 5.1(2)(b) of NI 81-106 require a Top Fund to file and deliver its interim financial reports by the Interim Filing Deadline. As the Initial Top Fund's interim period-end is June 30, the Initial Top Fund has an interim filing and delivery deadline of August 29.

20. Section 2.11 of NI 81-106 provides an exemption from the filing requirements of the audited annual financial statements and auditor's report, and interim financial reports if, among other things, the Top Fund delivers such statements and reports in accordance with Part 5 of NI 81-106 by the Annual Filing Deadline and Interim Filing Deadline, as applicable.

21. In order to formulate an opinion on the financial statements of each Top Fund, the Top Fund's auditor or the CIBC Master Fund's auditor requires audited annual financial statements of the respective Underlying Funds in order to audit the information contained in the Top Fund's annual financial statements. The auditors of the Top Funds have advised the Filer that they will be unable to complete the audit of each Top Fund's annual financial statements until the audited financial statements of a certain percentage of the Underlying Funds are completed and available to the respective Top Fund and/or CIBC Master Fund, as applicable.

22. The Underlying Funds may be domiciled in Canada, the United States or other international jurisdictions.

23. The Underlying Funds may have varying financial year-ends and may be subject to a variety of financial reporting deadlines.

24. In most cases, the Top Funds and/or the CIBC Master Funds will not be able to obtain the audited annual financial statements and auditor's reports, and interim financial reports of the Underlying Funds sooner than the deadline for filing such statements and reports of the Underlying Funds and, in all cases, no sooner than other securityholders of the Underlying Funds receive the financial statements and reports of the Underlying Funds. As a result, the Top Funds will not be able to meet the Annual Filing Deadline and Annual Delivery Requirement and the Interim Filing Deadline and Interim Delivery Requirement. The Filer expects this timing delay in the completion of its audited annual financial statements and unaudited interim financial reports of each Top Fund to occur every year for the foreseeable future.

25. The offering memorandum of each Top Fund provided to prospective investors will disclose, or such investors will be otherwise notified, that: (i) audited annual financial statements and auditor's reports for such Top Fund would be delivered to each investor within 180 days of such Top Fund's financial year end; and (ii) unaudited interim financial reports for such Top Fund would be delivered to each investor within 120 days following the end of each interim period of such Top Fund.

26. The Filer will notify securityholders of the Top Funds that it has received and intends to rely on relief from the Annual Filing Deadline and Annual Delivery Requirement and the Interim Filing Deadline and the Interim Delivery Requirement.

27. Each Top Fund therefore seeks an extension of the Annual Filing Deadline and Annual Delivery Requirement to permit delivery within 180 days of such Top Fund's year-end, to enable the Top Fund's auditors to first receive the audited annual financial statements and auditor's reports of the relevant Underlying Funds so as to be able to prepare such Top Fund's audited annual financial statements and auditor's report.

28. Each Top Fund therefore seeks an extension of the Interim Filing Deadline and Interim Delivery Requirement to permit delivery within 120 days of such Top Fund's most recently completed interim period, to enable the Top Fund to first receive the interim financial reports of the relevant Underlying Funds so as to be able to determine the net asset value of the relevant Underlying Funds and prepare such Top Fund's interim financial reports.

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 for so long as:

(a) The Top Fund has a financial year ending December 31.

(b) The Top Fund's investment strategy is to invest the Top Fund's investable assets in Underlying Funds which share the Top Fund's investment objective.

(c) The Top Fund invests the majority of its assets in Underlying Funds.

(d) No less than 25% of the total assets of the Top Fund at the time the Top Fund makes the initial investment decision in the Underlying Fund(s), are invested in investment entities that have financial reporting periods that end on the Top Fund's financial year end and are subject to the requirement that their annual financial statements be delivered within 120 days of their financial year ends and interim financial statements between 60 and 90 days of their most recent interim period.

(e) The offering memorandum provided to prospective investors regarding the Top Fund discloses that (i) audited annual financial statements and auditor's reports for the Top Fund will be filed and delivered within 180 days of its financial year-end; and (ii) interim financial reports for the Top Fund will be filed and delivered within 120 days of its interim period-end, subject to regulatory approval.

(f) The Top Fund notifies its securityholders that the Top Fund has received and intends to rely on relief from the filing and delivery requirements under section 2.2, section 2.4, paragraph 5.1(2)(a) and paragraph 5.1(2)(b) of NI 81-106.

(g) The Top Fund is not a reporting issuer and the Filer is a corporation incorporated under the laws of the Province of Ontario and has the necessary registrations to carry out its operations in each of the Canadian Jurisdictions in which it operates.

(h) The conditions in section 2.11 of NI 81-106 will be met, except for subsection 2.11(b), and:

(i) the audited annual financial statements and auditor's report will be delivered to securityholders of the Top Fund in accordance with Part 5 of NI 81-106 on or before the 180th day after the Top Fund's most recently completed financial year; and

(ii) the interim financial reports will be delivered to securityholders of the Top Fund in accordance with Part 5 of NI 81-106 on or before the 120th day after the Top Fund's most recently completed interim period.

(i) This order terminates within one year of the coming into force of any amendment to NI 81-106 or other rule that modifies how the Annual Filing Deadline, Annual Delivery Requirement, Interim Filing Deadline or Interim Delivery Requirement applies in connection with mutual funds.

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

Application File #: 2024/0030
SEDAR Project #: 6073793

B.3.5 Borealis Foods Inc.

Headnote

Subsection 74(1) – Application for exemption from prospectus requirement in connection with first trade of shares of issuer through exchange or market outside of Canada or to person or company outside of Canada – issuer not a reporting issuer in any jurisdiction in Canada – The issuer meets all the conditions of section 2.14 of National Instrument 45-102 Resale of Securities except that residents of Canada own more than 10% of the securities of the class; the issuer's securities are listed on an exchange outside of Canada; there is no market for the issuer's securities in Canada; the issuer has established that, despite being organized under Ontario corporate law and having a non-traditional head office in Ontario, it has minimal connection to Canada in that none of its material operations are conducted in Canada; a majority of the directors and officers are not resident in Canada; the issuer will provide securityholders with the same continuous disclosure materials that are provided to foreign shareholders – conditions of the exemption in section 2.15 of National Instrument 45-102 Resale of Securities not satisfied as the issuer will have its head office located in Canada.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74(1).
National Instrument 45-102 Resale of Securities, ss. 2.14 and 2.15.

February 5, 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
BOREALIS FOODS INC.
("New Borealis")**

DECISION

Background

The principal regulator in the Jurisdiction (the "**Decision Maker**") has received an application (the "**Application**") from Borealis Foods Inc. ("**Borealis**" or the "**Filer**") on behalf of New Borealis in connection with the proposed Business Combination (as defined below) between Borealis and Oxus Acquisition Corp. ("**Oxus**"), for a decision under section 74(1) of the *Securities Act* (Ontario) (the "**Act**") that the prospectus requirement set forth in section 53 of the Act does not apply to the first trade of New Borealis Shares (as defined below) held by Canadian Owners (as defined below) for a trade made: (i) through an exchange, or a market, outside of Canada; or (ii) to a person or company outside of Canada (collectively, the "**Resale Relief**").

The Decision Maker has also received a request from the Filer for a decision that the Application and this decision (together, the "**Confidential Material**") be kept confidential and not be made public until the earliest of: (i) the date on which the Business Combination (as defined herein) is completed; (ii) the date on which the Filer advises that there is no longer any need for the Confidential Material to remain confidential; or (iii) the date that is 90 days after the date of this decision (the "**Confidentiality Relief**").

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

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

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

Oxus

1. Oxus is a blank check company incorporated as a Cayman Islands exempted company. Oxus was created for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization, or similar business combination with one or more businesses or entities.

2. The principal executive office of Oxus is located at at Harbour Place, P.O. Box 472, 103 South Church Street, Grand Cayman KY1-1106, Cayman Islands. Its sponsor is Oxus Capital PTE. LTD, a corporation incorporated in Singapore and the controlling shareholder of the sponsor, Mr. Kenges Rakishev, is a citizen of Kazakhstan.

3. Oxus is a registrant with the United States Securities and Exchange Commission (the "**SEC**") and Oxus is subject to the requirements of the Securities Exchange Act of 1934 of the United States (the "**U.S. Securities Act**") and the rules and regulations of the Nasdaq Capital Market (the "**Nasdaq**"). Oxus is in compliance with the requirements of the U.S. Securities Act and is in good standing with the rules of the Nasdaq.

4. Oxus is not a reporting issuer in any jurisdiction of Canada and has no intention of becoming a reporting issuer in any jurisdiction of Canada. Oxus is not in default of securities legislation in any jurisdiction.

5. Neither the sponsor of Oxus nor any of its directors or executive officers are residents of or spend a significant amount of time in Canada. To the knowledge of the parties, Oxus does not have any Canadian shareholders.

6. Pursuant to Oxus's amended and restated memorandum and articles of association, a holder of Oxus's public shares (an "**Oxus public shareholder**") may request that Oxus redeem all or a portion of such public shares for cash if the Business Combination (as defined below) is consummated.

7. If the Business Combination is consummated, and if an Oxus public shareholder exercises redemption rights, Oxus will redeem such public shares for a per-share price, payable in cash, equal to the pro rata portion of the trust account established at the consummation of Oxus's initial public offering. The redemption will take place immediately after consummation of the Business Combination. Given the recent market trends in similar de-SPAC transactions, the parties anticipate that all, or close to all, of such public shares will be redeemed in connection with the completion of the Business Combination.

Borealis

8. Borealis is a Canadian federal corporation that operates a manufacturing and distribution business primarily through subsidiaries domiciled in the United States. Borealis is not a reporting issuer in Canada and is not in default of securities legislation in any jurisdiction.

9. Borealis's manufacturing activities are carried out entirely in the United States through U.S.-domiciled subsidiaries. Borealis does not have significant operations in Canada, as detailed further below.

10. Borealis has a registered office in Ontario (the "**Ontario office**"). While Borealis is formed in Canada, it does not have a traditional head office environment, as there is no central location from which all of the executive officers of Borealis operate. There are fewer than 10 employees of Borealis who work from Canada, of the more than 300 total employees.

11. The founder and Chief Executive Officer (the "**CEO**") of Borealis is a U.S. citizen who is resident in Canada. He is one of two directors of Borealis; the other is a citizen of Switzerland. The CEO travels often to the United States for operational purposes. He spends the majority of his time in Canada on video-conference calls with people outside of Canada (primarily in the United States). He would spend almost all of his time in the United States were it not for technology that facilitates such remote work.

12. In addition to the CEO, two other officers of Borealis reside in and work out of the Ontario office. The other employees in Canada are involved in administrative, marketing, and legal functions. No revenues are generated from the Ontario office.

13. Additionally:

    (a) all of Borealis's products are manufactured at facilities located in the United States;

(b) Borealis sells its products solely to wholesalers in the United States for distribution domestically and internationally (certain of which may resell such products to wholesalers or retailers with Canadian operations);

(c) Borealis does not directly sell its products to wholesalers or retailers in Canada;

(d) Borealis's products are currently sold through retail channels in the United States and Canada;

(e) Borealis's products are primarily distributed outside of Canada, with over 88% of the retail locations which distribute Borealis's products being located in the United States;

(f) all of New Borealis's revenue will be recognized in the United States or through sales by its U.S. subsidiaries (and will be considered U.S. sales under U.S GAAP);

(g) Borealis's go-to-market strategy and expansion is focused primarily outside of Canada, pursuing schools, armed forces, correctional facilities, and non-governmental organizations as customers in the United States and internationally, including a European expansion planned for 2024; and

(h) only three of New Borealis's anticipated executive officers, and fewer than 10 of its 300-plus person workforce of employees or contractors, are expected to be located in Canada.

14. As of the date hereof, there are approximately 163,462,954 issued and outstanding shares in the capital of Borealis (the "**Borealis Shares**") held by approximately 48 holders (the "**Shareholders**"). As of the date hereof, there are approximately options to acquire up to 3,696,417 Borealis Shares held by approximately 15 holders (the "**Optionholders**"). No Shareholder is also an Optionholder. Additionally, Borealis has an aggregate principal amount of approximately U.S.$47 million of convertible notes outstanding (the "**Borealis Convertible Notes**"), which will ultimately be exchanged for common shares in the capital of New Borealis ("**New Borealis Shares**") in accordance with the Plan of Arrangement (as defined below). All options will be exercised for Borealis Shares and then subsequently exchanged for New Borealis Shares pursuant to the Plan of Arrangement.

15. Four of the 48 Shareholders and three of the 15 Optionholders are residents of Canada and none of the outstanding debt instruments of Borealis are held by Canadian residents. Canadian Shareholders and Optionholders of Borealis (collectively, the "**Canadian Owners**") hold, directly or indirectly, approximately 34% of the issued and outstanding shares of Borealis on a partially diluted basis (giving effect to the exercise of options).

16. Five of the seven Canadian Owners are officers, employees, or consultants of Borealis (or corporations affiliated with the foregoing). Nearly all of the shares of Borealis held by Canadian Owners are held by two holding corporations (together, the "**Management HoldCos**"), both of which are wholly or majority-owned and controlled primarily by its Chief Executive Officer (the "**CEO**") and his spouse. Certain additional employees of Borealis have a minority interest in the Management HoldCos. One holding corporation is formed in Ontario and the other is a British Columbia unlimited liability corporation.

17. The Management HoldCos account for approximately 98% of the direct and indirect ownership of Borealis Shares by Canadian Owners. The CEO has sole voting and dispositive control over the shares of Borealis held by the Management HoldCos.

18. Excluding the Management HoldCos, there are five Canadian Owners who beneficially own, or exercise control or direction over, less than 2% of the issued and outstanding shares of Borealis on a partially diluted basis (giving effect to the exercise of options).

The Business Combination

19. On February 23, 2023, Oxus entered into a business combination agreement with 1000397116 Ontario Inc. (a wholly owned subsidiary of Oxus) and Borealis (as the same may be amended, supplemented or otherwise modified from time to time, the "**Business Combination Agreement**").

20. The Business Combination Agreement contemplates, among other things, that Borealis and Oxus will complete a de-SPAC transaction to be implemented pursuant to a plan of arrangement (the "**Plan of Arrangement**", and collectively, the "**Business Combination**").

21. The Business Combination Agreement further contemplates that Oxus will continue into Ontario and Borealis will be arranged. The arrangement will ultimately result in an amalgamated corporation under the *Business Corporations Act* (Ontario), New Borealis, which will be the resulting issuer following completion of the Business Combination with the name "Borealis Foods Inc.".

22. The parties to the Business Combination determined to complete the continuance of Oxus into Canada in order to provide an opportunity to the shareholders of Borealis for tax-deferred reorganization treatment on the share exchange under the

Business Combination and to eliminate the need for a complex exchangeable share structure; but for such tax-planning considerations, New Borealis could have been redomiciled into a jurisdiction outside Canada, in which case it would have qualified as a non-reporting foreign issuer and there would have been no *de minimis* threshold.

New Borealis and SEC Issuer Status

23. New Borealis will distribute the securities pursuant to the Plan of Arrangement under section 2.11 of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"). Securities distributed under section 2.11 are subject to a seasoning period under section 2.6 of National Instrument 45-102 *Resale of Securities* ("**NI 45-102**").

24. As of the effective time of the Business Combination, New Borealis will not be a reporting issuer in any jurisdiction in Canada. The New Borealis Shares will only be listed on the Nasdaq.

25. The business and operations of New Borealis after the Business Combination will be that of Borealis and will substantially be carried on outside of Canada through New Borealis's U.S. subsidiaries.

26. New Borealis will be an SEC Issuer within the meaning of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, as Oxus is required to file a registration statement with the SEC in connection with the Business Combination (the "**Oxus Registration Statement**"). The SEC's declaration of effectiveness of the Oxus Registration Statement is a condition precedent to the completion of the Business Combination. The Oxus Registration Statement will become that of New Borealis upon completion of the amalgamations contemplated by the Business Combination. The Oxus Registration Statement will register all securities to be issued by New Borealis pursuant to the Business Combination, except for the issuance of New Borealis Shares issuable upon the conversion of certain outstanding Borealis Convertible Notes. All securities to be issued by New Borealis to the Canadian Owners will be registered by the Oxus Registration Statement.

27. Following the closing of the Business Combination, it is expected that less than 18% of the New Borealis Shares will be held by Canadian residents. Almost all such shares will be held, directly or indirectly, by directors, officers, or employees of New Borealis. Nearly all of the New Borealis Shares held by Canadian Owners will be held by the Management HoldCos. Other than the Management HoldCos, there will be *de minimis* ownership of New Borealis Shares by Canadian residents (likely less than 2%).

28. The parties to the Business Combination determined to complete a continuance of Oxus into Canada in order to provide an opportunity to the shareholders of Borealis for tax-deferred reorganization treatment on the share exchange under the Business Combination and to eliminate the need for a complex exchangeable share structure. But for such tax-planning considerations, New Borealis could have been redomiciled into a jurisdiction outside Canada, in which case it would have qualified as a non-reporting foreign issuer and there would have been no *de minimis* threshold.

29. Following completion of the Business Combination, the Canadian Owners will represent less than 10% of all holders of New Borealis Shares but will hold more than 10% of the New Borealis Shares. It is not possible to provide an exact shareholding percentage due to: (i) the continued trading of the Oxus shares until closing; (ii) unknown redemption levels by Oxus public shareholders; (iii) the terms of the Borealis Convertible Notes pertaining to accrual of interest and conversion; and (iv) the terms of the Agreement, which does not provide for a fixed share exchange ratio. The share exchange ratio is, in part, a function of Borealis's indebtedness immediately prior to closing.

30. Current estimates are that ownership by Canadian Owners may be as high as approximately 15% to 18% of the New Borealis Shares immediately upon completion of the Business Combination. However, the final figure may be lower than these estimates as a result of the terms of the Borealis Convertible Notes, the floating share exchange ratio and final redemptions by Oxus public shareholders. The proportionate ownership by Canadians is anticipated to further decline after closing, as future financing activities are most likely to be through registered offerings in the United States or otherwise with non-Canadian investors.

31. Almost all of the New Borealis Shares held by Canadian Owners will be held by the Management HoldCos (i.e., the holding corporations formed in Ontario and British Columbia). There will be *de minimis* ownership of New Borealis Shares by Canadian residents other than the Management HoldCos.

32. The shares of New Borealis to be held by the Management HoldCos will be subject to a contractual restricted period pursuant to a lock-up agreement to be entered into upon closing of the Business Combination. The form of lock-up agreement contemplates that, subject to certain exceptions, all subject shares will be locked-up for up to 12 months following completion of the Business Combination. The lock-up agreement will contemplate that: (i) the subject shares may be transferred to a permitted transferee and (ii) 50% of the subject shares will no longer be restricted if, during the restricted period, the closing price of the New Borealis Shares equals or exceeds US$12.00 for any twenty (20) trading days within a thirty (30)-trading day period starting after the Closing.

33. Section 2.7 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada* ("**OSC Rule 72-503**"), and the equivalent provisions in section 2.14(1) of NI 45-102 and Alberta securities legislation, provide an exemption from the prospectus requirement for the first trade of a security of an issuer distributed under an exemption from the prospectus requirement provided that:

    (a) the issuer of the security:

        (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

        (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

    (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada:

        (i) did not own directly or indirectly more than 10% of the outstanding securities of the class or series, and

        (ii) did not represent in number more than 10% of the total number of owners directly or indirectly of securities of the class or series

        (the "**10% *de minimis* condition**"); and

    (c) the trade is made:

        (i) through an exchange, or a market, outside of Canada, or

        (ii) to a person or company outside of Canada.

        (collectively, the "**First Trade Exemption**").

34. In the absence of an order granting relief or an exemption being available, the first trades in securities held by Canadian residents, will be deemed to be a distribution pursuant to section 2.6 of NI 45-102, unless, among other things, New Borealis is and has been a reporting issuer for four months immediately preceding the trade in a jurisdiction of Canada.

35. As New Borealis is not and will not become a reporting issuer, the first trade relief in section 2.6 of NI 45-102 is not available. In addition, the First Trade Exemption will not be available to New Borealis. On closing of the Business Combination, the Canadian Owners are expected to hold more than 10% of the issued and outstanding New Borealis Shares.

36. The Canadian Owners would have been entitled to rely on section 2.8 of OSC Rule 72-503 (or the equivalent provision in section 2.15 of NI 45-102) but for the fact that New Borealis will be organized under the laws of Ontario and have a modest administrative office in Ontario. In particular, a majority of the directors and of the executive officers of New Borealis do not ordinarily reside in Canada.

37. The shares of New Borealis will trade only on Nasdaq and will not be listed in Canada. No market for the New Borealis Shares is expected to exist in Canada on completion of the Business Combination and none is expected to develop. There is no current contemplation that Canada would be a focus area for New Borealis from a capital markets perspective. Oxus has no significant presence in Canada, nor does it intend to increase its presence in Canada, and it does not propose list on a Canadian stock exchange. Further, as New Borealis will be a SEC registrant, it is expected that any public offerings will be conducted in the United States and not in Canada.

38. It is intended that any resale of New Borealis Shares by Canadian Owners will be made through the facilities of the Nasdaq, or any other exchange or market outside of Canada on which the New Borealis Shares may be quoted or listed at the time that the trade occurs, or to a person or company outside of Canada, in accordance with the rules and regulations of such foreign market.

39. Following the Business Combination, New Borealis's registered office and principal executive office identified for SEC filing purposes is expected to be located in Ontario. This location was chosen merely for convenience as it is where New Borealis's Canadian internal legal counsel is located, where the CEO's principal residence is and for the requirement to comply with the requirements of applicable corporate legislation that New Borealis have a records office in Ontario. Borealis does not, and New Borealis will not, have a traditional head office environment, as there is no central location from which all of the executive officers of New Borealis will operate.

40. New Borealis will not have a material connection to Canada on the basis that:

(a) the business of Borealis and its subsidiaries prior to the consummation of the Business Combination will be the business of New Borealis following the consummation of the Business Combination;

(b) Borealis does not have material operations in Canada;

(c) all of Borealis's products are manufactured at facilities located in the United States;

(d) Borealis sells its products solely to wholesalers in the United States for distribution domestically and internationally (certain of which may resell such products to wholesalers or retailers with Canadian operations);

(e) Borealis does not directly sell its products to wholesalers or retailers in Canada;

(f) Borealis's products are currently sold through retail in the United States and Canada;

(g) Borealis's products are primarily distributed outside of Canada, with over 88% of the retail locations which distribute Borealis's products being located in the United States;

(h) all of New Borealis's revenue will be recognized in the United States or through sales by its U.S. subsidiaries (and will be considered U.S. sales under U.S GAAP);

(i) Borealis's go-to-market strategy and expansion is focused primarily outside of Canada, pursuing schools, armed forces, correctional facilities, and non-governmental organizations as customers in the United States and internationally, including a European expansion planned for 2024;

(j) only three of New Borealis's anticipated executive officers, and less than 10 of its 300-plus person workforce of employees or contractors, are expected to be located in Canada;

(k) a minority of the directors and of the executive officers of New Borealis are expected to be located in Canada, with the remaining directors and executive officers resident in locations such as the United States, Europe and Asia; and

(l) Oxus is not continuing from the Cayman Islands to Ontario for business or operational reasons or to increase its connection to Canada, but for unrelated tax planning purposes.

41. Canadian Owners will receive the same level of disclosure as other shareholders of New Borealis given that:

(a) New Borealis will be an SEC registrant and will be subject to the requirements of the U.S. Securities Act and the rules and regulations of the Nasdaq;

(b) in accordance with the current requirements of the Nasdaq, Canadian Owners will receive copies of all shareholder materials provided to all other shareholders of New Borealis and information about New Borealis will be available publicly through the SEC's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR); and

(c) Canadian Owners would receive substantially the same continuous disclosure materials from New Borealis that an SEC issuer would be permitted to provide under National Instrument 51-102 *Continuous Disclosure Obligations*, even if New Borealis were a reporting issuer in Canada.

Decision

The Decision Maker is satisfied that the decision meets the test set out in subsection 74(1) of the Act.

The order of the Decision Maker under subsection 74(1) of the Act is that the Requested Relief is granted provided that:

(a) immediately following the Business Combination: (i) the Canadian Owners together will own, directly or indirectly, no more than 25% of the total issued and outstanding New Borealis Shares and (ii) the Canadian Owners will represent no more than 25% of the total number of holders directly or indirectly of the New

(b) any resale by Canadian Owners qualifies under the First Trade Exemption, other than the 10% *de minimis* condition.

The further order of the Decision Maker is that the Confidentiality Relief is granted.

DATED at Toronto, Ontario this 5th day of February, 2024.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0653

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B.4
Cease Trading Orders

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

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Avivagen Inc.	March 5, 2024	
Silo Wellness Inc.	March 5, 2024	
Tombill Mines Limited	March 5, 2024	
Molecule Holdings Inc.	March 5, 2024	
IntelliPharmaCeutics International Inc.	March 5, 2024	
Pounce Technologies Inc.	March 5, 2024	
Lucky Minerals Inc.	March 5, 2024	
Besra Gold Inc.	March 6, 2024	
Enlighta Inc.	March 6, 2024	
First Growth Funds Limited	March 6, 2024	

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

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

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	

Company Name	Date of Order	Date of Lapse
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	

B.5
Rules and Policies

B.5.1 Amendments to National Instrument 41-101 General Prospectus Requirements

AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.

2. The following part is added after Part 2:

PART 2A: Access to a Prospectus

Application

2A.1(1) Subject to subsection (2), this Part applies in respect of a prospectus and any amendment if access to the document is provided in accordance with the requirements under section 2A.5 or the conditions under section 2A.6.

(2) This Part does not apply in respect of

(a) a prospectus to distribute rights,

(b) a prospectus filed under NI 44-102 or NI 44-103, and

(c) a prospectus to distribute securities of an investment fund.

Access to a prospectus

2A.2(1) This section does not apply in British Columbia, Alberta, Québec and New Brunswick.

(2) The requirement under securities legislation to deliver or send a prospectus and any amendment may be satisfied by providing access to the document in accordance with subsection 2A.5(2) or (3).

(3) The prospectus and any amendment is delivered or sent on the date that access to the document has been provided in accordance with subsection 2A.5(2) or (3).

(4) The prospectus and any amendment is received on the date that the document has been delivered or sent in accordance with subsection (3).

Access to a prospectus – Alberta

2A.3 In Alberta, the requirement under securities legislation to provide access to a prospectus and any amendment is satisfied by providing access to the document in accordance with subsection 2A.5(2) or (3).

Right of withdrawal, revocation or cancellation

2A.4(1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Except in Alberta and Saskatchewan, if the final prospectus or any amendment is delivered or sent in accordance with subsection 2A.5(2), the right to withdraw from an agreement to purchase a security under securities legislation may be exercised by a purchaser within 2 business days after the later of

(a) the date that the document is received in accordance with subsection 2A.2(4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

(3) In Alberta, if access to the final prospectus or any amendment is provided in accordance with subsection 2A.5(2), pursuant to section 130 of the *Securities Act* (Alberta), the agreement to purchase securities is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the

purchaser, evidencing the intention of the purchaser not to be bound by the agreement to purchase, not later than 2 business days after the later of

(a) the date that access to the document is provided in accordance with section 2A.5(2), and

(b) the date that the purchaser or subscriber has entered into the agreement to purchase or the subscription or contract to purchase the security.

(4) In Saskatchewan, if the final prospectus or any amendment is delivered or sent in accordance with subsection 2A.5(2), a purchaser that is not a registrant may cancel a purchase if the purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from whom the purchaser purchased the security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of

(a) the date that the document is received in accordance with subsection 2A.2(4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

Procedures

2A.5(1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Access to the final prospectus and any amendment has been provided on the date on which all of the following have been satisfied:

(a) the document is filed on SEDAR+ and a receipt is issued and posted on SEDAR+ for the document, and

(b) after the receipt is posted for the document, a news release is issued and filed on SEDAR+ that states

(i) in the title of the news release, that the document is accessible through SEDAR+,

(ii) that access to the document is provided in accordance with securities legislation relating to procedures for providing access to a prospectus and any amendment,

(iii) that the document is accessible at www.sedarplus.com,

(iv) the securities that are offered under the document, and

(v) the following:

"An electronic or paper copy of the final prospectus and any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(3) Access to the preliminary prospectus and any amendment has been provided if the document has been filed on SEDAR+, and a receipt has been issued and posted on SEDAR+ for the document.

(4) If a purchaser requests an electronic or paper copy of the final prospectus or any amendment, from the issuer or dealer, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer within 2 business days from the date the request is received and without charge to the purchaser at the email address or address specified in the request.

(5) If a prospective purchaser requests an electronic or paper copy of the preliminary prospectus or any amendment, from the issuer or dealer, in accordance with securities legislation, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer without charge to the prospective purchaser at the email address or address specified in the request.

Exemption from requirement to send prospectus – British Columbia, Québec and New Brunswick

2A.6(1) In British Columbia, Québec and New Brunswick, a dealer is exempt from the requirement under securities legislation to send a final prospectus and any amendment if

(a) the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document, and

(b) after the receipt is posted for the document, a news release has been issued and filed on SEDAR+ that states

(i) in the title of the news release, that the document is accessible through SEDAR+,

(ii) that access to the document is provided in accordance with securities legislation relating to procedures for providing access to a prospectus and any amendment,

(iii) that the document is accessible at www.sedarplus.com,

(iv) the securities that are offered under the document, and

(v) the following:

"An electronic or paper copy of the final prospectus and any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(2) In British Columbia and New Brunswick, a dealer or issuer that solicits an expression of interest from a prospective purchaser is exempt from the requirement in section 78 (2) (c) of the *Securities Act* (British Columbia) or subsection 82(2) of the *Securities Act* (New Brunswick) to send a copy of the preliminary prospectus to the prospective purchaser if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

(3) In British Columbia and New Brunswick, if a purchaser, or in Québec, if a purchaser or subscriber, requests an electronic or paper copy of the final prospectus or any amendment from the issuer or dealer, a copy of the document in the format requested by the purchaser or subscriber must be sent by the issuer or dealer within 2 business days from the date the request is received, without charge, to the purchaser or subscriber at the email address or address specified in the request.

(4) In British Columbia and New Brunswick, if a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement, not later than 2 business days after the later of

(a) the date that the conditions referred to in subsection (1) are satisfied, and

(b) the date that the purchaser entered into the agreement.

(5) In Québec, if a dealer relies on subsection (1), a contract to purchase or a subscription is not binding on a purchaser or subscriber if the dealer from whom the purchaser or subscriber purchases or subscribes for the security receives written notice sent by the purchaser or subscriber, evidencing the intention of the purchaser or subscriber to rescind the contract or subscription, not later than 2 business days after the later of

(a) the date that the conditions referred to in subsection (1) are satisfied, and

(b) the date that the purchaser or subscriber entered into the contract or the date of the subscription.

(6) In British Columbia and New Brunswick, subsection (4) does not apply if the purchaser

(a) is a registrant, or

(b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).

(7) In Québec, subsection (5) does not apply if the purchaser or subscriber

(a) is a dealer, or

(b) disposes of the securities before the end of the time referred to in subsection (5).

(8) In British Columbia and New Brunswick, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller or vendor with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller or vendor on the date on which the dealer received the notice.

(9) In Québec, the dealer is presumed to have received the notice of rescission referred to in subsection (5) in the ordinary course of mail.***.***

3. Subsection 13.1(1) is amended by

(a) adding "and is accessible through SEDAR+***" after "***A preliminary prospectus containing important information relating to these securities has been filed with securities commissions or similar authorities in certain jurisdictions of Canada***", and***

(b) deleting "name and***".***

4. Subsection 13.2(1) is amended by

(a) adding "and is accessible through SEDAR+***" after "***The prospectus contains important detailed information about the securities being offered***", and***

(b) deleting "name and***".***

5. Subsection 13.5(2) is amended by adding "and is accessible through SEDAR+***" after "***A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***".***

6. Subsection 13.6(2) is amended by adding "and is accessible through SEDAR+***" after "***A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***".***

7. Section 13.7 is amended by

(a) replacing paragraph (1)(g) with the following:

(g) the investment dealer

(i) includes, in the marketing materials, a statement that the preliminary prospectus and any amendment are accessible through SEDAR+, or

(ii) provides, with the marketing materials, a copy of the preliminary prospectus and any amendment.***; and***

(b) amending subsection (5) by

(i) adding "and is accessible through SEDAR+. Copies of the preliminary prospectus and any amendment may be obtained from [*insert contact information for dealer or other relevant person or entity*.]***" after "***A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***", and***

(ii) deleting "A copy of the preliminary prospectus, and any amendment, is required to be delivered with this document.***".***

8. Section 13.8 is amended by

(a) replacing paragraph (1)(g) with the following:

(g) the investment dealer

(i) includes, in the marketing materials, a statement that the final prospectus and any amendment are accessible through SEDAR+, or

(ii) provides, with the marketing materials, a copy of the final prospectus and any amendment.***; and***

(b) amending subsection (5) by

(i) adding "and is accessible through SEDAR+. Copies of the final prospectus and any amendment may be obtained from [*insert contact information for dealer or other relevant person or entity*.]***" after "***A final prospectus containing important information relating to the securities described in this document has

been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***", and***

(ii) ***deleting "***A copy of the final prospectus, and any amendment, is required to be delivered with this document.***".***

9. Section 13.9 is amended by

(a) replacing paragraph (3)(c) with the following:

(c) make an oral statement at the commencement of the road show that the preliminary prospectus and any amendment are accessible through SEDAR+, or provide the investor with a copy of the preliminary prospectus and any amendment.***; and***

(b) amending subsection (4) by adding "The preliminary prospectus and any amendment are accessible through SEDAR+.***" after "***Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***".***

10. Section 13.10 is amended by

(a) replacing paragraph (3)(c) with the following:

(c) make an oral statement at the commencement of the road show that the final prospectus and any amendment are accessible through SEDAR+, or provide the investor with a copy of the final prospectus and any amendment.***; and***

(b) amending subsection (4) by adding "The final prospectus and any amendment are accessible through SEDAR+.***" after "***Investors should read the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***".***

11. Section 16.1 is amended by adding "and despite subsection 2A.5(5),***" after "***Except in Ontario,***".***

12. Schedule 3 of APPENDIX A is amended by

(a) replacing the address of the regulator in Alberta with the following:

Securities Review Officer
Alberta Securities Commission
Suite 600, 250 – 5th Street S.W.
Calgary, Alberta T2P 0R4
Telephone: (403) 355-4151
Toll-free: 1-877-355-4488
E-mail: inquiries@asc.ca
www.asc.ca***;***

(b) replacing the address of the regulator in Québec with the following:

Autorité des marchés financiers
Attention: Responsable de l'accès à l'information
800, rue du Square-Victoria, bureau 2200
Montréal, Québec H3C 0B4
Telephone: (514) 395-0337
Toll Free in Québec: (877) 525-0337
www.lautorite.qc.ca***; and***

(c) replacing the address of the regulator in Saskatchewan with the following:

Attention: Corporate Finance Branch
Financial and Consumer Affairs Authority of Saskatchewan
4th Floor, 2365 Albert Street
Regina, Saskatchewan S4P 4K1
Telephone: (306) 787-5645
Email: corpfin@gov.sk.ca
www.fcaa.gov.sk.ca***.***

13. Form 41-101F1 Information Required in a Prospectus is amended by

(a) adding the following section after section 1.10:

Rights of withdrawal and rescission

1.10.1 Include a cross-reference to the section in the prospectus and any amendment where information about the right to withdraw or rescind from an agreement to purchase securities is provided.*;*

(b) adding the following section after section 30.1:

Access procedures – general

30.1.1 If a news release will be issued and filed announcing that the prospectus or any amendment is accessible through SEDAR+ in accordance with subsection 2A.5(2) or 2A.6(1) of the Instrument, or subsection 2A.5(2) or 2A.6(1) of NI 44-103, replace the second sentence in the statement required under section 30.1 with a sentence in substantially the following form:

> "This right may be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR+ and a receipt is issued and posted for the document, and (ii) issued and filed a news release on SEDAR+ announcing that the document is accessible through SEDAR+, and (b) the date that the purchaser or subscriber has entered into an agreement to purchase the securities or a contract to purchase or a subscription for the securities."*; and*

(c) adding the following section after section 30.2:

Access procedures – non-fixed price offerings

30.2.1 In the case of a non-fixed price offering, if a news release will be issued and filed announcing that the prospectus or any amendment is accessible through SEDAR+ in accordance with subsection 2A.5(2) or 2A.6(1) of the Instrument, or subsection 2A.5(2) or 2A.6(1) of NI 44-103, replace, if applicable in the jurisdiction in which the prospectus is filed, the second sentence in the statement in section 30.1 with a sentence in substantially the following form:

> "Irrespective of the determination at a later date of the purchase price of the securities distributed, this right may only be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR+ and a receipt is issued and posted for the document, and (ii) issued and filed a news release on SEDAR+ announcing that the document is accessible through SEDAR+, and (b) the date that the purchaser or subscriber has entered into an agreement to purchase the securities or a contract to purchase or a subscription for the securities."*.*

Effective date

14. (1) This Instrument comes into force on April 16, 2024.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after April 16, 2024, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

B.5.2 Changes to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements

CHANGES TO
COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements is changed by this Document.

2. The following section is added after section 2.11:

Revocation of purchase – Alberta

2.12 In Alberta, section 130 of the *Securities Act* (Alberta) provides that an agreement to purchase securities is not binding on the purchaser if the dealer receives notice in writing that the purchaser does not intend to be bound by the agreement to purchase within the timelines set out in the regulations. If access to the final prospectus or any amendment is provided in accordance with subsection 2A.5(2) of the Instrument, the applicable timeline is that set forth in section 2A.4(3) of the Instrument. Otherwise, the applicable timeline is that set forth in Alberta Securities Commission Rule 46-503 *Revocation of Purchase*..

3. The following part is added after Part 2:

PART 2A: Access to a Prospectus

Delivery obligation

2A.1 Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus and any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus and any amendment.

Part 2A of the Instrument provides alternative procedures whereby a dealer may provide access to a preliminary prospectus, final prospectus and any amendment. In British Columbia, Québec and New Brunswick, the alternative procedures are structured as an exemption from the delivery obligation, while in all other jurisdictions the alternative is structured as procedures to provide access to the preliminary prospectus, final prospectus and any amendment. The access procedures and the conditions of the exemption are substantially equivalent and both result in providing access to a preliminary prospectus, final prospectus and any amendment.

In jurisdictions except British Columbia, Alberta, Québec and New Brunswick, under subsection 2A.2(2) of the Instrument, a dealer may satisfy its delivery obligation under securities legislation if access to the document is provided in accordance with subsection 2A.5(2) or (3) of the Instrument.

In Alberta, under section 2A.3 of the Instrument, a dealer may satisfy its access obligation under securities legislation if access to the document is provided in accordance with subsection 2A.5(2) or (3) of the Instrument.

In British Columbia and New Brunswick, a dealer is provided with an exemption from the requirement in securities legislation to send a preliminary prospectus, final prospectus and any amendment if the conditions set out in subsection 2A.6(1) or (2) of the Instrument are met.

In Québec, a dealer is provided with an exemption from the requirement in securities legislation to send a final prospectus and any amendment if the conditions set out in subsection 2A.6(1) of the Instrument are met. It is permissible to provide access to a preliminary prospectus if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

Purchaser's or subscriber's rights

2A.2 Subsections 2A.4(2), 2A.4(3), 2A.4(4), 2A.6(4) and 2A.6(5) of the Instrument set out the period of time within which a purchaser's or subscriber's right to withdraw or rescind from, revoke or cancel an agreement to purchase a security or a contract to purchase or a subscription for a security must be exercised when access to a prospectus and any amendment is provided.

For the purposes of section 2A.4 and subsections 2A.6(4) and (5) of the Instrument, securities legislation in a jurisdiction sets out any provisions for who may exercise the right to provide a written notice, whether the notice is required and if so by when and to whom it must be provided, when receipt of the notice is deemed to be provided and who has the onus of proving time to provide a notice has expired.

If a purchaser or subscriber requests an electronic or paper copy of the final prospectus or any amendment from the issuer or dealer as permitted by subsections 2A.5(4) or 2A.6(3) of the Instrument, the request will not affect the calculation of the period of time during which the purchaser or subscriber may exercise these rights.

News release

2A.3 To provide access to a prospectus under Part 2A of the Instrument, a news release including prescribed information must be issued and filed on SEDAR+ after a receipt for the final prospectus and any amendment is posted. The requirements under paragraph 2A.5(2)(b) of the Instrument and the conditions under paragraph 2A.6(1)(b) of the Instrument may be satisfied by including the prescribed information in a news release that contains other information, for example a news release announcing information with respect to the applicable offering..

4. These changes become effective on April 16, 2024.

B.5.3 Amendments to National Instrument 44-101 Short Form Prospectus Distributions

AMENDMENTS TO
NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.

2. Paragraph 7.2(c) is replaced with the following:

(c) upon issuance of a receipt for the preliminary short form prospectus,

(i) a written or oral statement that the preliminary short form prospectus is accessible through SEDAR+ is made to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, or

(ii) a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and***.***

3. Paragraph 7.4(2)(c) is replaced with the following:

(c) upon issuance of a receipt for the preliminary short form prospectus,

(i) a written or oral statement that the preliminary short form prospectus is accessible through SEDAR+ is made to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, or

(ii) a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and***.***

4. Subsection 7.5(2) is replaced with the following:

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The preliminary short form prospectus will be accessible through SEDAR+. A copy of the preliminary short form prospectus may be obtained from [*insert contact information for the investment dealer or underwriters*]. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***.***

5. Section 7.6 is amended by

(a) replacing paragraph (1)(g) with the following:

(g) the marketing materials include a statement that the preliminary short form prospectus will be accessible through SEDAR+, or, upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that received the marketing materials and expressed an interest in acquiring the securities.***; and***

(b) replacing subsection (5) with the following:

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. The preliminary short form

prospectus will be accessible through SEDAR+. A copy of the preliminary short form prospectus may be obtained from [*insert contact information for the investment dealer or underwriters*].

There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***.***

6. Paragraph 7.7(3)(c) is replaced with the following:

(c) make an oral statement at the commencement of the road show that the preliminary short form prospectus and any amendment will be accessible through SEDAR+, or, upon issuance of a receipt for the preliminary short form prospectus, provide the investor with a copy of the preliminary short form prospectus and any amendment.***.***

7. Form 44-101F1 Short Form Prospectus is amended by

(a) adding the following section after section 1.9:

1.9.1 Statutory Rights of Withdrawal and Rescission

Include a cross-reference to the section in the short form prospectus and any amendment where information about the right to withdraw or rescind from an agreement to purchase securities is provided.***;***

(b) adding the following section after section 20.1:

20.1.1 Access Procedures – General

If a news release will be issued and filed announcing that the short form prospectus or any amendment is accessible through SEDAR+ in accordance with subsection 2A.5(2) or 2A.6(1) of NI 41-101, subsection 6A.5(2) or 6A.6(1) of NI 44-102, or subsection 2A.5(2) or 2A.6(1) of NI 44-103, replace the second sentence in the statement required under section 20.1 with a sentence in substantially the following form:

> "This right may be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR+ and a receipt is issued and posted for the document, and (ii) issued and filed a news release on SEDAR+ announcing that the document is accessible through SEDAR+, and (b) the date that the purchaser or subscriber has entered into an agreement to purchase the securities or a contract to purchase or a subscription for the securities."***; and***

(c) adding the following section after section 20.2:

20.2.1 Access Procedures – Non-fixed Price Offerings

In the case of a non-fixed price offering, if a news release will be issued and filed announcing that the short form prospectus or any amendment is accessible through SEDAR+ in accordance with subsection 2A.5(2) or 2A.6(1) of NI 41-101, subsection 6A.5(2) or 6A.6(1) of NI 44-102, or subsection 2A.5(2) or 2A.6(1) of NI 44-103, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the statement required under section 20.1 with a sentence in substantially the following form:

> "Irrespective of the determination at a later date of the purchase price of the securities distributed, this right may only be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR+ and a receipt is issued and posted for the document, and (ii) issued and filed a news release on SEDAR+ announcing that the document is accessible through SEDAR+, and (b) the date that the purchaser or subscriber has entered into an agreement to purchase the securities or a contract to purchase or a subscription for the securities."***.***

Effective date

8. (1) This Instrument comes into force on April 16, 2024.

   (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after April 16, 2024, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

B.5.4 Amendments to National Instrument 44-102 Shelf Distributions

AMENDMENTS TO
NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. National Instrument 44-102 Shelf Distributions is amended by this Instrument.

2. Section 6.7 is amended by replacing "The***" before "***shelf prospectus supplement***" with "***Subject to Part 6A, the***".***

3. The following part is added after Part 6:

PART 6A ACCESS TO SHELF PROSPECTUS SUPPLEMENTS AND BASE SHELF PROSPECTUSES

6A.1 Application

(1) Subject to subsection (2), this Part applies in respect of a prospectus and any amendment if access to the document is provided in accordance with the requirements under section 6A.5 or the conditions under section 6A.6.

(2) This Part does not apply in respect of

(a) a prospectus to distribute securities by way of an MTN program or other continuous distribution, and

(b) a prospectus to distribute securities of an investment fund.

6A.2 Access to Shelf Prospectus Supplements and Base Shelf Prospectuses

(1) This section does not apply in British Columbia, Alberta, Québec and New Brunswick.

(2) The requirement under securities legislation to deliver or send a prospectus and any amendment may be satisfied by providing access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents in accordance with subsection 6A.5(2) or (3).

(3) The shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents is delivered or sent on the date that access to the document has been provided in accordance with subsection 6A.5(2) or (3).

(4) The shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is received on the date that the document has been delivered or sent in accordance with subsection (3).

6A.3 Access to Shelf Prospectus Supplements and Base Shelf Prospectuses – Alberta

In Alberta, the requirement under securities legislation to provide access to a prospectus and any amendment is satisfied by providing access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents in accordance with subsection 6A.5(2) or (3).

6A.4 Right of Withdrawal, Revocation or Cancellation

(1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Except in Alberta and Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is delivered or sent in accordance with subsection 6A.5(2), the right to withdraw from an agreement to purchase a security under securities legislation may be exercised by a purchaser within 2 business days after the later of

(a) the date that the document is received in accordance with subsection 6A.2(4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

(3) In Alberta, if access to the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is provided in accordance with subsection 6A.5(2), pursuant to section 130 of the *Securities Act* (Alberta), the agreement to purchase securities is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the

intention of the purchaser not to be bound by the agreement to purchase, not later than 2 business days after the later of

(a) the date that access to the document is provided in accordance with section 6A.5(2), and

(b) the date that the purchaser or subscriber has entered into the agreement to purchase or the subscription or contract to purchase the security.

(4) In Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is delivered or sent in accordance with subsection 6A.5(2), a purchaser that is not a registrant may cancel a purchase if the purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from whom the purchaser purchased the security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of

(a) the date that the document is received in accordance with subsection 6A.2(4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

6A.5 Procedures

(1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Access to the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents has been provided on the date on which all of the following have been satisfied:

(a) the base shelf prospectus and any amendment is filed on SEDAR+ and a receipt is issued and posted on SEDAR+ for the document,

(b) the shelf prospectus supplement and any amendment is filed on SEDAR+, and

(c) after the shelf prospectus supplement and any amendment is filed, or within 2 business days before the date the document is filed, a news release is issued and filed on SEDAR+ that states

(i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,

(ii) that access to the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is provided in accordance with securities legislation relating to procedures for providing access to a shelf prospectus supplement, a base shelf prospectus and any amendment,

(iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at www.sedarplus.com,

(iv) the securities that are offered under the shelf prospectus supplement, and

(v) the following:

“An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable.”

(3) Access to the preliminary base shelf prospectus and any amendment has been provided if the document has been filed on SEDAR+, and a receipt has been issued and posted on SEDAR+ for the document.

(4) If a purchaser requests an electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents, from the issuer or dealer, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer within 2 business days from the date the request is received and without charge to the purchaser at the email address or address specified in the request.

(5) If a prospective purchaser requests an electronic or paper copy of the preliminary base shelf prospectus or any amendment, from the issuer or dealer, in accordance with securities legislation, a copy of the document in the

format requested by the purchaser must be sent by the issuer or dealer without charge to the prospective purchaser at the email address or address specified in the request.

6A.6 Exemption from Requirement to Send Prospectus – British Columbia, Québec and New Brunswick

(1) In British Columbia, Québec and New Brunswick, a dealer is exempt from the requirement under securities legislation to send a final prospectus and any amendment if

(a) the base shelf prospectus and any amendment has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document,

(b) the shelf prospectus supplement and any amendment has been filed on SEDAR+, and

(c) after the shelf prospectus supplement and any amendment was filed, or within 2 business days before the date the document was filed, a news release has been issued and filed on SEDAR+ that states

(i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,

(ii) that access to the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents is provided in accordance with securities legislation relating to procedures for providing access to a shelf prospectus supplement, a base shelf prospectus and any amendment,

(iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at www.sedarplus.com,

(iv) the securities that are offered under the shelf prospectus supplement, and

(v) the following:

"An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(2) In British Columbia and New Brunswick, a dealer or issuer that solicits an expression of interest from a prospective purchaser is exempt from the requirement in section 78 (2) (c) of the *Securities Act* (British Columbia) or subsection 82(2) of the *Securities Act* (New Brunswick) to send a copy of the preliminary base shelf prospectus to the prospective purchaser if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

(3) In British Columbia and New Brunswick, if a purchaser, or in Québec, if a purchaser or subscriber, requests an electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents from the issuer or dealer, a copy of the document in the format requested by the purchaser or subscriber must be sent by the issuer or dealer within 2 business days from the date the request is received, without charge, to the purchaser or subscriber at the email address or address specified in the request.

(4) In British Columbia and New Brunswick, if a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement, not later than 2 business days after the later of

(a) the date that the conditions referred to in subsection (1) are satisfied, and

(b) the date that the purchaser entered into the agreement.

(5) In Québec, if a dealer relies on subsection (1), a contract to purchase or a subscription is not binding on a purchaser or subscriber if the dealer from whom the purchaser or subscriber purchases or subscribes for the security receives written notice sent by the purchaser or subscriber, evidencing the intention of the purchaser or subscriber to rescind the contract or subscription, not later than 2 business days after the later of

(a) the date that the conditions referred to in subsection (1) are satisfied, and

(b) the date that the purchaser or subscriber entered into the contract or the date of the subscription.

(6) In British Columbia and New Brunswick, subsection (4) does not apply if the purchaser

(a) is a registrant, or

(b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).

(7) In Québec, subsection (5) does not apply if the purchaser or subscriber

(a) is a dealer, or

(b) disposes of the securities before the end of the time referred to in subsection (5).

(8) In British Columbia and New Brunswick, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller or vendor with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller or vendor on the date on which the dealer received the notice.

(9) In Québec, the dealer is presumed to have received the notice of rescission referred to in subsection (5) in the ordinary course of mail.*.*

4. Subsection 9.2(1) is replaced with the following:

(1) The following provisions do not apply to an issuer distributing a security under an ATM prospectus:

(a) section 7.2 of NI 41-101;

(b) section 1.9A of Form 44-101F1;

(c) item 20 of Form 44-101F1;

(d) item 8 of section 5.5 of this Instrument;

(e) Part 6A of this Instrument.*.*

5. Subsection 9A.2(2) is replaced with the following:

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+. Copies of the documents may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.*.*

6. Section 9A.3 is amended by

(a) replacing paragraph (1)(g) with the following:

(g) the investment dealer

(i) includes, in the marketing materials, a statement that the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+, or

(ii) provides, with the marketing materials, a copy of the final base shelf prospectus, applicable shelf prospectus supplement and any amendment to the documents that have been filed.***; and***

(b) replacing subsection (5) with the following:

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+. Copies of the documents may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***.***

7. Section 9A.4 is amended by

(a) replacing paragraph (3)(c) with the following:

(c) make an oral statement at the commencement of the road show that the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+, or provide the investor with a copy of the final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents that have been filed.***; and***

(b) amending subsection (4) by adding "The final base shelf prospectus, any applicable shelf prospectus supplement and any amendment to the documents are accessible through SEDAR+.***" after "***Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***".***

Effective date

8. (1) This Instrument comes into force on April 16, 2024.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after April 16, 2024, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

B.5.5 Changes to Companion Policy 44-102CP to National Instrument 44-102 Shelf Distributions

CHANGES TO
COMPANION POLICY 44-102CP TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. Companion Policy 44-102CP to National Instrument 44-102 Shelf Distributions is changed by this Document.

2. Subsection 2.6(3) is changed by adding ", subject to Part 6A,***" after "***NI 44-102 provides that***".***

3. Section 2.9 is replaced with the following:

2.9 Delivery Obligations – Purchaser's or Subscriber's Rights – The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of all relevant shelf prospectus supplements. It is only at this time that the entire prospectus has been delivered.

Subsections 6A.4(2), 6A.4(3), 6A.4(4), 6A.6(4) and 6A.6(5) of the Instrument set out the period of time within which a purchaser's or subscriber's right to withdraw or rescind from, revoke or cancel an agreement to purchase a security or a contract to purchase or a subscription for a security must be exercised when access to a prospectus and any amendment is provided.

For the purposes of section 6A.4 and subsections 6A.6(4) and (5) of the Instrument, securities legislation in a jurisdiction sets out any provisions for who may exercise the right to provide a written notice, whether the notice is required and if so by when and to whom it must be provided, when receipt of the notice is deemed to be provided and who has the onus of proving time to provide a notice has expired.

If a purchaser or subscriber requests an electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment from the issuer or dealer as permitted by subsections 6A.5(4) or 6A.6(3) of the Instrument, the request will not affect the calculation of the period of time during which the purchaser or subscriber may exercise these rights.***.***

4. The following section is added after section 2.9:

2.10 Revocation of Purchase – Alberta – In Alberta, section 130 of the *Securities Act* (Alberta) provides that an agreement to purchase securities is not binding on the purchaser if the dealer receives notice in writing that the purchaser does not intend to be bound by the agreement to purchase within the timelines set out in the regulations. If access to the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is provided in accordance with subsection 6A.5(2) of the Instrument, the applicable timeline is that set forth in section 6A.4(3) of the Instrument. Otherwise, the applicable timeline is that set forth in Alberta Securities Commission Rule 46-503 *Revocation of Purchase*.***.***

5. The following part is added after Part 2:

PART 2A ACCESS TO SHELF PROSPECTUS SUPPLEMENTS AND BASE SHELF PROSPECTUSES

2A.1 Delivery Obligation – Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus and any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus and any amendment.

Part 6A of the Instrument provides alternative procedures whereby a dealer may provide access to a preliminary prospectus, final prospectus and any amendment. In British Columbia, Québec and New Brunswick, the alternative procedures are structured as an exemption from the delivery obligation, while in all other jurisdictions the alternative is structured as procedures to provide access to the preliminary prospectus, final prospectus and any amendment. The access procedures and the conditions of the exemption are substantially equivalent and both result in providing access to a preliminary prospectus, final prospectus and any amendment.

In jurisdictions except British Columbia, Alberta, Québec and New Brunswick, under subsection 6A.2(2) of the Instrument, a dealer may satisfy its delivery obligation under securities legislation if access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents is provided in accordance with subsection 6A.5(2) or (3) of the Instrument.

In Alberta, under section 6A.3 of the Instrument, a dealer may satisfy its access obligation under securities legislation if access to the documents is provided in accordance with subsection 6A.5(2) or (3) of the Instrument.

In British Columbia and New Brunswick, a dealer is provided with an exemption from the requirement in securities legislation to send a shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus and any amendment to the documents if the conditions set out in subsection 6A.6(1) or (2) of the Instrument are met.

In Québec, a dealer is provided with an exemption from the requirement in securities legislation to send a shelf prospectus supplement, the corresponding base shelf prospectus and any amendment to the documents if the conditions set out in subsection 6A.6(1) of the Instrument are met. It is permissible to provide access to the preliminary base shelf prospectus and any amendment if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

2A.2 **News Release –** To provide access to a shelf prospectus supplement, the corresponding base shelf prospectus and any amendment under Part 6A of the Instrument, a news release including prescribed information must be issued and filed on SEDAR+ after the supplement and any amendment is filed or within 2 business days before the date the document was filed. The requirements under paragraph 6A.5(2)(c) of the Instrument and the conditions under paragraph 6A.6(1)(c) of the Instrument may be satisfied by including the prescribed information in a news release that contains other information, for example a news release announcing the offering price of the securities or other information with respect to the applicable offering.

2A.3 **Structured Notes –** Part 6A of the Instrument does not apply to MTN programs and other continuous distributions. The securities regulatory authorities note that MTN programs have routinely been used to distribute structured notes. Structured notes are generally specified derivatives for which the amount payable is determined by reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the structured note issuer. The securities regulatory authorities expect that structured notes will continue to be distributed under MTN programs or other continuous distributions, as they have been historically, and may have public interest concerns if they are distributed in another manner so that the issuer could rely on the access model permitted in Part 6A.*.*

6. These changes become effective on April 16, 2024.

B.5.6 Amendments to National Instrument 44-103 Post-Receipt Pricing

AMENDMENTS TO
NATIONAL INSTRUMENT 44-103 *POST-RECEIPT PRICING*

1. National Instrument 44-103 Post-Receipt Pricing is amended by this Instrument.

2. The following part is added after Part 2:

PART 2A ACCESS TO SUPPLEMENTED PREP PROSPECTUSES

2A.1 Application

(1) Subject to subsection (2), this Part applies in respect of a prospectus and any amendment if access to the document is provided in accordance with the requirements under section 2A.5 or the conditions under section 2A.6.

(2) This Part does not apply in respect of a prospectus to distribute securities of an investment fund.

2A.2 Access to Supplemented PREP Prospectuses

(1) This section does not apply in British Columbia, Alberta, Québec and New Brunswick.

(2) The requirement under securities legislation to deliver or send a prospectus and any amendment may be satisfied by providing access to the supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment to the documents in accordance with subsection 2A.5(2) or (3).

(3) The supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment to the documents is delivered or sent on the date that access to the document has been provided in accordance with subsection 2A.5(2) or (3).

(4) The supplemented PREP prospectus and any amendment is received on the date that the document has been delivered or sent in accordance with subsection (3).

2A.3 Access to Supplemented PREP Prospectuses – Alberta In Alberta, the requirement under securities legislation to provide access to a prospectus and any amendment is satisfied by providing access to the supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment to the documents in accordance with subsection 2A.5(2) or (3).

2A.4 Right of Withdrawal, Revocation or Cancellation

(1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Except in Alberta and Saskatchewan, if the supplemented PREP prospectus or any amendment is delivered or sent in accordance with subsection 2A.5(2), the right to withdraw from an agreement to purchase a security under securities legislation may be exercised by a purchaser within 2 business days after the later of

(a) the date that the document is received in accordance with subsection 2A.2(4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

(3) In Alberta, if access to the supplemented PREP prospectus or any amendment is provided in accordance with subsection 2A.5(2), pursuant to section 130 of the *Securities Act* (Alberta), the agreement to purchase securities is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement to purchase, not later than 2 business days after the later of

(a) the date that access to the document is provided in accordance with section 2A.5(2), and

(b) the date that the purchaser or subscriber has entered into the agreement to purchase or the subscription or contract to purchase the security.

(4) In Saskatchewan, if the supplemented PREP prospectus or any amendment is delivered or sent in accordance with subsection 2A.5(2), a purchaser that is not a registrant may cancel a purchase if the

purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from whom the purchaser purchased the security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of

(a) the date that the document is received in accordance with subsection 2A.2(4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

2A.5 Procedures

(1) This section does not apply in British Columbia, Québec and New Brunswick.

(2) Access to the supplemented PREP prospectus and any amendment has been provided on the date on which all of the following have been satisfied:

(a) the base PREP prospectus and any amendment is filed on SEDAR+ and a receipt is issued and posted on SEDAR+ for the document;

(b) the supplemented PREP prospectus and any amendment is filed on SEDAR+; and

(c) after the supplemented PREP prospectus and any amendment is filed, or within 2 business days before the date the document is filed, a news release is issued and filed on SEDAR+ that states

(i) in the title of the news release, that the supplemented PREP prospectus and any amendment is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,

(ii) that access to the supplemented PREP prospectus and any amendment is provided in accordance with securities legislation relating to procedures for providing access to a supplemented PREP prospectus and any amendment,

(iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at www.sedarplus.com,

(iv) the securities that are offered under the supplemented PREP prospectus, and

(v) the following:

“An electronic or paper copy of the supplemented PREP prospectus and any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable.”

(3) Access to the preliminary base PREP prospectus and any amendment has been provided if the document has been filed on SEDAR+, and a receipt has been issued and posted on SEDAR+ for the document.

(4) If a purchaser requests an electronic or paper copy of the supplemented PREP prospectus or any amendment, from the issuer or dealer, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer within 2 business days from the date the request is received and without charge to the purchaser at the email address or address specified in the request.

(5) If a prospective purchaser requests an electronic or paper copy of the preliminary base PREP prospectus or any amendment, from the issuer or dealer, in accordance with securities legislation, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer without charge to the prospective purchaser at the email address or address specified in the request.

2A.6 Exemption from Requirement to Send Prospectus – British Columbia, Québec and New Brunswick

(1) In British Columbia, Québec and New Brunswick, a dealer is exempt from the requirement under securities legislation to send a final prospectus and any amendment if

(a) the base PREP prospectus and any amendment has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document,

(b) a supplemented PREP prospectus and any amendment has been filed on SEDAR+, and

(c) after the supplemented PREP prospectus and any amendment was filed, or within 2 business days before the date the document was filed, a news release has been issued and filed on SEDAR+ that states

(i) in the title of the news release, that the supplemented PREP prospectus and any amendment is accessible through SEDAR+, or will be accessible through SEDAR+ within 2 business days, as applicable,

(ii) that access to the supplemented PREP prospectus and any amendment is provided in accordance with securities legislation relating to procedures for providing access to a supplemented PREP prospectus and any amendment,

(iii) that the document is accessible, or will be accessible within 2 business days, as applicable, at www.sedarplus.com,

(iv) the securities that are offered under the supplemented PREP prospectus, and

(v) the following:

"An electronic or paper copy of the supplemented PREP prospectus and any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(2) In British Columbia and New Brunswick, a dealer or issuer that solicits an expression of interest from a prospective purchaser is exempt from the requirement in section 78 (2) (c) of the *Securities Act* (British Columbia) or subsection 82(2) of the *Securities Act* (New Brunswick) to send a copy of the preliminary base PREP prospectus to the prospective purchaser if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

(3) In British Columbia and New Brunswick, if a purchaser, or in Québec, if a purchaser or subscriber, requests an electronic or paper copy of the supplemented PREP prospectus or any amendment from the issuer or dealer, a copy of the document in the format requested by the purchaser or subscriber must be sent by the issuer or dealer within 2 business days from the date the request is received, without charge, to the purchaser or subscriber at the email address or address specified in the request.

(4) In British Columbia and New Brunswick, if a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement, not later than 2 business days after the later of

(a) the date that the conditions referred to in subsection (1) are satisfied, and

(b) the date that the purchaser entered into the agreement.

(5) In Québec, if a dealer relies on subsection (1), a contract to purchase or a subscription is not binding on a purchaser or subscriber if the dealer from whom the purchaser or subscriber purchases or subscribes for the security receives written notice sent by the purchaser or subscriber, evidencing the intention of the purchaser or subscriber to rescind the contract or subscription, not later than 2 business days after the later of

(a) the date that the conditions referred to in subsection (1) are satisfied, and

(b) the date that the purchaser or subscriber entered into the contract or the date of the subscription.

(6) In British Columbia and New Brunswick, subsection (4) does not apply if the purchaser

(a) is a registrant, or

(b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).

(7) In Québec, subsection (5) does not apply if the purchaser [or subscriber]

(a) is a dealer, or

(b) disposes of the securities before the end of the time referred to in subsection (5).

(8) In British Columbia and New Brunswick, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller or vendor with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller or vendor on the date on which the dealer received the notice.

(9) In Québec, the dealer is presumed to have received the notice of rescission referred to in subsection (5) in the ordinary course of mail.***.***

3. Subsection 4A.2(2) is replaced with the following:

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A [final base PREP prospectus/supplemented PREP prospectus] containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The [final base PREP prospectus/supplemented PREP prospectus] and any amendment are accessible through SEDAR+. Copies of the documents may be obtained from *[insert contact information for the investment dealer or underwriters]*.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***.***

4. Section 4A.3 is amended by

(a) replacing paragraph (1)(g) with the following:

(g) the investment dealer

(i) includes, in the marketing materials, a statement that the final base PREP prospectus and any amendment, or if it has been filed, the supplemented PREP prospectus and any amendment, are accessible through SEDAR+, or

(ii) provides, with the marketing materials, a copy of the final base PREP prospectus and any amendment, or if it has been filed, the supplemented PREP prospectus and any amendment.***; and***

(b) replacing subsection (6) with the following:

(6) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A [final base PREP prospectus/supplemented PREP prospectus] containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The [final base PREP prospectus/supplemented PREP prospectus] and any amendment are accessible through SEDAR+. Copies of the documents may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***.***

5. Section 4A.4 is amended by

(a) replacing paragraph (3)(c) with the following:

(c) make an oral statement at the commencement of the road show that the final base PREP prospectus and any amendment, or if they have been filed, the supplemented PREP prospectus and any amendment, are accessible through SEDAR+, or provide the investor with a copy of the final base PREP prospectus and any amendment, or if they have been filed, the supplemented PREP prospectus and any amendment.***; and***

(b) amending subsection (4) by adding "The [final base PREP prospectus/supplemented PREP prospectus] and any amendment are accessible through SEDAR+.***" after "***Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***".***

Effective date

6. (1) This Instrument comes into force on April 16, 2024.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after April 16, 2024, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

B.5.7 Changes to Companion Policy 44-103CP to National Instrument 44-103 Post-Receipt Pricing

CHANGES TO
COMPANION POLICY 44-103CP TO NATIONAL INSTRUMENT 44-103 *POST-RECEIPT PRICING*

1. Companion Policy 44-103CP to National Instrument 44-103 Post-Receipt Pricing is changed by this Document.

2. The following section is added after section 1.4:

1.5 Revocation of Purchase – Alberta – In Alberta, section 130 of the *Securities Act* (Alberta) provides that an agreement to purchase securities is not binding on the purchaser if the dealer receives notice in writing that the purchaser does not intend to be bound by the agreement to purchase within the timelines set out in the regulations. If access to the supplemented PREP prospectus or any amendment is provided in accordance with subsection 2A.5(2) of the Instrument, the applicable timeline is that set forth in section 2A.4(3) of the Instrument. Otherwise, the applicable timeline is that set forth in Alberta Securities Commission Rule 46-503 *Revocation of Purchase*..

3. The following part is added after Part 2:

PART 2A ACCESS TO SUPPLEMENTED PREP PROSPECTUSES

2A.1 Delivery Obligation – Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus and any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus and any amendment.

Part 2A of the Instrument provides alternative procedures whereby a dealer may provide access to a preliminary prospectus, final prospectus and any amendment. In British Columbia, Québec and New Brunswick, the alternative procedures are structured as an exemption from the delivery obligation, while in all other jurisdictions the alternative is structured as procedures to provide access to the preliminary prospectus, final prospectus and any amendment. The access procedures and the conditions of the exemption are substantially equivalent and both result in providing access to a preliminary prospectus, final prospectus and any amendment.

In jurisdictions except British Columbia, Alberta, Québec and New Brunswick, under subsection 2A.2(2) of the Instrument, a dealer may satisfy its delivery obligation under securities legislation if access to the supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment is provided in accordance with subsection 2A.5(2) or (3) of the Instrument.

In Alberta, under section 2A.3 of the Instrument, a dealer may satisfy its access obligation under securities legislation if access to the documents is provided in accordance with subsection 2A.5(2) or (3) of the Instrument.

In British Columbia and New Brunswick, a dealer is provided with an exemption from the requirement in securities legislation to send a supplemented PREP prospectus, the preliminary base PREP prospectus and any amendment to the documents if the conditions set out in subsection 2A.6(1) or (2) of the Instrument are met.

In Québec, a dealer is provided with an exemption from the requirement in securities legislation to send a supplemented PREP prospectus and any amendment to the documents if the conditions set out in subsection 2A.6(1) of the Instrument are met. It is permissible to provide access to a preliminary base PREP prospectus and any amendment if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

2A.2 News Release – To provide access to a supplemented PREP prospectus and any amendment under Part 2A of the Instrument, a news release including prescribed information must be issued and filed on SEDAR+ after the document is filed or within 2 business days before the date the document was filed. The requirements under paragraph 2A.5(2)(c) of the Instrument and the conditions under paragraph 2A.6(1)(c) of the Instrument may be satisfied by including the prescribed information in a news release that contains other information, for example a news release announcing the information omitted from the base PREP prospectus or other information with respect to the applicable offering..

4. Section 3.3 is replaced with the following:

3.3 Delivery Obligations – Purchaser's or subscriber's Rights – The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of a supplemented PREP prospectus. It is only at this time that the entire prospectus has been delivered.

Subsections 2A.4(2), 2A.4(3), 2A.4(4), 2A.6(4) and 2A.6(5) of the Instrument set out the period of time within which a purchaser's or subscriber's right to withdraw or rescind from, revoke or cancel an agreement to purchase a security or a contract to purchase or a subscription for a security must be exercised when access to a prospectus and any amendment is provided.

For the purposes of section 2A.4 and subsections 2A.6(4) and (5) of the Instrument, securities legislation in a jurisdiction sets out any provisions for who may exercise the right to provide a written notice, whether the notice is required and if so by when and to whom it must be provided, when receipt of the notice is deemed to be provided and who has the onus of proving time to provide a notice has expired.

If a purchaser or subscriber requests an electronic or paper copy of the supplemented PREP prospectus or any amendment from the issuer or dealer as permitted by subsections 2A.5(4) or 2A.6(3) of the Instrument, the request will not affect the calculation of the period of time during which the purchaser or subscriber may exercise these rights.*.*

5. These changes become effective on April 16, 2024.

B.5.8 Changes to National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means

CHANGES TO
NATIONAL POLICY 47-201 *TRADING SECURITIES USING THE INTERNET AND OTHER ELECTRONIC MEANS*

1. National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means is changed by this Document.

2. The following is added to the beginning of the third bullet in subsection 2.7(3):

"make an oral statement at the commencement of the road show that the relevant prospectus and any amendment are accessible through SEDAR+, or***".***

3. This change becomes effective on April 16, 2024.

B.7
Insider Reporting

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

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

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

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
CIBC Private Wealth Canadian Core Equity Pool
CIBC Private Wealth Canadian Core Pool
CIBC Private Wealth Canadian Dividend Growth Pool
CIBC Private Wealth North American Yield Equity Pool
CIBC Private Wealth North American Yield Pool
CIBC Private Wealth U.S. Core Equity Pool
Principal Regulator – Ontario
Type and Date
Final Simplified Prospectus dated Mar 5, 2024
NP 11-202 Final Receipt dated Mar 6, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06071957

Issuer Name:
Harvest Balanced Income & Growth Enhanced ETF
Harvest Balanced Income & Growth ETF
Harvest Industrial Leaders Enhanced Income ETF
Harvest Industrial Leaders Income ETF
Principal Regulator – Ontario
Type and Date
Combined Preliminary and Pro Forma Long Form Prospectus dated Mar 4, 2024
NP 11-202 Preliminary Receipt dated Mar 6, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06093211

Issuer Name:
FDP Balanced Income Portfolio
Principal Regulator – Quebec
Type and Date:
Amendment #2 to Final Simplified Prospectus dated Mar 5, 2024
NP 11-202 Final Receipt dated Mar 8, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03511035

Issuer Name:
IPC Essentials Balanced Portfolio
IPC Essentials Growth Portfolio
IPC Essentials Income Portfolio
IPC Private Wealth Visio Balanced Growth Pool
IPC Private Wealth Visio Balanced Income Pool
IPC Private Wealth Visio Balanced Pool
IPC Private Wealth Visio Global Advantage Balanced Pool
IPC Private Wealth Visio Global Opportunities Balanced Pool
IPC Private Wealth Visio Growth Pool
IPC Private Wealth Visio Income Pool
Principal Regulator – Ontario
Type and Date
Amendment # 1 to Final Simplified Prospectus dated Feb 29, 2024
NP 11-202 Final Receipt dated Mar 6, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06026945

NON-INVESTMENT FUNDS

Issuer Name:
Surge Energy Inc.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated Mar 6, 2024
NP 11-202 Final Receipt dated Mar 7, 2024
Offering Price and Description:
Common Shares, Preferred Shares, Warrants, Subscription Receipts, Debt Securities, Units
Filing # 06093861

Issuer Name:
CARDS II Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Mar 6, 2024
NP 11-202 Final Receipt dated Mar 7, 2024
Offering Price and Description:
Up to $8,000,000,000.00 Credit Card Receivables Backed Notes
Filing # 06086397

Issuer Name:
Rektron Group Inc.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Mar 4, 2024
NP 11-202 Final Receipt dated Mar 5, 2024
Offering Price and Description:
7,500,000 Units - USD$2.00
2,595,917 Common Shares issuable on deemed exercise of 2,595,917 Special Warrants - USD$1.58
Filing # 06060621

Issuer Name:
Timbercreek Financial Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Mar 5, 2024
NP 11-202 Final Receipt dated Mar 5, 2024
Offering Price and Description:
Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06093223

Issuer Name:
Bank of Nova Scotia, The
Principal Regulator – Ontario
Type and Date:
Fina Shelf Prospectus dated Mar 4, 2024
NP 11-202 Final Receipt dated Mar 5, 2024
Offering Price and Description:
Senior Notes (Principal at Risk Notes)
Filing # 06093029

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Categories	Portfolio Management Corporation	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	March 8, 2024
New Registration	A1Capital Securities Inc.	Exempt Market Dealer	March 11, 2024

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