The Ontario Securities Commission

OSC Bulletin

June 4, 2020

Volume 43, Issue 23

(2020), 43 OSCB

The Ontario Securities Commission administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Published under the authority of the Commission by:
Thomson Reuters
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

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Office of the Secretary: Fax: 416-593-2318

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Printed in the United States by Thomson Reuters.

ISSN 0226-9325

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May 29, 2020

Notice of General Order

Ontario Instrument 13-506

Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-502 Fees, No. 2

As a result of the Coronavirus pandemic ("**COVID-19**"), the Ontario Securities Commission (the "**Commission**") is providing market participants with temporary relief from the accrual of late fees charged under Ontario Securities Commission Rule 13-502 *Fees* ("**OSC Rule 13-502**").

Description of Order

The order provides that late fees under OSC Rule 13-502, where applicable in respect of fees payable by, or the filing or delivery of documents or forms that are required to be filed by, an investment fund, a registrant or an unregistered capital markets participant cease to accrue in the period beginning June 2, 2020 and ending September 30, 2020. Late fees otherwise applicable under OSC Rule 13-502 cease to accrue in the period beginning June 2, 2020, and ending August 31, 2020.

Reasons for the Order

As a result of the outbreak of COVID-19, certain market participants may experience difficulty in making filings and payments required by OSC Rule 13-502. The Commission previously provided relief from the accrual of late fees charged under OSC Rule 13-502 between the period of April 17, 2020 to June 1, 2020, in the form of Ontario Instrument 13-504 *Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-502 Fees*. Under the circumstances, the Commission has determined that it would not be prejudicial to the public interest to make this order, which grants continued temporary relief from the accrual of late fees for the periods specified above.

Day on which the Order Ceases to Have Effect

The order comes into effect on April 17, 2020, and expires on September 30, 2020.

1.1.2 OSC Notice of General Order – Ontario Instrument 13-507 Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-503 (Commodity Futures Act) Fees, No. 2

May 29, 2020

Notice of General Order

Ontario Instrument 13-507

Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-503 (Commodity Futures Act) Fees, No. 2

As a result of the Coronavirus pandemic ("**COVID-19**"), the Ontario Securities Commission (the "**Commission**") is providing market participants with temporary relief from the accrual of late fees charged under Ontario Securities Commission Rule 13-503 *(Commodity Futures Act) Fees* ("**OSC Rule 13-503**").

Description of Order

The order provides that all late fees under OSC Rule 13-503 cease to accrue in the period beginning on June 2, 2020, and ending September 30, 2020.

Reasons for the Order

As a result of the outbreak of COVID-19 certain market participants may experience difficulties in making filings and payments required by OSC Rule 13-503. The Commission previously provided relief from the accrual of late fees charged under OSC Rule 13-503 between the period of April 17, 2020, to June 1, 2020, in the form of Ontario Instrument 13-505 *Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-503 (Commodity Futures Act) Fees*. Under the circumstances, the Commission has determined that it would not be prejudicial to the public interest to make this order which grants continued temporary relief from the accrual of late fees until September 30, 2020.

Day on which the Order Ceases to Have Effect

The order comes into effect on June 2, 2020, and expires on September 30, 2020.

1.1.3 CSA Staff Notice 43-311 Review of Mineral Resource Estimates in Technical Reports

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 43-311
Review of Mineral Resource Estimates in Technical Reports

June 4, 2020

Executive Summary

Disclosure of a mineral resource estimate (**MRE**) is a significant milestone for mining issuers. It is often highly anticipated by the market and can have a major influence on the share price and market capitalization of a mining company. The MRE becomes the foundation for subsequent mining studies that serve to quantify the attractiveness of a mineral project as an investment opportunity.

Staff of the Canadian Securities Administrators (**Staff** or **we**) are publishing this notice to present the results of a disclosure review by the securities regulatory authorities in British Columbia, Ontario, Quebec, and Alberta. Staff evaluated 86 technical reports supporting MREs to assess the quality, clarity, and compliance of disclosure.

CSA staff had found non-compliant MRE disclosure in technical reports and taken note of recent MRE re-statements by mining issuers. This review, completed in late 2018, explored whether disclosure both complied with the disclosure standard and provided transparency into the qualified person's (QP) adherence to best estimation practices. Based on the review, ten technical reports were amended and refiled with six refilings related to inadequate disclosure and four refilings resulting in revisions to the MRE itself due to non-standard professional practice issues.

This notice provides mining issuers and QPs with a level of certainty about how securities regulatory authorities assess disclosure of MREs in technical reports and provides specific guidance to assist issuers, including their board and management, to address areas of deficient disclosure identified by the review and potentially reduce the need for regulatory intervention. We believe applying this guidance will help to standardize publicly reported MREs in technical reports, providing mining investors and analysts with greater confidence when evaluating MREs.

The review generally found that the mechanics of the estimation process were explained well including geological modelling of controls on the mineralization, statistical analysis of the data, interpolation methods, and validation tests on the block model. The disclosure of how project operators ensured quality control of sampling and analysis was also often well described.

Our results identified inadequate disclosure in the following areas:

- *Reasonable Prospects for Eventual Economic Extraction* (**Reasonable Prospects**): A mineral deposit is not a mineral resource unless it has demonstrated Reasonable Prospects. Some technical reports lacked adequate disclosure on metal recoveries, assumed mining and processing methods and costs, and constraints applied to the MRE to demonstrate that the mineralized material had the potential to be mined and processed economically.

- *Data Verification*: Data used to support a MRE needs to be adequately verified and determined suitable by the QP for use in the MRE. It is common for mineral projects to pass through the hands of several property holders, each generating exploration and drilling data. Using legacy data from former operators is legitimate, but this data needs careful verification, documented in the technical report.

- *Risk Factors*: Each mineral project has its own set of risks, any of which could affect the MRE. Many technical reports only provided boilerplate disclosure about potential risks and uncertainties that are general to the mining industry. Failure to set out meaningful known risks specific to the mineral project may make MRE disclosure potentially misleading.

- *Sensitivity to Cut-off Grade*: Variations to the cut-off grade to indicate the relative robustness of the estimate can be useful information. However, all estimates resulting from each of the cut-off grade scenarios must meet the test of Reasonable Prospects and the base case or preferred scenario must be highlighted.

Staff will continue to review technical reports as part of the ongoing continuous disclosure review process. Based on the outcomes of this review, Staff will pay special attention to MRE and the areas of inadequate disclosure identified.

We will require that issuers correct material disclosure deficiencies by amending and re-filing the technical report and filing a clarifying or retracting news release. Where warranted, we will direct complaints related to inappropriate professional practice to the QP's professional association.

Review Purpose and Scope

Purpose

The purpose of the review was to:

1. Assess technical reports' compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**) and Form 43-101F1 *Technical Report* (the **Form**). We also reviewed the disclosure for conformance to the Canadian Institute of Mining, Metallurgy and Petroleum (**CIM**) Definition Standards for Mineral Resources and Mineral Reserves (**CIM Definition Standards**, adopted by CIM Council May 10, 2014) incorporated by reference into NI 43-101.

2. Compare estimation practice documented in the technical report against CIM Best Practices Guidelines including Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines (**CIM BPG**, adopted by CIM Council November 23, 2003). Estimation practice has evolved since publication of CIM BPG, with sophisticated geological modeling, geostatistical, and mining optimization software now integral to the practice. Subsequent to the review, an updated version of CIM BPG was adopted by CIM Council on November 28, 2019.

3. Develop guidance for mining issuers and QPs to improve the disclosure of MREs in technical reports and ease the reporting burden by providing clarity on disclosure requirements and expectations of securities regulators.

4. Identify potential improvements to MRE disclosure requirements for consideration in future policy projects.

Scope

The review focused on the following key areas:

1. QP's relevant experience and the purpose of the technical report

2. Data verification and adequacy for use in MRE

3. Mineralization controls and geological model

4. Mineral resource estimate data analysis

5. Mineral resource estimation and classification

6. Reasonable prospects for eventual economic extraction

7. Reporting results, sensitivities, risks, and uncertainties in the MRE

The procedure used for the review included the following steps:

1. Staff developed a measurement system to evaluate MRE disclosure in technical reports, considering compliance with the Form, NI 43-101, and current industry best practice (see Methodology in Appendix I). For estimation best practice, staff consulted with the CIM Mineral Resources and Mineral Reserves Committee, the CSA Mining Technical Advisory and Monitoring Committee, and the AMF Mining Advisory Committee.

2. The system scored disclosure of 33 elements, across seven themes, evaluating the clarity and adequacy required for a reasonably informed reader to understand the MRE (see Methodology in Appendix I).

3. Staff selected technical reports for the review from those filed on SEDAR (see Technical Reports Selection Criteria in Appendix I).

4. Seven staff across three jurisdictions (British Columbia, Ontario, and Quebec) reviewed 86 technical reports, and repeated reviews of more than 10% of the selected technical reports for quality assurance.

5. We analyzed the results of the MRE review and reported key findings in Figure 1 and provided Staff's observations, commentary, and guidance (see Discussion of Review Findings).

Actions Taken

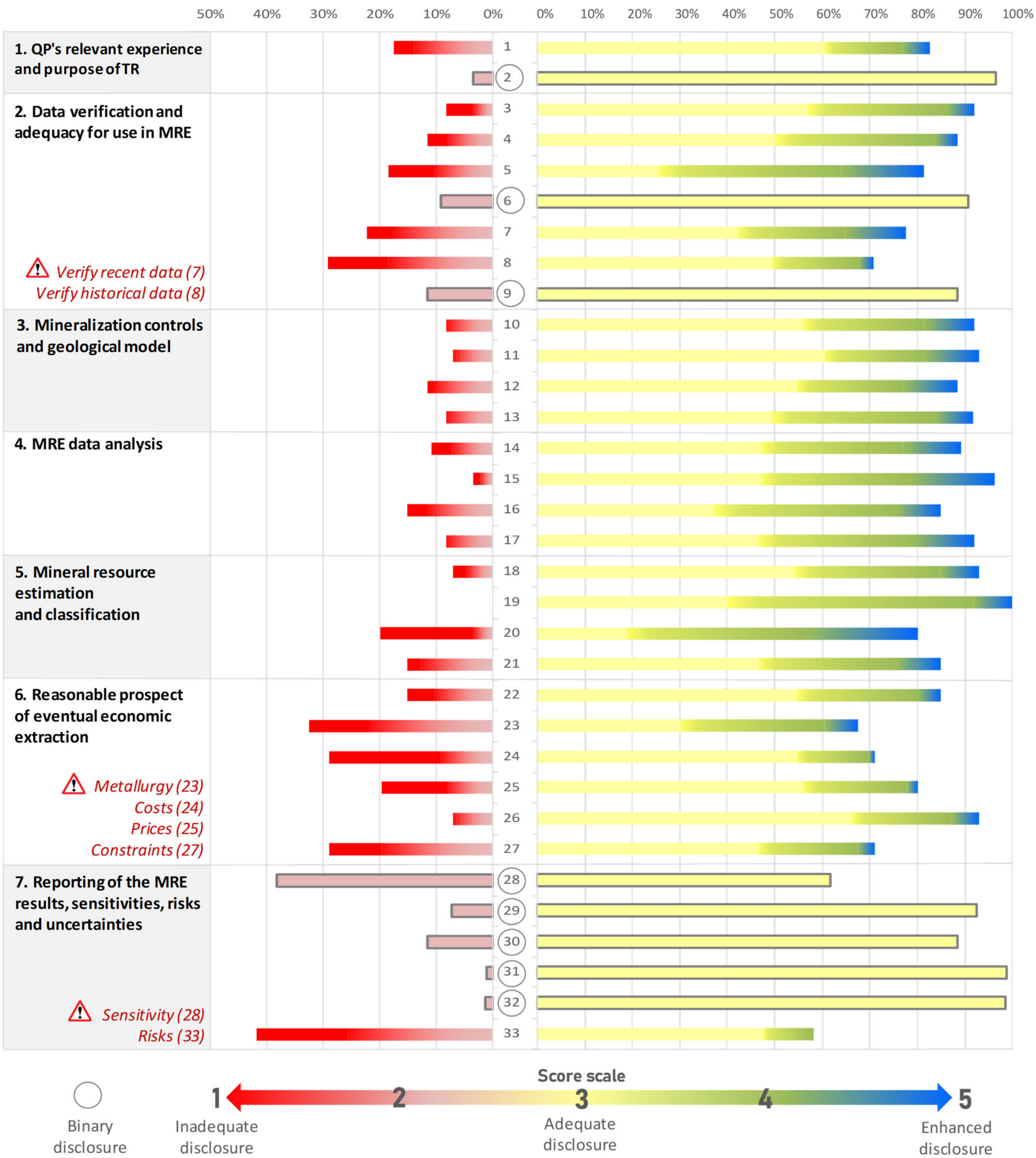
Staff issued ten comment letters to mining issuers when the disclosure was significantly inadequate in one area, or so inadequate across multiple areas to make the disclosure potentially misleading.

These letters resulted in ten amended and refiled technical reports (12% of reports reviewed), with the following outcomes:

- Six required revision to add disclosure supporting the MRE
- Four required revision to the MRE due to professional practice issues resulting in
  - One downgrade in the resource category
  - One reduction in the estimated tonnage or grade
  - One complete recalculation of the MRE, with verification of historical data
  - One retraction of the MRE.

Staff provided a summary of the findings to the CIM Mineral Resources and Mineral Reserves Committee who were concurrently updating the Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines.

Figure 1: Disclosure Elements and Review Results



The bars show the percentage of the 33 disclosure elements in the reviewed reports that were each assigned a score of 1-to-5. The numbers along the vertical axis correspond to the disclosure elements detailed in Appendix II. The circled binary disclosure elements (2, 6, 9, 28, 29, 30, 31, and 32) were assigned a score of 1 for inadequate or 3 for adequate. The seven disclosure themes are identified along the left side of the chart; individual elements are discussed in Appendix II.

Discussion of Review Findings

The following summarizes the outcomes for each theme and includes Staff commentary. Appendix II describes the 33 disclosure elements and notes the requirements of NI 43-101, the Form, and CIM Definition Standards, and the guidance in CIM BPG, that correspond to each element.

1. QP's relevant experience and purpose of the technical report

The QP responsible for the MRE must be suitably qualified to complete a MRE for the specific property and its deposit model. The technical report must state its terms of reference.

Results

More than 15% of the QPs responsible for the MRE provided incomplete disclosure of their relevant experience in preparing estimates for the property's commodity and deposit type.

Disclosure of the terms of reference and purpose of the technical report was done very well.

Staff Commentary

- The QP's certificate should demonstrate relevant experience in comparable mineral deposit types by including examples of the MREs they have prepared.
- Disclosing the technical report's terms of reference gives readers specific information about the mineral project's stage of development.

2. Data verification and adequacy for use in MRE

Describing sample preparation, security, analytical procedures, and quality assurance/quality control (QA/QC) is critical to an understandable MRE. QPs must state their professional opinion on the merits of those processes, explain the steps they took to verify the integrity of the data, and state their professional opinion whether the data suits the purpose of the technical report.

Results

We found the disclosure of sample preparation, security, and analytical procedures to be of good quality, notably the disclosure of the QA/QC protocols and results implemented by the issuer. Our review found that more than 80% of the technical reports had disclosure that made the MRE result understandable. Staff noted enhanced disclosure about QA/QC protocols and results in more than 50% of the reports.

In contrast, disclosure about data verification procedures and results was one of the weakest areas in the MRE review. More than 20% of the technical reports reviewed had incomplete disclosure concerning the QP's data verification procedures and results. Among reports where a significant portion of the resource database was acquired by operators prior to the current issuer, the proportion with incomplete disclosure was almost 30%.

Staff Commentary

- QPs should bear in mind the distinction between the project operator's QA/QC protocols (and results) and their own independent data verification.
- It is critical the QP verify the integrity of legacy data collected before the activities of the current operator, especially if the sampling, analytical, and QA/QC information is no longer available to the current operator.
- The personal inspection is an indispensable component of the data verification process; we think the QP responsible for the MRE should perform a site visit.

3. Mineralization controls and geological model

This theme takes in the description of the geological controls of the mineralization on the property; these controls form the basis for the geological model used to constrain the MRE. It also includes descriptions of the data sets used in the MRE, and the criteria and methodology used to develop the mineral resource model.

Results

We noted excellent disclosure of these elements, with more than 85% of the technical reports reviewed showing adequate disclosure for all the criteria. Staff saw enhanced disclosure in more than 30% of the technical reports reviewed.

Staff Commentary

- Defining a proper geological mineralization model from the geological settings and mineralization controls is the foundation of a representative MRE.

- A poorly defined geological model may result in an erroneous estimate that may require future restatement.

4. <u>Mineral resource estimate data analysis</u>

This theme includes the description of analyses that quantify the statistical and spatial relationships of the variables (grades, dimensions, densities, etc.) used in the estimation process.

Results

We noted excellent disclosure related to this theme, with more than 85% of the technical reports providing adequate disclosure for all the elements in this theme. More than 40% of the technical reports provided enhanced disclosure.

Staff Commentary

- Discuss any matters that might materially affect a reasonably informed reader's understanding of the estimate being reported. Problems encountered in the collection of data, or with the sufficiency of data, must be clearly disclosed, particularly when they directly affect the reliability or confidence in the MRE.

5. <u>Mineral resource estimation and classification</u>

This area includes discussion of the procedures and methodologies used to estimate and classify the mineral resource, including the steps taken to validate the mineral resource model.

Results

Our review found adequate disclosure of all elements in more than 80% of the technical reports. We also noted enhanced disclosure on interpolation and block model validation in more than 40%. However, a subset (between 15% and 20%) of reviewed reports had incomplete disclosure about block model validation and classification methodology.

Staff Commentary

- The criteria used for classification of the MRE should be described in enough detail for a reasonably informed reader to understand them.

- Disclosure of the block model validation methods and results lets a reasonably informed reader gauge how robust the results of the MRE are.

6. <u>Reasonable prospects for eventual economic extraction</u>

This area includes the description of the different technical and economic assumptions used to determine that the estimated mineralized material has Reasonable Prospects.

Results

Except for the element mentioning the cut-off grade used to constrain the MRE (#26), our review found this aspect of disclosure to be one of the weakest. More than 20% of the technical reports provided incomplete disclosure of metallurgical recovery, cost assumptions, or other factors that might limit the economics of the resource. Many reports lacked specific information about constraining surfaces applied to demonstrate Reasonable Prospects -- for example, pit shells for open pit deposits, mineable shapes for underground, and surface limitations that might constrain the potential mining method.

Staff Commentary

- This is a critical aspect of the MRE. A reasonably informed reader needs complete disclosure of the assumptions applied to the project in order to understand how the deposit is a mineral resource with demonstrated Reasonable Prospects, and not just a mineral inventory.

- Show your work: clearly show how the cut-off grade was derived from the selected assumptions and parameters.

- For early stage projects, QPs may demonstrate Reasonable Prospects by comparing the subject deposit to analogous mine operations. QPs using analogy should:

  - state specific analogues showing why they apply to the subject property,

  - compare the key attributes of the subject deposit with those of the analogues,

  - adjust the cut-off grade of the MRE to reflect the differences between the project and its analogues.

- QPs should seek opinions or assistance from other professionals in areas where they lack the necessary expertise, such as mining, metallurgy, and infrastructure.

7. Reporting MRE results, sensitivities, risks, and uncertainties

This theme includes disclosure of the MRE according to NI 43-101 requirements, including information about tonnage, grade, mineral resource categories, and a discussion about uncertainties or risk factors that could materially affect the MRE. It can also provide the reader with a sensitivity analysis using alternative cut-off grade scenarios.

Results

Our review found adequate disclosure in this area with two major exceptions. First, more than 35% of the technical reports did not disclose sensitivities to cut-off grade well, including some reports with sensitivity cases that did not demonstrate Reasonable Prospects. Second, more than 40% of the reports had incomplete disclosure on factors specific to the project that could materially affect the MRE, with some reporting only generic disclosure of risks or uncertainties.

Staff Commentary

- To show the relative robustness of cut-off grade scenarios clearly, and to meet definition standards:

  - show the MRE at the base case cut-off grade prominently; there can only be one current MRE for the mineral project at a point in time;

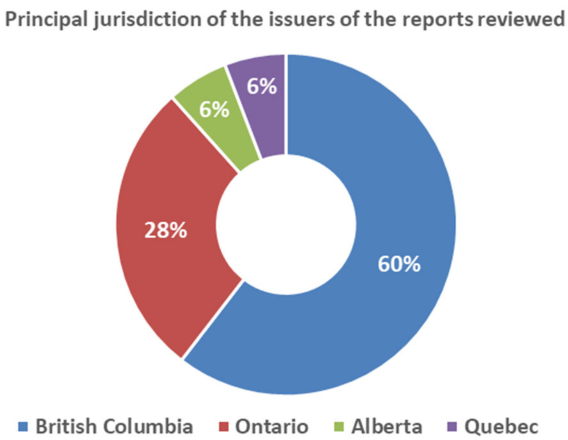
  - report only the alternative cut-off grade scenarios that meet the test of Reasonable Prospects;

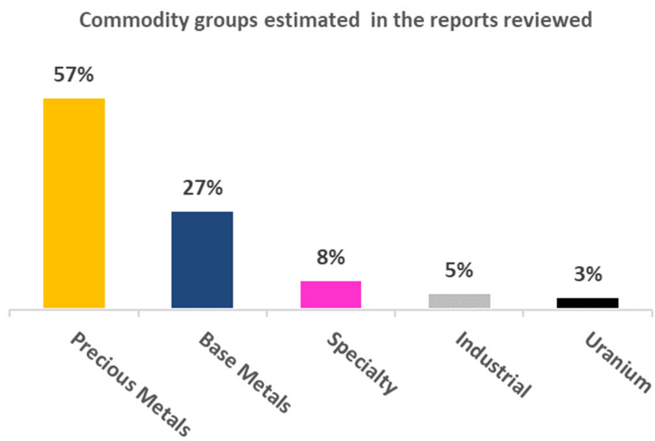
  - do not include an estimate with a zero cut-off grade; it represents a mineral inventory with no demonstrated Reasonable Prospects.

- Omitting specific risks of the MRE could potentially be misleading.

Appendix I

Distribution profile of technical reports reviewed





The distribution profile of technical reports reviewed approximates the distribution of the total number of reporting mining issuers in Canada by principal jurisdiction (left) and the relative percentage of technical reports reviewed by commodity group (right).

Selection criteria for technical reports

The selection criteria included:

- The technical report supported the disclosure of an initial or an updated mineral resource estimate.
- The technical report was the then-current technical report the issuer had on file for the subject property at the time of the review.
- The property was not the subject of an economic analysis, and therefore not an 'advanced property' as defined in section 1.1 of NI 43-101.
- The technical report had an effective date (or that failing, a signing date) after the most recent revision to the CIM Definition Standards.
- The selection reflected the distribution of mining issuers by principal regulating jurisdiction and covered a range of commodity types. (A distribution profile of the reports reviewed, by the issuer's principal jurisdiction and the commodities estimated, is shown above.)

Methodology

The measurement system staff developed to evaluate disclosure of mineral resource estimates considered 33 specific disclosure elements or requirements, covering seven disclosure themes. For each element, staff evaluated whether the disclosure was clear and sufficient for a reasonably informed reader to understand it.

Staff used this five-point scale to rate the quality, clarity, and compliance of the disclosure for each of the 33 elements reviewed:

For eight of the 33 elements, where disclosure could be either adequate or inadequate, staff assigned a score of 1 for inadequate disclosure and a score of 3 for adequate disclosure.

Quality Control

To assess the consistency of scoring across jurisdictions, staff completed an additional nine ‘blind’ repeat reviews of selected technical reports. The process selected three technical reports randomly from the 86 reviews. Each had been originally reviewed by staff in a different jurisdiction. One staff refereed the selection and quality assessment process. No staff duplicated a review on a report they had already seen. The referee kept all re-review selections and results confidential until all nine repeat reviews were completed. A statistical analysis comparing the original review and the (three) repeat reviews shows that scoring across the CSA was consistent or highly repeatable (precise). Scores ranged less than half the standard deviation for all 33 categories in the 86 reviews.

Appendix II

NI 43-101 and CIM BPG

Disclosure elements reviewed and referenced to the specific provisions of NI 43-101, the Form, CIM Definition Standards, and CIM BPG. The table below highlights applicable requirements, standards and guidelines, but is not intended to present a comprehensive review of these requirements, standards and guidelines.

QP's relevant experience and purpose of the technical report		
1	Qualifications of the QP	Para. 8.1(2)(c) of NI 43-101 requires a statement of the QP's qualifications in the Certificate of Qualified Person, including a brief summary of relevant experience.
2	Purpose for preparing the technical report	Item 2(b) of the Form requires a description of the terms of reference and purpose the technical report was prepared for.
Data verification and adequacy for use in the MRE		
3	Sample preparation and security procedures	Item 11(a) of the Form requires a description of sample preparation methods and quality control measures employed before dispatch of samples to an analytical or testing laboratory, the method or process of sample splitting and reduction, and the security measures taken to ensure the validity and integrity of samples taken.
4	Analytical procedures	Item 11(b) of the Form requires a description of relevant information regarding sample preparation, assaying and analytical procedures used, the name and location of the analytical or testing laboratories, the relationship of the laboratory to the issuer, and whether the laboratories are certified by any standards association and the particulars of any certification.
5	Quality assurance and quality control results analysis	Item 11(c) of the Form requires a description of a summary of the nature, extent, and results of quality control procedures employed and quality assurance actions taken or recommended to provide adequate confidence in the data collection and processing.
6	Opinion of the QP on sample preparation, security and analytical procedures	Item 11(d) of the Form requires a statement of the author's opinion on the adequacy of sample preparation, security, and analytical procedures.
7	Verification of the issuer's data used in the MRE	Items 12(a) and 12(b) of the Form require a description of the steps taken by the QP to verify the data in the technical report, including the data verification procedures applied by the QP, and any limitation on or failure to conduct such verification, and the reason for any such limitations or failure.
8	Verification of the data used in the MRE collected prior to the activities of the issuer	Items 12(a) and 12(b) of the Form require a description of the steps taken by the QP to verify the data in the technical report, including the data verification procedures applied by the QP, and any limitation on or failure to conduct such verification, and the reason for any such limitations or failure.
9	Opinion of the QP on the adequacy of data	Item 12(c) of the Form requires a statement of the QP's opinion on the adequacy of the data for the purposes used in the technical report.
Mineralization controls and geological model		
Item 14(a) of the Form requires that a technical report disclosing mineral resources must provide sufficient discussion of the key assumptions, parameters, and methods used to estimate the mineral resources for a reasonably informed reader to understand the basis for the estimate and how it was generated. CIM Definition Standards states QPs are encouraged to provide information that is as comprehensive as possible in their technical reports on MREs. The Estimation of Mineral Resource and Mineral Reserve Best Practice Guidelines provide, in a summary form, a list of the main criteria which should be considered when reporting Mineral Resources.		

10	Geological and analytical datasets used for the MRE	CIM BPG (4) states that the resource database forms the foundation necessary for the estimation of mineral resources. The database typically includes geological, survey and assay datasets that, verified beforehand, will be used during the geological interpretation, modeling, and estimation of the mineral resources.
11	Surfaces, volumes and other features used to constrain the MRE	CIM BPG (6) states that surfaces (i.e. surface topography or bedrock interface) and volumes (i.e. underground excavation voids), potentially constraining the MRE, must be considered during the modeling of the mineralized deposit.
12	Geological and mineralization control model	CIM BPG (5) states that the collected data should be analyzed in an unbiased, scientific fashion to develop a geological concept which forms the underlying premise on which the geological interpretation is developed. The concept should include consideration of the geological setting, analogous deposits, styles of mineralization, mineralogical characteristics, and genesis.
13	Methodology of modelling geological domains	CIM BPG (5) states that assumptions concerning the spatial continuity of the mineralizing structures in the mineralization wireframe models should be reasonable, be supported by the direct geological evidence, and be consistent with similar deposits where the spatial continuity has been demonstrated. The parameters used for the construction of all mineralized wireframe models should be fully documented.
Mineral resource estimate data analysis		
14	Sample support	CIM BPG (6) states that data for the MRE generally are obtained from a variety of support (size, shape and orientation of samples) and must be standardized into composites if statistical parameters vary substantially from one support to another. Selection of the composite length should be appropriate for the data, deposit, and conceptual operational scenario, and be specific to a geological or mineralization domain.
15	Treatment of outliers	CIM BPG (6) states that outliers, those values inconsistent with the majority of the data, must be recognized and managed in the estimate because they can contribute to serious overestimation of global and local grades. Regardless of the methodology selected (like domaining, grade capping and spatially restricting the influence of high-grade assays), the QP must provide documentation of the approach selected, along with justification and support for the decision.
16	Continuity analysis	CIM BPG (6) states that the QP should use a comprehensive approach to, and appropriate methods of, exploratory data analysis to understand the statistical and spatial character of variables on which the estimate depends. Data analysis includes interrelationships among variables of interest, recognition of systematic spatial variation of the variables (e.g. grade, thickness, density, etc.), definition of distinctive domains that must be evaluated independently for the estimate, and identification and understanding of outliers. Data analysis should be conducted using appropriate univariate, bivariate and/or multivariate procedures, including spatial autocorrelation studies, which are an aspect of data analysis that assists in defining correlation and range of influence of a grade variable in two or three dimensions.
17	Rock density	Rock bulk density is used to convert a volume of rock into tonnage. CIM BPG (4) and (6) state that the methodology used to determine bulk density values should be described in detail and must account for any void spaces or cavities that may be present so as to avoid over-estimation of tonnage. Estimation of the bulk density is a critical component in the preparation of an accurate tonnage estimate for both the mineralized volumes, and the adjoining non-mineralized or weakly mineralized material.
Mineral resource estimation and classification		

18	Block model parameters and interpolated variables	The block model is a three-dimensional array of blocks, typically constrained inside the geological domains, used to assign the interpolated variables during the estimation process. CIM BPG (6) states that the modelling work flow adopted for the preparation of a resource block model should consider the distribution of the informing data, along with the size, distribution, and geometry of the mineralized zones, all of which must be compatible with the anticipated mining method(s) and related equipment.
19	Interpolation methodology	CIM BPG (6) states that the QP must select appropriate estimation method(s) or techniques for the resource model (for example, nearest neighbor estimates, inverse distance to a power, various kriging approaches). The choice of estimation techniques to be employed is dependent to a degree on the size and geometry of the deposit and the quantity and spatial distribution of available data.
20	Resource model validation	CIM BPG (6) states that the QP should ensure that the final resource block model is consistent with such primary data as the geology and mineralization wireframe models, structural models, topography and excavation surfaces and volumes, and the analytical data that were used to prepare estimates of the modelled attributes. The validation steps could include comparison of volume estimates between the block model and the wireframe models, visual inspection of interpolated results on suitable plans and sections, checks for global and local bias (comparison of interpolated and nearest neighbor or declustered composite statistics, and analysis of local trends), and checks on change of support (degree of grade smoothing in the interpolation).
21	Mineral resource classification	CIM Definition Standards require the classification of the MRE into three categories which reflect the level of geological knowledge and confidence. CIM BPG (6) states that the criteria or methods used for classification should be documented in sufficient detail so that the results are reproducible by others.
Reasonable prospects for eventual economic extraction		
22	Mining method	CIM Definition Standards for mineral resource states that the phrase ‘reasonable prospects for eventual economic extraction’ implies a judgment by the QP in respect to the technical and economic factors likely to influence the prospect of economic extraction. The QP should consider and clearly state the basis for determining that the material has reasonable prospects for eventual economic extraction. Assumptions should include estimates of cut-off grade and geological continuity at the selected cut-off, metallurgical recovery, smelter payments, commodity price or product value, mining and processing method, and mining, processing and general and administrative costs.
23	Metallurgical assumptions	
24	Costs assumptions	
25	Commodity prices	
26	Cut-off grade	
27	Constraints applied to the MRE	Description of features used to constrain the MRE in determining reasonable prospects for eventual economic extraction (for example, an optimized pit envelope, conceptual underground workings, mineral property boundary, or surface infrastructure).
Reporting of MRE results, sensitivities, risks, and uncertainties		
Item 14(b) of the Form requires a technical report that discloses mineral resources to comply with all disclosure requirements for mineral resources set out in s. 2.2, 2.3, and 3.4 of NI 43-101.		
28	Sensitivity analysis using different cut-off grades	Instruction (b) of Item 14 of the Form states that where multiple cut-off grades scenarios are presented, all estimates resulting from each of the cut-off grade scenarios must meet the test of Reasonable Prospects.
29	Methodology of metal or mineral equivalent grade	Item 14(c) of the Form states that when the grade of a multiple-commodity mineral resource is reported as metal or mineral equivalent, the report must also state the individual grade of each metal or mineral and the metal prices, recoveries, and relevant conversion factors used to estimate the metal or mineral equivalent grade.

30	Effective date of MRE	Para. 3.4(a) of NI 43-101 requires the issuer to include in the written disclosure the effective date of each mineral resource.
31	Quantity and grade of each resource category	Para. 2.2(d) and 3.4(b) of NI 43-101 require the disclosure of the quantity and grade of each category of mineral resources.
32	Inferred category not added with other categories	Para. 2.2(c) of NI 43-101 proscribes adding inferred mineral resources to other categories of mineral resources.
33	Specific risk factors	Para. 3.4(d) of NI 43-101 and Item 14(d) of the Form requires the inclusion of a general discussion on the extent to which the MRE could be materially affected by any known environmental, permitting, legal, title, taxation, socio-economic, marketing, political, or other relevant factors.

Questions

Please refer your questions to any of the following people:

Chris Collins
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British Columbia Securities Commission
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1.1.4 OSC Notice of General Order – Ontario Instrument 45-505 Relief in Respect of the Distribution of Securities Through a Funding Portal Operated by Silver Maple Ventures Inc.

Notice of General Order

Ontario Instrument 45-505

Relief in Respect of the Distribution of Securities
Through a Funding Portal Operated by Silver Maple Ventures Inc.

The Ontario Securities Commission (the "**Commission**") is providing issuers with relief from the requirement to file a prospectus in respect of crowdfunding distributions of securities through a funding portal operated by Silver Maple Ventures Inc. (the "**Filer**").

Description of Order

The order provides that issuers in Ontario are exempt from the requirement to file a prospectus in respect of a crowdfunding distribution of securities facilitated through the funding portal known as "FrontFundr", which is operated by the Filer, an exempt market dealer in Ontario, provided that certain conditions are satisfied, including that:

(i) The distribution is of the issuer's eligible securities;

(ii) The issuer is not a reporting issuer or an investment fund;

(iii) The issuer prepares an offering document that is made available to purchasers on the FrontFundr website;

(iv) The aggregate amount raised by the issuer in the crowdfunding distribution does not exceed $250,000 and the issuer completes no more than two distributions in a calendar year; and

(v) Each purchaser invests no more than $1,500 (or no more than $5,000 if the purchaser has obtained positive suitability advice from a registered dealer).

Detail on these conditions, as well as the other conditions necessary to be satisfied for reliance on the prospectus relief, are included in the order.

Reasons for the Order

On November 27, 2019, the Commission granted substantively similar relief to the Filer, except that it was only applicable to a specified list of issuers who had an established relationship with the Filer. This relief is being granted on a class basis under subsection 143.11(2) of the *Securities Act* (Ontario) because it will apply to any issuer that distributes securities through the Filer's funding portal that satisfies the conditions in the order.

The order is intended to facilitate access to new sources of capital for those start-ups and small and medium sized enterprises that seek to conduct crowdfunding distributions of securities through the FrontFundr portal, without compromising investor protection. This is particularly relevant in the current COVID-19 business environment, when it may be especially challenging for these categories of businesses to access capital.

The order substantially mirrors prospectus exemptions provided to non-reporting issuers by certain other Canadian jurisdictions, including British Columbia, which adopted registration and prospectus exemptions by means of blanket orders intended to facilitate capital-raising through securities crowdfunding.

Because the Filer is registered as an exempt market dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in Ontario, this order does not mirror registration exemptions found in the crowdfunding blanket orders adopted by certain other Canadian jurisdictions.

Since the relief applies only to an issuer if the conditions contained in the order are met, the Commission is satisfied that it would not be prejudicial to the public interest to grant this relief.

Day on which the Order Ceases to Have Effect

The order comes into effect on May 28, 2020 (the **Effective Date**), and remains in effect until the earlier of the date on which the Commission adopts proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (which is currently publicly available for comment) or the date that is 18 months from the Effective Date.

1.1.5 CSA Notice of Approval – Mandatory Post-Trade Transparency of Trades in Government Debt Securities, Expanded Transparency of Trades in Corporate Debt Securities and Amendments to National Instrument 21-101 Marketplace Operation and Related Companion Policy

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Approval
Mandatory Post-Trade Transparency of Trades in Government Debt Securities,
Expanded Transparency of Trades in Corporate Debt Securities and
Amendments to National Instrument 21-101 *Marketplace Operation* and Related Companion Policy

June 4, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**), have approved amendments to National Instrument 21-101 *Marketplace Operation* (**NI 21-101** or the **Instrument**) and its related Companion Policy (**21-101CP**) (together, the **Amendments**) in relation to the introduction of mandatory post-trade transparency of trades in government debt securities (the **Government Debt Transparency Framework**) and expanded transparency of trades in corporate debt securities (the **Expanded Corporate Debt Transparency Framework**).

We are publishing the text of the Amendments at Annex B to this Notice, together with other relevant information at Annexes C through E. The text of the Amendments will also be available on the websites of other CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

Provided all ministerial approvals are obtained, the Amendments will come into force on August 31, 2020.

Substance and Purpose

The substance and purpose of the Amendments is to revise NI 21-101 and 21-101CP to prescribe mandatory post-trade transparency of trades in government debt securities and to expand transparency of trades in corporate debt securities. The Amendments adjust the rule framework to require all persons or companies that execute trades in government and corporate debt securities to report such trades to an information processor (**IP**), as required by the IP.

Background

On May 24, 2018, the CSA published CSA Staff Notice and Request for Comment 21-323 (the **2018 Notice**).[1]

Summary of Written Comments Received

In response to the 2018 Notice, we received submissions from eight commenters. We have considered the comments received and thank all commenters for their input. A list of those who submitted comments and a summary of the comments and our responses is attached at Annex D to this Notice. Copies of the comment letters are available at www.osc.gov.on.ca.

Summary of the Amendments and Minor Changes

See Annex A for a summary of the Amendments and a description of minor changes that have been made to the Amendments proposed in the 2018 Notice.

[1] http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20180524_21-323-notice-rfc-debt-securities.htm.

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained at Annex E.

Annexes

A. Summary of the Amendments and minor changes;

B. Amendments to NI 21-101;

C. Blackline showing changes to NI 21-101 and 21-101CP;

D. List of commenters along with chart summarizing comments and CSA responses; and

E. Local matters (as the case may be in each jurisdiction).

Questions

Please refer your questions to any of the following:

Alina Bazavan Senior Analyst, Market Regulation Ontario Securities Commission abazavan@osc.gov.on.ca	Heather Cohen Legal Counsel, Market Regulation Ontario Securities Commission hcohen@osc.gov.on.ca
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Katrina Prokopy Senior Legal Counsel Alberta Securities Commission Katrina.Prokopy@asc.ca	

ANNEX A

SUMMARY OF THE AMENDMENTS AND MINOR CHANGES

This Annex summarizes the Amendments and describes the minor changes from the proposed amendments published on May 24, 2018 in the 2018 Notice. While the Amendments have been approved mostly as proposed, an addition has been made to the volume caps as described below.

1. The Amendments

The Amendments introduce mandatory post-trade transparency requirements for government debt securities and expand the current transparency requirements for corporate debt securities. They were developed with the cooperation of staff from the Bank of Canada, the Department of Finance Canada and the Investment Industry Regulatory Organization of Canada (**IIROC**). As indicated in the 2018 Notice, the Amendments were drafted based on an analysis of data from the Market Trade Reporting System 2.0 (**MTRS 2.0**),[2] consultations with industry stakeholders and a review of the existing transparency regime for corporate debt securities. The complete text of the Amendments is available at Annex B.

2. Government Debt Transparency Framework

(a) The Amendments

The Government Debt Transparency Framework will be established by the Amendments and the appointment of an IP for government debt securities, which will implement the transparency requirements as articulated in 21-101CP.

As described in the 2018 Notice, the Amendments will change the existing provisions in section 8.1 of NI 21-101 to require a person or company that executes trades in government debt securities to provide information regarding trades in these securities to an IP. In addition, under subsection 14.4(2) of NI 21-101, the IP will be required to disseminate post-trade information about such trades. The CSA will identify the persons or companies required to report details of trades in government debt securities in the 21-101CP and will set the model for reporting and disseminating such information, including the dissemination delay and the volume caps.

(b) Comments Received and CSA Response

We proposed that the reporting requirements should be extended to the banks listed in Schedule I, II or III of the *Bank Act* (Canada) (**Banks**), and we sought specific comments regarding the expansion to Schedule III banks. The comments received, with one exception, strongly supported the inclusion of Banks, including Schedule III banks, to the extent that they execute trades in government debt securities. One commenter was initially of the view that expanding the regulatory requirements to Banks would lead to a change in the securities regulatory regime applicable to Banks which would deviate from the Hockin-Kwinter Accord.[3]

We are of the view that the expansion of the debt transparency requirements to Banks will not impact the regulatory regime applicable to them because they will continue to remain exempted from registration requirements under provincial securities laws. In addition, we believe that the expansion of the debt transparency requirements to Banks is required for meaningful transparency because a large proportion of trades in government and corporate debt securities is executed with counterparties other than the persons or companies already subject to transparency requirements under NI 21-101.[4] Therefore, not expanding the debt transparency requirements to Banks would lead to informational gaps, undermine transparency and create an unlevel playing field among debt market participants, allowing for arbitrage opportunities.

In a subsequent letter, this same commenter requested that Banks be given additional time to implement the debt transparency requirements. After careful consideration, we continue to be of the view that the additional nine months provided to Banks that are not currently reporting their transactions to the MTRS 2.0 is an appropriate delay.

Commenters also suggested that to avoid duplicative reporting, which could create a false perception of liquidity, Banks should be required to report trades in government debt securities to the IP only if such trades are executed with a person or company other than a dealer, as these transactions will already be reported by dealers to the IP.

We recognize the concerns expressed by commenters with respect to duplicative reporting. However, after considering all the comments received, we believe that, at this time, all persons or companies executing trades in government debt securities,

[2] MTRS 2.0 data contains information about transactions in all debt securities reported by IIROC Dealer Members.

[3] Under the Accord, the government of Ontario and the federal government agreed that the Office of the Superintendent of Financial Institutions will regulate securities-related activities of federal institutions that are carried on directly by these institutions.

[4] Based on the data available to date, 65 percent of the trades reported in all debt securities and 52 percent of the volume reported in all debt securities would go partially unreported without the inclusion of the Banks.

including Banks, should report such trades to the IP. The IP has advised us that dual reporting is required for it to ensure the accuracy of the trade details being reported and to allow for corrections to be made when necessary. Such reporting will not be confusing because the IP will only disseminate one-sided information about trades in government debt securities.

The 2018 Notice proposed three volume caps for government debt securities and to delay the publication of trade details for all transactions until T+1 at 5:00 pm ET. The 2018 Notice also described how the volume caps were developed through an analysis of the trading patterns of the least liquid securities in each group of securities. As a result, we had proposed larger volume caps for the most liquid government debt securities and lower volume caps for less liquid government debt securities. We sought comments on whether the proposed volume caps and publication delay were appropriate, particularly for the most illiquid government debt securities, such as those issued by municipalities, or those held by a small number of investors.

The comments received were supportive of the proposed volume caps with the exception of the volume cap proposed for debt securities issued by Québec municipalities. As a result, we conducted an additional analysis[5] to determine whether the differences in organization and trading patterns in debt securities issued by Québec municipalities relative to all other municipalities justified the creation of a fourth grouping of debt securities with a lower volume cap.

We note that the municipal market forms a core part of the Canadian debt landscape. Further, we note that in several provinces, including Ontario, British Columbia, Alberta, Nova Scotia and New Brunswick, there are provincially sponsored borrowing authorities that fund the municipalities. These authorities are not directly active in the debt markets. Québec does not have a provincially sponsored authority that manages the borrowing for the municipalities in the province. Thus, municipalities within the province are active issuers of publicly traded debt. Except for the City of Montréal, most of the Québec-based municipalities issue unrated serial bonds via an auction process.

Based on the data available to us, we noted that the municipal debt market in Québec represents approximately 40 percent of the total volume of municipal debt traded in Canada and approximately 72 percent of the number of trades executed. The size of a large trade in the 75th trade percentile is significantly lower than Ontario and British Columbia (i.e. $58,000 in Québec relative to $300,000 in Ontario and $674,000 in British Columbia). As a result, based on our additional analysis and the comments received, we created an additional, lower volume cap for trades in debt securities issued by Québec municipalities. The table below outlines the volume caps for all government debt securities covered by the transparency requirements.

Table 1 – Grouping of government debt securities by volume caps

<table>
<tr><th>$10M</th><th>$5M</th><th>$2M</th><th>250K</th></tr>
<tr><td>Government of Canada Bills (GoC Bills)</td><td>Government of Canada nominal bonds with over 10 years remaining to maturity (GoC>10)</td><td>All provincial debt securities including Real Return Bonds, Strip Coupons and Residuals</td><td>Québec municipal debt securities</td></tr>
<tr><td rowspan="2">Government of Canada nominal bonds with 10 or less years remaining to maturity (GoC <=10)</td><td rowspan="2"></td><td>All municipal debt securities, except those issued in Québec</td><td></td></tr>
<tr><td>All other agency debt securities</td><td></td></tr>
<tr><td>All Canada Mortgage Bonds (CMB)</td><td></td><td>Government of Canada Real Return Bonds</td><td></td></tr>
<tr><td></td><td></td><td>Government of Canada Strip Coupons and Residuals</td><td></td></tr>
</table>

With respect to the publication delay proposed in the 2018 Notice, the comments received provided mixed views regarding what would represent appropriate delay for different types of government debt securities. Two commenters suggested that certain less liquid government debt securities should be subject to lengthier publication delays, whereas two other commenters expressed concerns that the publication delay, as proposed, was not sufficiently timely when compared to those in other jurisdictions. The remaining commenters supported the proposed publication delay and considered it to be appropriate.

We recognize the concerns that have been historically raised about the potential impact of transparency on liquidity and the willingness of dealers to provide liquidity if information about their transactions becomes immediately available. After considering all comments received, we remain of the view that the publication of trade details on T+1 at 5:00 pm ET reflects the best balance between transparency and liquidity. This publication delay, together with the volume caps, should provide dealers with sufficient time to manage their inventory risk before information about their transactions is made public. We intend to monitor the impact of transparency over time and will adjust the dissemination delay and volume caps should there be any unintended consequences.

[5] The methodology used to determine whether a lower volume cap would be appropriate was identical to the one used and published in the 2018 Notice to determine the proposed volume caps for each securities grouping. See Schedule 1 of the 2018 Notice.

In support of this position, we further note that a review conducted by Staff of the Ontario Securities Commission after post-trade transparency was mandated for corporate debt securities showed no negative impact on the liquidity of the corporate debt market. Furthermore, there are currently other vendors that provide information about trades in corporate debt securities on a more timely basis than IIROC. There have been no concerns about this information being available to market participants.

3. Expanded Corporate Debt Transparency Framework

The Expanded Corporate Debt Transparency Framework will be established by the Amendments and will be implemented through the IP.

We noted in the 2018 Notice that the Amendments will change the existing provisions in section 8.2 of NI 21-101 to require a person or company that executes trades in corporate debt securities to provide information regarding trades in these securities to an IP, as required by the IP. IIROC has been the IP for corporate debt securities since July 4, 2016 and is currently disseminating post-trade information regarding trades in corporate debt securities. As with the Government Debt Transparency Framework, the CSA will identify the persons or companies required to report details of trades in corporate debt securities.

We sought comments on the expansion of the reporting and transparency requirements to Banks, and, in particular, Schedule III banks. The comments received, with one exception, strongly supported the inclusion of Banks, including Schedule III banks to the extent that they execute trades in corporate debt securities.

In addition, to align the publication delay between government and corporate debt securities, we indicated in the 2018 Notice that we were proposing to shorten the publication delay for information about trades in corporate debt securities from T+2 at midnight to T+1 at 5:00 pm ET.

4. IIROC as the Information Processor for Debt Securities

(a) Summary of IIROC's Operations as an IP

The role of an IP for debt securities is to provide transparency to the public regarding trades in corporate and/or government debt securities. NI 21-101 contains the framework for the regulation of an IP. Specifically, it mandates the IP to:

- provide prompt and accurate order[6] and trade information to the public;

- not unreasonably restrict fair access to such information;

- provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders and trades in debt securities;

- maintain reasonable books and records; and

- maintain resilient systems and arrange to conduct an annual independent system review.

We recommended IIROC be designated as the IP for government debt securities in addition to being designated as the IP for corporate debt securities. To expand its mandate to all debt securities, IIROC will file changes to its Form 21-101F5 *Initial Operation Report for Information Processor* (**Form 21-101F5**) in accordance with the requirements of NI 21-101.

As an IP for debt securities, IIROC will collect government debt data in addition to corporate debt data and make publicly available a subset of this data, described below, in accordance with the requirements of NI 21-101. IIROC will collect the data using the same platform it uses to collect corporate debt data, MTRS 2.0, which facilitates dealers' reporting of debt trades in accordance with the requirements of IIROC Rule 2800C. To disseminate the government debt data, IIROC will use the same web-based system it uses for the dissemination of corporate debt data. The data will be disseminated on T+1 at 5:00 pm ET for both corporate and government debt transactions.

The data that will be made transparent will consist of both historical data for each debt security and trade details for each trade. The government and corporate debt data that will be made available will include the issuer's name, interest rate, yield, price and volume. The volume will be subject to volume caps, as provided in Table 1 above. The complete list of data fields that will be included in the information disseminated is available at Schedule 1 of this Annex.

As mentioned above, the data for both corporate and government debt trades will be disseminated on T+1 at 5:00 pm ET. Currently, information on transactions in corporate debt securities is disseminated at midnight on T+2, which means that the dissemination of information about trades in corporate debt securities will be accelerated.

[6] Currently there is no requirement to report or display orders.

Shortening the dissemination delay accords with the CSA's view that the publication delay should be reduced over time where appropriate and after careful consideration.[7] The CSA and IIROC will monitor the debt trading activity as well as the appropriateness of the publication delay and the volume caps over time to determine whether to further reduce the publication delay and/or amend the volume caps. Any changes to these or other aspects of the transparency framework will be subject to public consultation.

(b) Implementation of the Government Debt Transparency Framework and the Expanded Corporate Debt Transparency Framework

As indicated above, the Amendments require persons or companies that execute trades in government debt securities and corporate debt securities to provide details of such trades to an IP, as required by the IP for those securities. The reporting of trades will not create any additional burden for dealers and those Banks that are currently required or are choosing to report trades in corporate debt securities to IIROC IP under section 8.2 of NI 21-101. However, for other Banks, additional time may be needed for implementation. As a result, once IIROC is designated as an IP for all debt securities, which will occur in tandem with the implementation of the Amendments, it will introduce transparency in two phases:

- August 31, 2020 – the IP begins to disseminate post-trade information for trades in government debt securities executed by dealers that are currently subject to IIROC Rule 2800C, marketplaces, inter-dealer bond brokers and Banks that are currently reporting their corporate debt transactions to the MTRS 2.0, in addition to disseminating the existing post-trade information for corporate debt securities.

- May 31, 2021 – the IP begins disseminating post-trade information for trades in corporate and government debt securities executed by those Banks that do not currently report their debt transactions to the MTRS 2.0.

(c) Regulatory Requirements and Oversight by CSA Staff

As an IP for debt securities, IIROC will be subject to the applicable regulatory requirements in NI 21-101. IIROC will also comply with the terms and conditions[8] set by the regulatory authorities in each jurisdiction.

The CSA will conduct oversight activities to ensure that as an IP for debt securities, IIROC complies with the requirements in NI 21-101 and the terms and conditions set by regulatory authorities in each jurisdiction. The terms and conditions for IIROC as an IP for debt securities in Ontario were published in the 2018 Notice. The terms and conditions have since been streamlined to reflect discussions among the CSA and are set out again at Annex E – Local matters for Ontario. None of the changes to the terms and conditions are material.

[7] See CSA Staff Notice 21-317 *Next Steps in Implementation of a Plan to Enhance Regulation of the Fixed Income Market.*

[8] For now, terms and conditions will be contained in a Designation Order in British Columbia, Ontario and Saskatchewan, a Recognition Order in Québec and in undertakings from the IP in all other jurisdictions. These terms and conditions will be set by each applicable regulator.

SCHEDULE 1

DATA FIELDS FOR THE GOVERNMENT DEBT INFORMATION TO BE DISSEMINATED BY IIROC AS AN INFORMATION PROCESSOR

The data fields below will be made publicly available by IIROC as an information processor. They apply to all government and corporate debt securities subject to transparency requirements.

I. Summary level data for each bond

1. CUSIP and/or ISIN number, where available
2. Issuer name
3. Type of bond (New)
4. Original issue date (New)
5. Maturity date
6. Coupon rate
7. Last traded price
8. Last traded yield
9. Total trade count (total trades done on the last trade date)
10. Last trade date
11. Highest traded price on the last trade date
12. Lowest traded price on the last trade date

II. Transaction level data for each bond

1. CUSIP and/or ISIN number, where available
2. Issuer name
3. Maturity date
4. Coupon rate
5. Date of execution
6. Time of execution
7. Settlement date
8. Type (indicates whether the transaction is new, a cancellation or a correction)
9. Volume (subject to volume caps)
10. Price
11. Yield
12. Account type (retail or institutional counterparty)
13. An indication of whether a commission was recorded (“yes” or “no” answer)

ANNEX B

AMENDMENTS TO NATIONAL INSTRUMENT 21-101

MARKETPLACE OPERATION

1. National Instrument 21-101 Marketplace Operation is amended by this Instrument.

2. Section 1.1 is amended by replacing the definition of "information processor" ***with the following:***

"information processor,

(a) in every jurisdiction except for British Columbia, means any person or company that receives and provides information under this Instrument and has filed Form 21-101F5 and,

(b) in British Columbia, means a person or company that is designated as an information processor for the purposes of this Instrument;"***.***

3. The title to Part 8 is replaced with **"INFORMATION TRANSPARENCY REQUIREMENTS FOR PERSONS AND COMPANIES DEALING IN UNLISTED DEBT SECURITIES"*.***

4. Subsection 8.1(1) is amended by replacing "marketplace as required by" ***with*** "marketplace, as required by"***.***

5. Subsection 8.1(3) is repealed.

6. Subsection 8.1(4) is amended by replacing "marketplace as required by" ***with*** "marketplace, as required by"***.***

7. Subsection 8.1(5) is replaced with the following:

(5) A person or company must provide to an information processor accurate and timely information regarding trades in government debt securities executed by or through the person or company, as required by the information processor.

8. Subsection 8.2(1) is replaced with the following:

(1) A marketplace that displays orders of corporate debt securities to a person or company must provide to an information processor accurate and timely information regarding orders for corporate debt securities displayed by the marketplace, as required by the information processor.

9. Subsection 8.2(3) is replaced with the following:

(3) A person or company must provide to an information processor accurate and timely information regarding trades in corporate debt securities executed by or through the person or company, as required by the information processor.

10. Subsections 8.2(4) and 8.2(5) are repealed.

11. Section 8.3 is amended by replacing "an accurate consolidated feed in real-time" ***with*** "accurate consolidated information on a timely basis"***.***

12. Section 8.4 is amended by replacing "marketplace, inter-dealer bond broker or dealer" ***with*** "person or company"***.***

13. Subsection 14.4(1) is replaced with the following:

(1) An information processor for exchange-traded securities must enter into an agreement with each marketplace that is required to provide information to the information processor which states that the marketplace will

(a) provide information to the information processor in accordance with Part 7 of this Instrument; and

(b) comply with any other reasonable requirements set by the information processor.

14. Subsection 14.4 (4) is amended by replacing "marketplace, inter-dealer bond broker or dealer" ***with*** "person or company"***.***

15. Subsection 14.4(8) is repealed.

16. Subsection 14.4(9) is repealed.

17. Subparagraph 14.5(d)(ii) is amended by replacing the word "calendar" ***with*** "information processor's financial"***.***

18. Subsection 14.7 is amended by replacing "marketplace, inter-dealer bond broker or dealer" ***with*** "person or company"***.***

19. Paragraph 14.8(b) is replaced with the following:

(b) in the case of an information processor for government debt securities or corporate debt securities,

(i) the marketplaces that report orders for corporate debt securities or government debt securities to the information processor, as applicable,

(ii) the inter-dealer bond brokers that report orders for government debt securities to the information processor,

(iii) the persons and companies that report trades in corporate debt securities or government debt securities to the information processor, as applicable,

(iv) when trades in each corporate debt security or government debt security, as applicable, must be provided to the information processor by a person or company,

(v) when the information provided to the information processor will be publicly disseminated by the information processor, and

(vi) the cap on the displayed volume of trades for each corporate debt security or government debt security, as applicable,***.***

20. Subsection 14.8 is amended by deleting "and" ***at the end of paragraph (c), by adding*** "and" ***at the end of paragraph (d) and by adding the following paragraph:***

(e) a list of the types of data elements relating to the order and trade information required to be provided under Part 7 or Part 8 of this Instrument.

Coming into force

21. (1) This Instrument comes into force on August 31, 2020.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after August 31, 2020, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

Changes to Companion Policy 21-101CP Marketplace Operation

1. The changes to Companion Policy 21-101CP are set out in this Document.

2. Section 10.1 is replaced with:

(1) The requirements for pre-trade transparency of orders for unlisted debt securities set out in sections 8.1 and 8.2 of the Instrument have not been implemented by reason of the exception provided for in section 8.6 of the Instrument and the fact that no pre-trade requirements have been set by an information processor for corporate debt securities.

(2) The requirements for post-trade transparency of trades in unlisted debt securities are set out in sections 8.1 and 8.2 of the Instrument. The detailed reporting requirements, determined by the Canadian securities regulatory authorities and implemented through the information processor, such as who must report information, deadlines for reporting, delays in publication of information and caps on displayed volume, are articulated in this companion policy and in Form 21-101F5.

(3) Sections 8.1 and 8.2 of the Instrument require persons or companies executing trades in unlisted debt securities by or through that person or company to report these trades to the information processor. Specifically, such persons or companies are currently marketplaces, dealers, inter-dealer bond brokers and banks listed in Schedule I, II and III of the *Bank Act* (Canada).

(4) The detailed reporting requirements for trades in unlisted debt securities include, but are not limited to, details as to the type of issuer, coupon and maturity, last traded price, last traded yield, date and time of execution, settlement date, the type of transaction, the volume transacted (subject to volume caps), as required by the information processor.

(5) Details of the volume transacted will be subject to volume caps as follows:

(a) If the total par value of a trade of an investment grade corporate debt security is greater than $2 million, the information processor will display it as "$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than $200,000, the information processor will display it as "$200,000+".

(b) For government debt securities, the volume transacted will be displayed by the information processor in accordance with the chart below:

<table>
<tr><th>$10M</th><th>$5M</th><th>$2M</th><th>250K</th></tr>
<tr><td>Government of Canada Bills (GoC Bills)</td><td>Government of Canada nominal bonds with over 10 years remaining to maturity (GoC>10)</td><td>All provincial debt securities including Real Return Bonds, Strip Coupons and Residuals</td><td>Québec municipal debt securities</td></tr>
<tr><td rowspan="2">Government of Canada nominal bonds with 10 or less years remaining to maturity (GoC <=10)</td><td rowspan="2"></td><td>All municipal debt securities, except those issued in Québec</td><td></td></tr>
<tr><td>All other agency debt securities</td><td></td></tr>
<tr><td>All Canada Mortgage Bonds (CMB)</td><td></td><td>Government of Canada Real Return Bonds</td><td></td></tr>
<tr><td></td><td></td><td>Government of Canada Strip Coupons and Residuals</td><td></td></tr>
</table>

(6) The information processor may propose changes to its transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. Any initial transparency requirements and any proposed changes will be subject to consultation with market participants through a notice and comment process, prior to approval by the Canadian securities regulatory authorities.

3. Section 10.2 is deleted.

4. ***Section 10.3 is replaced with:***

Consolidated Feed – Section 8.3 of the Instrument requires the information processor to produce accurate consolidated information on a timely basis showing the information provided to the information processor under sections 8.1 and 8.2 of the Instrument. The Canadian securities regulatory authorities have determined that information about trades in unlisted debt securities should be displayed by the information processor at 5:00 pm the day after the trade was executed by or through a person or company (T+1 at 5:00 pm ET).

5. ***Subsection 16.1(2) is changed by replacing*** "marketplaces, inter-dealer bond brokers and dealers" ***with*** "persons and companies" ***and*** "marketplace, inter-dealer bond broker or dealer" with "person or company"***.***

6. ***Subsection 16.2(1) is changed by deleting*** "In Québec, a person or company may carry on the activity of an information processor only if it is recognized by the securities regulatory authority"***.***

7. ***Section 16.2 is changed by adding paragraph (4)*** "The specific authority of securities regulatory authorities to allow a person or company to act as an information processor for the purposes of the Instrument may differ, depending on the relevant legislative framework. For instance, in Québec, a person or company may carry on the activity of an information processor, only if it is recognized or exempted by the securities regulatory authority. In certain other jurisdictions, a person or company may be designated an information processor, subject to the relevant requirements in securities legislation or may otherwise be allowed to act as an information processor, if it is in the public interest"***.***

8. ***Paragraph 16.3(c) is changed by replacing*** "marketplaces, inter-dealer bond brokers and dealers" ***with*** "persons and companies"***.***

9. ***Paragraph 16.3(k) is replaced with:***

(k) in the case of an information processor for corporate debt securities or government debt securities, changes to the information referred to in paragraph 14.8(b) of the Instrument.***.***

10. These changes become effective on August 31, 2020.

ANNEX C

AMENDMENTS TO NATIONAL INSTRUMENT 21-101

MARKETPLACE OPERATION

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Instrument

“accounting principles” means accounting principles as defined in National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;

"alternative trading system",

(a) in every jurisdiction other than Ontario, means a marketplace that

(i) is not a recognized quotation and trade reporting system or a recognized exchange, and

(ii) does not

(A) require an issuer to enter into an agreement to have its securities traded on the marketplace,

(B) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis,

(C) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and

(D) discipline subscribers other than by exclusion from participation in the marketplace, and

(b) in Ontario has the meaning set out in subsection 1(1) of the Securities Act (Ontario);

"ATS" means an alternative trading system;

"corporate debt security" means a debt security issued in Canada by a company or corporation that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101, and does not include a government debt security;

"exchange-traded security" means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of this Instrument and NI 23-101;

"foreign exchange-traded security" means a security that is listed on an exchange, or quoted on a quotation and trade reporting system, outside of Canada that is regulated by an ordinary member of the International Organization of Securities Commissions and is not listed on an exchange or quoted on a quotation and trade reporting system in Canada;

"government debt security" means

(a) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada,

(b) a debt security issued or guaranteed by any municipal corporation or municipal body in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,

(c) a debt security issued or guaranteed by a crown corporation or public body in Canada,

(d) in Ontario, a debt security of any school board in Ontario or of a corporation established under section 248(1) of the *Education Act* (Ontario), or

(e) in Québec, a debt security of the Comité de gestion de la taxe scolaire de I'île de Montréal that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101;

“IIROC” means the Investment Industry Regulatory Organization of Canada;

~~(a)~~ "information processor",

(a) in every jurisdiction except for British Columbia, means any person or company that receives and provides information under this Instrument and has filed Form 21-101F5 and,

(b) ~~(a) Québec,~~in British Columbia, means a person or company that is ~~a recognized information processorin Québec, that is a recognized~~designated as an information processor~~;~~ for the purposes of this Instrument.

"inter-dealer bond broker" means a person or company that is approved by IIROC under IIROC Rule 36 Inter-Dealer Bond Brokerage Systems, as amended, and is subject to IIROC Rule 36 and IIROC Rule 2100 Inter-Dealer Bond Brokerage Systems, as amended;

"market integrator" [repealed]

"marketplace",

(a) in every jurisdiction other than Ontario, means

(i) an exchange,

(ii) a quotation and trade reporting system,

(iii) a person or company not included in clause (i) or (ii) that

(A) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,

(B) brings together the orders for securities of multiple buyers and sellers, and

(C) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or

(iv) a dealer that executes a trade of an exchange-traded security outside of a marketplace, but does not include an inter-dealer bond broker, and

(b) in Ontario has the meaning set out in subsection 1(1) of the Securities Act (Ontario);

"marketplace participant" means a member of an exchange, a user of a quotation and trade reporting system, or a subscriber of an ATS;

“member” means, for a recognized exchange, a person or company

(a) holding at least one seat on the exchange, or

(b) that has been granted direct trading access rights by the exchange and is subject to regulatory oversight by the exchange,

and the person or company’s representatives;

"NI 23-101" means National Instrument 23-101 Trading Rules;

"order" means a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security;

“participant dealer” means a participant dealer as defined in Part 1 of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces;

“private enterprise” means a private enterprise as defined in Part 3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;

“publicly accountable enterprise” means a publicly accountable enterprise as defined in Part 3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;

"recognized exchange" means

(a) in Ontario, a recognized exchange as defined in subsection 1(1) of the *Securities Act* (Ontario),

(b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization, and

(c) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"recognized quotation and trade reporting system" means

(a) in every jurisdiction other than British Columbia, Ontario and Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system,

(b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange,

(b.1) in Ontario, a recognized quotation and trade reporting system as defined in subsection 1(1) of the *Securities Act* (Ontario), and

(c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization;

"regulation services provider" means a person or company that provides regulation services and is

(a) a recognized exchange,

(b) a recognized quotation and trade reporting system, or

(c) a recognized self-regulatory entity;

"self-regulatory entity" means a self-regulatory body or self-regulatory organization that

(a) is not an exchange, and

(b) is recognized as a self-regulatory body or self-regulatory organization by the securities regulatory authority;

"subscriber" means, for an ATS, a person or company that has entered into a contractual agreement with the ATS to access the ATS for the purpose of effecting trades or submitting, disseminating or displaying orders on the ATS, and the person or company’s representatives;

"trading fee" means the fee that a marketplace charges for execution of a trade on that marketplace;

"trading volume" means the number of securities traded;

"unlisted debt security" means a government debt security or corporate debt security; and

"user" means, for a recognized quotation and trade reporting system, a person or company that quotes orders or reports trades on the recognized quotation and trade reporting system, and the person or company’s representatives.

1.2 **Interpretation - Marketplace -** For the purpose of the definition of "marketplace" in section 1.1, a person or company is not considered to constitute, maintain or provide a market or facilities for bringing together buyers and sellers of securities, solely because the person or company routes orders to a marketplace or a dealer for execution.

1.3 Interpretation - Affiliated Entity, Controlled Entity and Subsidiary Entity

(1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

(2) In this Instrument, a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

(a) it is a controlled entity of,

(i) that other,

(ii) that other and one or more persons or companies each of which is a controlled entity of that other, or

(iii) two or more persons or companies, each of which is a controlled entity of that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

1.4 Interpretation – Security

(1) In British Columbia, the term "security", when used in this Instrument, includes an option that is an exchange contract but does not include a futures contract.

(2) In Ontario, the term "security", when used in this Instrument, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the *Commodity Futures Act* or the form of which is not accepted by the Director under the *Commodity Futures Act*.

(3) In Québec, the term “security”, when used in this Instrument, includes a standardized derivative as this notion is defined in the *Derivatives Act*.

(4) In Alberta, New Brunswick, Nova Scotia and Saskatchewan, the term “security”, when used in this Instrument, includes an option that is an exchange contract.

1.5 Interpretation – NI 23-101

Terms defined or interpreted in NI 23-101 and used in this Instrument have the respective meanings ascribed to them in NI 23-101.

PART 2 APPLICATION

2.1 Application - This Instrument does not apply to a marketplace that is a member of a recognized exchange or a member of an exchange that has been recognized for the purposes of this Instrument and NI 23-101.

PART 3 MARKETPLACE INFORMATION

3.1 Initial Filing of Information

(1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system Form 21-101F1.

(2) A person or company must not carry on business as an ATS unless it has filed Form 21-101F2 at least 45 days before the ATS begins to carry on business as an ATS.

3.2 Change in Information

(1) Subject to subsection (2), a marketplace must not implement a significant change to a matter set out in Form 21-101F1 or in Form 21-101F2 unless the marketplace has filed an amendment to the information provided in Form 21-101F1 or in Form 21-101F2 in the manner set out in the applicable form at least 45 days before implementing the change.

(1.1) A marketplace that has entered into an agreement with a regulation services provider under NI 23-101 must not implement a significant change to a matter set out in Exhibit E – Operation of the Marketplace of Form 21-101F1 or Exhibit E – Operation of the Marketplace of Form 21-101F2 as applicable, or Exhibit I – Securities of Form 21-101F1 or Exhibit I – Securities of Form 21-101F2 as applicable, unless the marketplace has provided the applicable exhibit to its regulation services provider at least 45 days before implementing the change.

(2) A marketplace must file an amendment to the information provided in Exhibit L – Fees of Form 21-101F1 or Exhibit L – Fees of Form 21-101F2, as applicable, at least seven business days before implementing a change to the information provided in Exhibit L – Fees.

(3) For any change involving a matter set out in Form 21-101F1 or Form 21-101F2 other than a change referred to in subsection (1) or (2), a marketplace must file an amendment to the information provided in the applicable form by the earlier of

(a) the close of business on the 10th day after the end of the month in which the change was made, and

(b) if applicable, the time the marketplace discloses the change publicly.

(4) The chief executive officer of a marketplace, or an individual performing a similar function, must certify in writing, within 30 days after the end of each calendar year, that the information contained in the marketplace's current Form 21-101F1 or Form 21-101F2, as applicable, including the description of its operations, is true, correct, and complete and that the marketplace is operating as described in the applicable form.

(5) A marketplace must file an updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, within 30 days after the end of each calendar year.

3.3 Reporting Requirements

A marketplace must file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the marketplace has carried on business.

3.4 Ceasing to Carry on Business as an ATS

(1) An ATS that intends to cease carrying on business as an ATS must file a report on Form 21-101F4 at least 30 days before ceasing to carry on that business.

(2) An ATS that involuntarily ceases to carry on business as an ATS must file a report on Form 21-101F4 as soon as practicable after it ceases to carry on that business.

3.5 Forms Filed in Electronic Form

A person or company that is required to file a form or exhibit under this Instrument must file that form or exhibit in electronic form.

PART 4 MARKETPLACE FILING OF AUDITED FINANCIAL STATEMENTS

4.1 Filing of Initial Audited Financial Statements

(1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system, together with Form 21-101F1, audited financial statements for its latest financial year that

(a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises or IFRS,

(b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and

(c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an unmodified auditor's report.

(2) A person or company must not carry on business as an ATS unless it has filed, together with Form 21-101F2, audited financial statements for its latest financial year.

4.2 Filing of Annual Audited Financial Statements

(1) A recognized exchange and a recognized quotation and trade reporting system must file annual audited financial statements within 90 days after the end of its financial year in accordance with the requirements outlined in subsection 4.1(1).

(2) An ATS must file annual audited financial statements.

PART 5 MARKETPLACE REQUIREMENTS

5.1 Access Requirements

(1) A marketplace must not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(2) A marketplace must

(a) establish written standards for granting access to each of its services, and

(b) keep records of

(i) each grant of access including the reasons for granting access to an applicant, and

(ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

(3) A marketplace must not

(a) permit unreasonable discrimination among clients, issuers and marketplace participants, or

(b) impose any burden on competition that is not reasonably necessary and appropriate.

5.2 No Restrictions on Trading on Another Marketplace - A marketplace must not prohibit, condition, or otherwise limit, directly or indirectly, a marketplace participant from effecting a transaction on any marketplace.

5.3 Public Interest Rules

(1) Rules, policies and other similar instruments adopted by a recognized exchange or a recognized quotation and trade reporting system

(a) must not be contrary to the public interest; and

(b) must be designed to

(i) ensure compliance with securities legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade, and

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities.

(2) **[repealed]**

5.4 Compliance Rules - A recognized exchange or a recognized quotation and trade reporting system must have rules or other similar instruments that

(a) require compliance with securities legislation; and

(b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.

5.5 Filing of Rules - A recognized exchange or a recognized quotation and trade reporting system must file all rules, policies and other similar instruments, and all amendments thereto.

5.6 [repealed]

5.7 Fair and Orderly Markets – A marketplace must take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.

5.8 Discriminatory Terms – A marketplace must not impose terms that have the effect of discriminating between orders that are routed to the marketplace and orders that are entered on that marketplace for execution.

5.9 Risk Disclosure for Trades in Foreign Exchange-Traded Securities

(1) A marketplace that is trading foreign exchange-traded securities must provide each marketplace participant with disclosure in substantially the following words:

"The securities traded by or through the marketplace are not listed on an exchange in Canada and may not be securities of a reporting issuer in Canada. As a result, there is no assurance that information concerning the issuer is available or, if the information is available, that it meets Canadian disclosure requirements."

(2) Before the first order for a foreign exchange-traded security is entered onto the marketplace by a marketplace participant, the marketplace must obtain an acknowledgement from the marketplace participant that the marketplace participant has received the disclosure required in subsection (1).

5.10 Confidential Treatment of Trading Information

(1) A marketplace must not release a marketplace participant's order or trade information to a person or company, other than the marketplace participant, a securities regulatory authority or a regulation services provider unless

(a) the marketplace participant has consented in writing to the release of the information,

(b) the release of the information is required by this Instrument or under applicable law, or

(c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.

(1.1) Despite subsection (1), a marketplace may release a marketplace participant's order or trade information to a person or company if the marketplace

(a) reasonably believes that the information will be used solely for the purpose of capital markets research,

(b) reasonably believes that if information identifying, directly or indirectly, a marketplace participant or a client of the marketplace participant is released,

(i) it is required for the purpose of the capital markets research, and

(ii) that the research is not intended for the purpose of

(A) identifying a particular marketplace participant or a client of the marketplace participant, or

(B) identifying a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant,

(c) has entered into a written agreement with each person or company that will receive the order and trade information from the marketplace that provides that

(i) the person or company must

(A) not disclose to or share any information with any person or company if that information could, directly or indirectly, identify a marketplace participant or a client of the marketplace participant without the marketplace's consent, other than as provided under subparagraph (ii) below,

(B) not publish or otherwise disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or a client of the marketplace participant,

(C) not use the order and trade information, or provide it to any other person or company, for any purpose other than capital markets research,

(D) keep the order and trade information securely stored at all times,

(E) keep the order and trade information for no longer than a reasonable period of time after the completion of the research and publication process, and

(F) immediately inform the marketplace of any breach or possible breach of the confidentiality of the information provided,

(ii) the person or company may disclose order or trade information used in connection with research submitted to a publication if

(A) the information to be disclosed will be used solely for the purposes of verification of the research carried out by the person or company,

(B) the person or company must notify the marketplace prior to disclosing the information for verification purposes, and

(C) the person or company must obtain written agreement from the publisher and any other person or company involved in the verification of the research that the publisher or the other person or company will

(I) maintain the confidentiality of the information,

(II) use the information only for the purposes of verifying the research,

(III) keep the information securely stored at all times,

(IV) keep the information for no longer than a reasonable period of time after the completion of the verification, and

(V) immediately inform the marketplace of any breach or possible breach of the agreement or of the confidentiality of the information provided, and

(iii) the marketplace has the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.

(1.2) A marketplace that releases a marketplace participant's order or trade information under subsection (1.1) must

(a) promptly inform the regulator or, in Québec, the securities regulatory authority, in the event the marketplace becomes aware of any breach or possible breach of the confidentiality of the information provided or of the agreement, and

(b) take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.

(2) A marketplace must not carry on business unless it has implemented reasonable safeguards and procedures to protect a marketplace participant's order or trade information, including

(a) limiting access to order or trade information of marketplace participants to

(i) employees of the marketplace, or

(ii) persons or companies retained by the marketplace to operate the system or to be responsible for compliance by the marketplace with securities legislation; and

(b) implementing standards controlling trading by employees of the marketplace for their own accounts.

(3) A marketplace must not carry on business as a marketplace unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.

5.11 Management of Conflicts of Interest

A marketplace must establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides.

5.12 Outsourcing

If a marketplace outsources any of its key services or systems to a service provider, which includes affiliates or associates of the marketplace, the marketplace must

(a) establish and maintain policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements,

(b) identify any conflicts of interest between the marketplace and the service provider to which key services or systems are outsourced, and establish and maintain policies and procedures to mitigate and manage such conflicts of interest,

(c) enter into a contract with the service provider to which key services or systems are outsourced that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,

(d) maintain access to the books and records of the service providers relating to the outsourced activities,

(e) ensure that the securities regulatory authorities have access to all data, information and systems maintained by the service provider on behalf of the marketplace for the purposes of determining the marketplace's compliance with securities legislation,

(f) take appropriate measures to determine that service providers to which key services or systems are outsourced establish, maintain and periodically test an appropriate business continuity plan, including a disaster recovery plan,

(g) take appropriate measures to ensure that the service providers protect the marketplace participants' proprietary, order, trade or any other confidential information, and

(h) establish processes and procedures to regularly review the performance of the service provider under any such outsourcing arrangement.

5.13 Access Arrangements with a Service Provider

If a third party service provider provides a means of access to a marketplace, the marketplace must ensure the third party service provider complies with the written standards for access that the marketplace has established pursuant to paragraph 5.1(2)(a) when providing the access services.

PART 6 REQUIREMENTS APPLICABLE ONLY TO ATSs

6.1 **Registration -** An ATS must not carry on business as an ATS unless

(a) it is registered as a dealer;

(b) it is a member of a self-regulatory entity; and

(c) it complies with the provisions of this Instrument and NI 23-101.

6.2 **Registration Exemption Not Available -** Except as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS.

6.3 **Securities Permitted to be Traded on an ATS -** An ATS must not execute trades in securities other than

(a) exchange-traded securities;

(b) corporate debt securities;

(c) government debt securities; or

(d) foreign exchange-traded securities.

6.4 **[repealed]**

6.5 **[repealed]**

6.6 **[repealed]**

6.7 **Notification of Threshold**

(1) An ATS must notify the securities regulatory authority in writing if,

(a) during at least two of the preceding three months of operation, the total dollar value of the trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total dollar value of the trading volume for the month in that type of security on all marketplaces in Canada,

(b) during at least two of the preceding three months of operation, the total trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total trading volume for the month in that type of security on all marketplaces in Canada, or

(c) during at least two of the preceding three months of operation, the number of trades on the ATS for a month in any type of security is equal to or greater than 10 percent of the number of trades for the month in that type of security on all marketplaces in Canada.

(2) An ATS must provide the notice referred to in subsection (1) within 30 days after the threshold referred to in subsection (1) is met or exceeded.

6.8 **[repealed]**

6.9 **Name -** An ATS must not use in its name the word "exchange", the words "stock market”, the word "bourse" or any derivations of those terms.

6.10 **[repealed]**

6.11 **Risk Disclosure to Non-Registered Subscribers**

(1) When opening an account for a subscriber that is not registered as a dealer under securities legislation, an ATS must provide that subscriber with disclosure in substantially the following words:

Although the ATS is registered as a dealer under securities legislation, it is a marketplace and therefore does not ensure best execution for its subscribers.

(2) Before the first order submitted by a subscriber that is not registered as a dealer under securities legislation is entered onto the ATS by the subscriber, the ATS must obtain an acknowledgement from that subscriber that the subscriber has received the disclosure required in subsection (1).

6.12 [repealed]

6.13 [repealed]

PART 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EXCHANGE-TRADED SECURITIES AND FOREIGN EXCHANGE-TRADED SECURITIES

7.1 Pre-Trade Information Transparency - Exchange-Traded Securities

(1) A marketplace that displays orders of exchange-traded securities to a person or company must provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.

(3) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor.

7.2 Post-Trade Information Transparency - Exchange-Traded Securities

(1) A marketplace must provide accurate and timely information regarding trades for exchange-traded securities executed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

(2) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor.

7.3 Pre-Trade Information Transparency - Foreign Exchange-Traded Securities

(1) A marketplace that displays orders of foreign exchange-traded securities to a person or company must provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed by the marketplace to an information vendor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.

7.4 Post-Trade Information Transparency - Foreign Exchange-Traded Securities - A marketplace must provide accurate and timely information regarding trades for foreign exchange-traded securities executed on the marketplace to an information vendor.

7.5 Consolidated Feed - Exchange-Traded Securities - An information processor must produce an accurate consolidated feed in real-time showing the information provided to the information processor under sections 7.1 and 7.2.

7.6 Compliance with Requirements of an Information Processor - A marketplace that is subject to this Part must comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

PART 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR ~~MARKETPLACES~~PERSONS AND COMPANIES DEALING IN UNLISTED DEBT SECURITIES~~, INTER-DEALER BOND BROKERS AND DEALERS~~

8.1 Pre-Trade and Post-Trade Information Transparency Requirements - Government Debt Securities

(1) A marketplace that displays orders of government debt securities to a person or company must provide to an information processor accurate and timely information regarding orders for government debt securities displayed by the marketplace, as required by the information processor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) ~~A marketplace must provide to an information processor accurate and timely information regarding details of trades of government debt securities executed on the marketplace as required by the information processor.~~[repealed]

(4) An inter-dealer bond broker must provide to an information processor accurate and timely information regarding orders for government debt securities executed through the inter-dealer bond broker, as required by the information processor.

(5) ~~An inter-dealer bond broker~~A person or company must provide to an information processor accurate and timely information regarding ~~details of~~ trades ~~of~~in government debt securities executed by or through the ~~inter-dealer bond broker~~person or company, as required by the information processor.

8.2 Pre-Trade and Post-Trade Information Transparency Requirements - Corporate Debt Securities

(1) A marketplace that displays orders of corporate debt securities to a person or company must provide to an information processor accurate and timely information regarding orders for~~ designated~~ corporate debt securities displayed by the marketplace ~~to an information processor~~, as required by the information processor~~, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider~~.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A ~~marketplace~~person or company must provide to an information processor accurate and timely information regarding ~~details of~~ trades ~~of designated~~in corporate debt securities executed ~~on~~by or through the person or company, as required by the ~~marketplace to an~~ information processor~~, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider~~.

(4) ~~An inter-dealer bond broker must provide accurate and timely information regarding details of trades of designated corporate debt securities executed through the inter-dealer bond broker to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.~~[repealed]

(5) ~~A dealer executing trades of corporate debt securities outside of a marketplace must provide accurate and timely information regarding details of trades of designated corporate debt securities traded by or through the dealer to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.~~[repealed]

8.3 Consolidated Feed - Unlisted Debt Securities - An information processor must produce ~~an~~ accurate consolidated ~~feed in real-time~~information on a timely basis showing the information provided to the information processor under sections 8.1 and 8.2.

8.4 Compliance with Requirements of an Information Processor - A ~~marketplace, inter-dealer bond broker~~person or ~~dealer~~company that is subject to this Part must comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

8.5 [repealed]

8.6 Exemption for Government Debt Securities - Section 8.1 does not apply until January 1, 2018.

PART 9 [repealed]

PART 10 TRANSPARENCY OF MARKETPLACE OPERATIONS

10.1 Disclosure by Marketplaces - A marketplace must publicly disclose, on its website, information reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides, including, but not limited to, information related to

(a) all fees, including any listing, trading, data, co-location and routing fees charged by the marketplace, an affiliate or by a party to which services have directly or indirectly been outsourced or which directly or indirectly provides those services,

(b) how orders are entered, interact and execute,

(c) all order types,

(d) access requirements,

(e) the policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides,

(f) any referral arrangements between the marketplace and service providers,

(g) where routing is offered, how routing decisions are made,

(h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest,

(i) any access arrangements with a third party service provider, including the name of the third party service provider and the standards for access to be complied with by the third party service provider, and

(j) the hours of operation of any testing environments provided by the marketplace, a description of any differences between the testing environment and production environment of the marketplace and the potential impact of these differences on the effectiveness of testing, and any policies and procedures relating to a marketplace's use of uniform test symbols for purposes of testing in its production environment.

10.2 [repealed]

10.3 [repealed]

PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

11.1 Business Records - A marketplace must keep such books, records and other documents as are reasonably necessary for the proper recording of its business in electronic form.

11.2 Other Records

(1) As part of the records required to be maintained under section 11.1, a marketplace must include the following information in electronic form:

(a) a record of all marketplace participants who have been granted access to trading in the marketplace;

(b) daily trading summaries for the marketplace including

(i) a list of securities traded,

(ii) transaction volumes

(A) for securities other than debt securities, expressed as the number of issues traded, number of trades, total unit volume and total dollar value of trades and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency, and

(B) for debt securities, expressed as the number of trades and total dollar value traded and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency,

(c) a record of each order which must include

(i) the order identifier assigned to the order by the marketplace,

(ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,

(iii) the identifier assigned to the marketplace where the order is received or originated,

(iv) each unique client identifier assigned to a client accessing the marketplace using direct electronic access,

(v) the type, issuer, class, series and symbol of the security,

(vi) the number of securities to which the order applies,

(vii) the strike date and strike price, if applicable,

(viii) whether the order is a buy or sell order,

(ix) whether the order is a short sale order, if applicable,

(x) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,

(xi) the date and time the order is first originated or received by the marketplace,

(xii) whether the account is a retail, wholesale, employee, proprietary or any other type of account,

(xiii) the date and time the order expires,

(xiv) whether the order is an intentional cross,

(xv) whether the order is a jitney and if so, the identifier of the underlying broker,

(xvi) the currency of the order,

(xvii) whether the order is routed to another marketplace for execution, and the date, time and name of the marketplace to which the order was routed, and

(xviii) whether the order is a directed-action order, and whether the marketplace marked the order as a directed-action order or received the order marked as a directed-action order, and

(d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including

(i) the identifier assigned to the marketplace where the order was executed,

(ii) whether the order was fully or partially executed,

(iii) the number of securities bought or sold,

(iv) the date and time of the execution of the order,

(v) the price at which the order was executed,

(vi) the identifier assigned to the marketplace participant on each side of the trade,

(vii) whether the transaction was a cross,

(viii) time-sequenced records of all messages sent to or received from an information processor, an information vendor or a marketplace,

(ix) the marketplace trading fee for each trade, and

(x) each unique client identifier assigned to a client accessing the marketplace using direct electronic access.

11.2.1 Transmission in Electronic Form – A marketplace must transmit

(a) to a regulation services provider, if it has entered into an agreement with a regulation services provider in accordance with NI 23-101, the information required by the regulation services provider within ten business days, in electronic form and in the manner requested by the regulation services provider, and

(b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation within ten business days, in electronic form and in the manner requested by the securities regulatory authority.

11.3 Record Preservation Requirements

(1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace must keep

(a) all records required to be made under sections 11.1 and 11.2;

(b) at least one copy of its standards for granting access to trading, if any, all records relevant to its decision to grant, deny or limit access to a person or company and, if applicable, all other records made or received by the marketplace in the course of complying with section 5.1;

(c) at least one copy of all records made or received by the marketplace in the course of complying with sections 12.1 and 12.4, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records;

(d) all written notices provided by the marketplace to marketplace participants generally, including notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the marketplace and denials of, or limitation to, access to the marketplace;

(e) the acknowledgement obtained under subsection 5.9(2) or 6.11(2);

(f) a copy of any agreement referred to in section 8.4 of NI 23-101;

(g) a copy of any agreement referred to in subsections 13.1(2) and 13.1(3);

(h) a copy of any agreement referred to in section 5.10; and

(i) a copy of any agreement referred to in paragraph 5.12(c).

(2) During the period in which a marketplace is in existence, the marketplace must keep

(a) all organizational documents, minute books and stock certificate books;

(b) copies of all forms filed under Part 3; and

(c) in the case of an ATS, copies of all notices given under section 6.7.

11.4 [repealed]

11.5 Synchronization of Clocks

(1) A marketplace trading exchange-traded securities or foreign exchange-traded securities, an information processor receiving information about those securities, and a dealer trading those securities must synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101 with

the clock used by a regulation services provider monitoring the activities of marketplaces and marketplace participants trading those securities.

(2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities, and an inter-dealer bond broker trading those securities must synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101.

PART 12 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

12.1 System Requirements - For each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace must

(a) develop and maintain

(i) an adequate system of internal control over those systems, and

(ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and

(c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction, delay or security breach and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service and the results of the marketplace's internal review of the failure, malfunction, delay or security breach.

12.1.1 Auxiliary Systems - For each system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, that, if breached, would pose a security threat to one or more of the previously mentioned systems, a marketplace must

(a) develop and maintain an adequate system of information security controls that relate to the security threats posed to any system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, and

(b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material security breach and provide timely updates on the status of the breach, the resumption of service, where applicable, and the results of the marketplace's internal review of the security breach.

12.2 System Reviews

(1) A marketplace must annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that the marketplace is in compliance with

(a) paragraph 12.1(a),

(b) section 12.1.1, and

(c) section 12.4.

(2) A marketplace must provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or audit committee, promptly upon the report's completion, and

(b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.

12.3 Marketplace Technology Requirements and Testing Facilities

(1) A marketplace must make publicly available all technology requirements regarding interfacing with or accessing the marketplace in their final form,

(a) if operations have not begun, for at least three months immediately before operations begin; and

(b) if operations have begun, for at least three months before implementing a material change to its technology requirements.

(2) After complying with subsection (1), a marketplace must make available testing facilities for interfacing with or accessing the marketplace,

(a) if operations have not begun, for at least two months immediately before operations begin; and

(b) if operations have begun, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace must not begin operations before

(a) it has complied with paragraphs (1)(a) and (2)(a),

(b) its regulation services provider, if applicable, has confirmed to the marketplace that trading may commence on the marketplace, and

(c) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed.

(3.1) A marketplace must not implement a material change to the systems referred to in section 12.1 before

(a) it has complied with paragraphs (1)(b) and (2)(a), and

(b) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.

(4) Subsection (3.1) does not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if

(a) the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and

(b) the marketplace publishes the changed technology requirements as soon as practicable.

12.3.1 Uniform Test Symbols

A marketplace must use uniform test symbols, as set by a regulator, or in Québec, the securities regulatory authority, for the purpose of performing testing in its production environment.

12.4 Business Continuity Planning

(1) A marketplace must

(a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and

(b) test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.

(2) A marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing, can resume operations within two hours following the declaration of a disaster by the marketplace.

(3) A recognized exchange or quotation and trade reporting system, that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that is critical and supports real-time market surveillance, can resume operations within two hours following the declaration of a disaster at the primary site by the exchange or quotation and trade reporting system.

(4) A regulation services provider, that has entered into a written agreement with a marketplace to conduct market surveillance for the marketplace, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the regulation services provider, that is critical and supports real-time market surveillance can resume operations within two hours following the declaration of a disaster at the primary site by the regulation services provider.

12.4.1 Industry-Wide Business Continuity Tests

A marketplace, recognized clearing agency, information processor, and participant dealer must participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority.

PART 13 CLEARING AND SETTLEMENT

13.1 Clearing and Settlement

(1) All trades executed on a marketplace must be reported to and settled through a clearing agency.

(2) For a trade executed through an ATS by a subscriber that is registered as a dealer under securities legislation, the ATS and its subscriber must enter into an agreement that specifies whether the trade must be reported to a clearing agency by

(a) the ATS;

(b) the subscriber; or

(c) an agent for the subscriber that is a clearing member of a clearing agency.

(3) For a trade executed through an ATS by a subscriber that is not registered as a dealer under securities legislation, an ATS and its subscriber must enter into an agreement that specifies whether the trade must be reported to a clearing agency by

(a) the ATS; or

(b) an agent for the subscriber that is a clearing member of a clearing agency.

13.2 Access to Clearing Agency of Choice

(1) A marketplace must report a trade in a security to a clearing agency designated by a marketplace participant.

(2) Subsection (1) does not apply to a trade in a security that is a standardized derivative or an exchange-traded security that is an option.

PART 14 REQUIREMENTS FOR AN INFORMATION PROCESSOR

14.1 Filing Requirements for an Information Processor

(1) A person or company that intends to carry on business as an information processor must file Form 21-101F5 at least 90 days before the information processor begins to carry on business as an information processor.

(2) **[repealed]**

14.2 Change in Information

(1) At least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, an information processor must file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

(2) If an information processor implements a change involving a matter set out in Form 21-101F5, other than a change referred to in subsection (1), the information processor must, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

14.3 Ceasing to Carry on Business as an Information Processor

(1) If an information processor intends to cease carrying on business as an information processor, the information processor must file a report on Form 21-101F6 at least 30 days before ceasing to carry on that business.

(2) If an information processor involuntarily ceases to carry on business as an information processor, the information processor must file a report on Form 21-101F6 as soon as practicable after it ceases to carry on that business.

14.4 Requirements Applicable to an Information Processor

(1) An information processor for exchange-traded securities must enter into an agreement with each marketplace~~, inter-dealer bond broker and dealer~~ that is required to provide information to the information processor which states that the marketplace~~, inter-dealer bond broker or dealer~~ will

(a) provide information to the information processor in accordance with Part 7 ~~or 8, as applicable~~of this Instrument; and

(b) comply with any other reasonable requirements set by the information processor.

(2) An information processor must provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.

(3) An information processor must keep such books, records and other documents as are reasonably necessary for the proper recording of its business.

(4) An information processor must establish in a timely manner an electronic connection or changes to an electronic connection to a ~~marketplace, inter-dealer bond broker~~person or ~~dealer~~company that is required to provide information to the information processor

(5) An information processor must provide prompt and accurate order and trade information and must not unreasonably restrict fair access to such information.

(6) An information processor must file annual audited financial statements within 90 days after the end of its financial year that

(a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, Canadian GAAP applicable to private enterprises or IFRS,

(b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and

(c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an auditor's report.

(6.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the income statement and the statement of cash flow of the information processor and any other information necessary to demonstrate the financial condition of the information processor within 90 days after the end of the financial year of the person or company.

(7) An information processor must file its financial budget within 30 days after the start of a financial year.

(7.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the financial budget relating to the information processor within 30 days of the start of the financial year of the person or company.

(8) ~~An information processor must file, within 30 days after the end of each calendar quarter, the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities.~~[repealed]

(9) ~~An information processor must file, within 30 days after the end of each calendar year, the process to communicate the designated securities to the marketplaces, inter-dealer bond brokers and dealers providing the information required by the Instrument, including where the list of designated securities can be found.~~[repealed]

14.5 System Requirements - An information processor must,

(a) develop and maintain

(i) an adequate system of internal controls over its critical systems, and

(ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support, and system software support,

(b) in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,

(i) make reasonable current and future capacity estimates for each of its systems, and

(ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner,

(c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a) and section 14.6,

(d) provide the report resulting from the review conducted under paragraph (c) to

(i) its board of directors or the audit committee promptly upon the report's completion, and

(ii) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the ~~calendar~~information processor's financial year end, and

(e) promptly notify the following of any failure, malfunction or material delay of its systems or equipment

(i) the regulator or, in Québec, the securities regulatory authority, and

(ii) any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor.

14.6 Business Continuity Planning

An information processor must

(a) develop and maintain reasonable business continuity plans, including disaster recovery plans,

(b) test its business continuity plans, including disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually, and

(c) establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical systems can resume operations within one hour following the declaration of a disaster by the information processor.

14.7 Confidential Treatment of Trading Information

An information processor must not release order and trade information to a person or company other than the ~~marketplace, inter-dealer bond broker~~person or ~~dealer~~company that provided this information in accordance with this Instrument or a securities regulatory authority, unless

(a) the release of that information is required by this Instrument or under applicable law, or

(b) the information processor received prior approval from the securities regulatory authority.

14.8 Transparency of Operations of an Information Processor

An information processor must publicly disclose on its website information reasonably necessary to enable a person or company to understand the information processor's operations or services it provides including, but not limited to

(a) all fees charged by the information processor for the consolidated data,

(b) in the case of an information processor for corporate debt securities or government debt securities,

(i) the marketplaces that report orders for corporate debt securities or government debt securities to the information processor, as applicable,

(ii) the inter-dealer bond brokers that report orders for government debt securities to the information processor,

(iii) the persons and companies that report trades in corporate debt securities or government debt securities to the information processor, as applicable,

(iv) when trades in each corporate debt security or government debt security, as applicable, must be provided to the information processor by a person or company,

(v) when the information provided to the information processor will be publicly disseminated by the information processor, and

(vi) the cap on the displayed volume of trades for each corporate debt security or government debt security, as applicable,

~~(b) a description of the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities,,~~

(c) access requirements, ~~and~~

(d) the policies and procedures to manage conflicts of interest that may arise in the operation of the information processor, and

(e) a list of the types of data elements relating to the order and trade information required to be provided under Part 7 or Part 8 of this Instrument.

PART 15 EXEMPTION

15.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PROPOSED CHANGES TO COMPANION POLICY 21-101 CP

MARKETPLACE OPERATION

PART 1 INTRODUCTION

1.1 Introduction - Exchanges, quotation and trade reporting systems and ATSs are marketplaces that provide a market facility or venue on which securities can be traded. The areas of interest from a regulatory perspective are in many ways similar for each of these marketplaces since they may have similar trading activities. The regulatory regime for exchanges and quotation and trade reporting systems arises from the securities legislation of the various jurisdictions. Exchanges and quotation and trade reporting systems are recognized under orders from the Canadian securities regulatory authorities, with various terms and conditions of recognition. ATSs, which are not recognized as exchanges or quotation and trade reporting systems, are regulated under National Instrument 21-101 Marketplace Operation (the Instrument) and National Instrument 23-101 Trading Rules (NI 23-101). The Instrument and NI 23-101, which were adopted at a time when new types of markets were emerging, provide the regulatory framework that allows and regulates the operation of multiple marketplaces.

The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to the Instrument, including:

(a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and

(b) the interpretation of various terms and provisions in the Instrument.

1.2 Definition of Exchange-Traded Security - Section 1.1 of the Instrument defines an "exchange-traded security" as a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of the Instrument and NI 23-101.

If a security trades on a recognized exchange or recognized quotation and trade reporting system on a “when issued” basis, as defined in IIROC’s Universal Market Integrity Rules, the security would be considered to be listed on that recognized exchange or quoted on that recognized quotation and trade reporting system and would therefore be an exchange-traded security.

If no “when issued” market has been posted by a recognized exchange or recognized quotation and trade reporting system for a security, an ATS may not allow this security to be traded on a “when issued” basis on its marketplace.

A security that is inter-listed would be considered to be an exchange-traded security. A security that is listed on a foreign exchange or quoted on a foreign quotation and trade reporting system, but is not listed or quoted on a domestic exchange or quotation and trade reporting system, falls within the definition of “foreign exchange-traded security”.

1.3 Definition of Foreign Exchange-Traded Security - The definition of foreign exchange-traded security includes a reference to ordinary members of the International Organization of Securities Commissions (IOSCO). To determine the current list of ordinary members, reference should be made to the IOSCO website at www.iosco.org.

1.4 Definition of Regulation Services Provider - The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace.

PART 2 MARKETPLACE

2.1 Marketplace

(1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. Subparagraphs (a)(iii) and (a)(iv) of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATSs. A dealer that internalizes its orders for exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of "marketplace" and an ATS.

(2) Two of the characteristics of a "marketplace" are

(a) that it brings together orders for securities of multiple buyers and sellers; and

(b) that it uses established, non-discretionary methods under which the orders interact with each other.

(3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it

(a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or

(b) receives orders centrally for processing and execution (regardless of the level of automation used).

(4) The Canadian securities regulatory authorities are of the view that "established, nondiscretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."

(5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Instrument:

(a) A system operated by a person or company that only permits one seller to sell its securities, such as a system that permits issuers to sell their own securities to investors.

(b) A system that merely routes orders for execution to a facility where the orders are executed.

(c) A system that posts information about trading interests, without facilities for execution.

In the first two cases, the criteria of multiple buyers and sellers would not be met. In the last two cases, routing systems and bulletin boards do not establish non-discretionary methods under which parties entering orders interact with each other.

(6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is required to be registered as a dealer under securities legislation.

(7) Inter-dealer bond brokers that conduct traditional inter-dealer bond broker activity have a choice as to how to be regulated under the Instrument and NI 23-101. Each inter-dealer bond broker can choose to be subject to IIROC Rule 36 and IIROC Rule 2100, fall within the definition of inter-dealer bond broker in the Instrument and be subject to the transparency requirements of Part 8 of the Instrument. Alternatively, the inter-dealer bond broker can choose to be an ATS and comply with the provisions of the Instrument and NI 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker that chooses to be an ATS will not be subject to Rule 36 or IIROC Rule 2100, but will be subject to all other IIROC requirements applicable to a dealer.

(8) Section 1.2 of the Instrument contains an interpretation of the definition of “marketplace”. The Canadian securities regulatory authorities do not consider a system that only routes unmatched orders to a marketplace for execution to be a marketplace. If a dealer uses a system to match buy and sell orders or pair orders with contra-side orders outside of a marketplace and route the matched or paired orders to a marketplace as a cross, the Canadian securities regulatory authorities may consider the dealer to be operating a marketplace under subparagraph (a)(iii) of the definition of “marketplace”. The Canadian securities regulatory authorities encourage dealers that operate or plan to operate such a system to meet with the applicable securities regulatory authority to discuss the operation of the system and whether the dealer’s system falls within the definition of “marketplace”.

PART 3 CHARACTERISTICS OF EXCHANGES, QUOTATION AND TRADE REPORTING SYSTEMS AND ATSs

3.1 Exchange

(1) Securities legislation of most jurisdictions does not define the term "exchange".

(2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace

(a) requires an issuer to enter into an agreement in order for the issuer's securities to trade on the marketplace, i.e., the marketplace provides a listing function;

(b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis, i.e., the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis. For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;

(c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or

(d) disciplines marketplace participants, in addition to discipline by exclusion from trading, i.e., the marketplace can levy fines or take enforcement action.

(3) An ATS that requires a subscriber to agree to comply with the requirements of a regulation services provider as part of its contract with that subscriber is not setting "requirements governing the conduct of subscribers". In addition, marketplaces are not precluded from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.

(4) The criteria in subsection 3.1(2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

3.2 Quotation and Trade Reporting System

(1) Securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under securities legislation in those jurisdictions as a person or company, other than an exchange or registered dealer, that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers. A person or company that carries on business as a vendor of market data or a bulletin board with no execution facilities would not normally be considered to be a quotation and trade reporting system.

(2) A quotation and trade reporting system is considered to have "quoted" a security if

(a) the security has been subject to a listing or quoting process, and

(b) the issuer issuing the security or the dealer trading the security has entered into an agreement with the quotation and trade reporting system to list or quote the security.

3.3 Definition of an ATS

(1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as

(a) requiring listing agreements,

(b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,

(c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and

(d) disciplining subscribers.

A marketplace, other than a quotation and trade reporting system, that engages in any of these activities or meets these criteria would, in the view of the Canadian securities regulatory authorities, be an exchange and would have to be recognized as such in order to carry on business, unless exempted from this requirement by the Canadian securities regulatory authorities.

(2) An ATS can establish trading algorithms that provide that a trade takes place if certain events occur. These algorithms are not considered to be "requirements governing the conduct of subscribers".

(3) A marketplace that would otherwise meet the definition of an ATS in the Instrument may apply to the Canadian securities regulatory authorities for recognition as an exchange.

3.4 Requirements Applicable to ATSs

(1) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.

(2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.

(3) Under paragraph 6.1(a) of the Instrument, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under securities legislation, including the requirements imposed by the Instrument and NI 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.

(4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under paragraph 6.1(a) and all other requirements in the Instrument and in NI 23-101 and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.

(5) Paragraph 6.1(b) of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the IIROC is the only entity that would come within the definition.

(6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.

(7) Subsection 6.7(1) of the Instrument requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS and its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation or if additional terms and conditions should be placed on the registration of the ATS. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having significant market presence in a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, debt securities or options.

(8) Any marketplace that is required to provide notice under section 6.7 of the Instrument will determine the calculation based on publicly available information.

PART 4 RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

4.1 Recognition as an Exchange or Quotation and Trade Reporting System

(1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.

(2) In determining whether it is in the public interest to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities will look at a number of factors, including

(a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Instrument;

(b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;

(c) whether the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions;

(d) whether the rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors;

(e) whether the exchange or quotation and trade reporting system has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides;

(f) whether the requirements of the exchange or quotation and trade reporting system relating to access to its services are fair and reasonable; and

(g) whether the exchange or quotation and trade reporting system's process for setting fees is fair, transparent and appropriate, and whether the fees are equitably allocated among the participants, issuers and other users of services, do not have the effect of creating barriers to access and at the same time ensure that the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions.

4.2 Process

Although the basic requirements or criteria for recognition of an exchange or quotation and trade reporting system may be similar in various jurisdictions, the precise requirements and the process for seeking a recognition or an exemption from recognition in each jurisdiction is determined by that jurisdiction.

PART 5 ORDERS

5.1 Orders

(1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders". However, if those prices or quantities are implied and determinable, for example, by knowing the features of the marketplace, the indications of interest may be considered an order.

(2) The terminology used is not determinative of whether an indication of interest constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty (i.e. the indication is "actionable"). The Canadian securities regulatory authorities would consider an indication of interest to be actionable if it includes sufficient information to enable it to be executed without communicating with the marketplace participant that entered the order. Such information may include the symbol of the security, side (buy or sell), size, and price. The information may be explicitly stated, or it may be implicit and determinable based on the features of the marketplace. Even if the person or company must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated or an implied price, based on understandings or past dealings, will be viewed as an order.

(3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Instrument, the Canadian securities regulatory authorities do not consider special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery, to be orders that must be provided to an information processor or, if there is no information processor, to an information vendor for consolidation.

(4) The securities regulatory authority may consider granting an exemption from the pre-trade transparency requirements in sections 7.1, 7.3, 8.1 and/or 8.2 of the Instrument to a marketplace for orders that result from a request for quotes or facility that allows negotiation between two parties provided that

(a) order details are shown only to the negotiating parties,

(b) other than as provided by paragraph (a), no actionable indication of interest or order is displayed by either party or the marketplace, and

(c) each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of the Instrument.

(5) The determination of whether an order has been placed does not turn on the level of automation used. Orders can be given over the telephone, as well as electronically.

PART 6 MARKETPLACE INFORMATION AND FINANCIAL STATEMENTS

6.1 Forms Filed by Marketplaces

(1) The definition of marketplace includes exchanges, quotation and trade reporting systems and ATSs. The legal entity that is recognized as an exchange or quotation and trade reporting system, or registered as a dealer in the case of an ATS, owns and operates the market or trading facility. In some cases, the entity may own and operate more than one trading facility. In such cases the marketplace may file separate forms in respect of each trading facility, or it may choose to file one form covering all of the different trading facilities. If the latter alternative is chosen, the marketplace must clearly identify the facility to which the information or changes apply.

(2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain proprietary financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.

(3) While initial Forms 21-101F1 and 21-101F2 and amendments thereto are kept confidential, certain Canadian securities regulatory authorities may publish a summary of the information included in the forms filed by a marketplace, or information related to significant changes to the forms of a marketplace, where the Canadian securities regulatory authorities are of the view that a certain degree of transparency for certain aspects of a marketplace would allow investors and industry participants to be better informed as to how securities trade on the marketplace.

(4) Under subsection 3.2(1) of the Instrument, a marketplace is required to file an amendment to the information provided in Form 21-101F1 or Form 21-101F2, as applicable, at least 45 days prior to implementing a significant change. The Canadian securities regulatory authorities consider a significant change to be a change that could significantly impact a marketplace, its systems, its market structure, its marketplace participants or their systems, investors, issuers or the Canadian capital markets.

A change would be considered to significantly impact the marketplace if it is likely to give rise to potential conflicts of interest, to limit access to the services of a marketplace, introduce changes to the structure of the marketplace or result in costs, such as implementation costs, to marketplace participants, investors or, if applicable, the regulation services provider.

The following types of changes are considered to be significant changes as they would always have a significant impact:

(a) changes in the structure of the marketplace, including procedures governing how orders are entered, displayed (if applicable), executed, how they interact, are cleared and settled;

(b) new or changes to order types, and

(c) changes in the fees and the fee model of the marketplace.

The following may be considered by the Canadian securities regulatory authorities as significant changes, depending on whether they have a significant impact:

(d) new or changes to the services provided by the marketplace, including the hours of operation;

(e) new or changes to the means of access to the market or facility and its services;

(f) new or changes to types of securities traded on the marketplace;

(g) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;

(h) new or changes to types of marketplace participants;

(i) changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity;

(j) changes to the corporate governance of the marketplace, including changes to the composition requirements for the board of directors or any board committees and changes to the mandates of the board of directors or any board committees;

(k) changes in control over marketplaces;

(l) changes in affiliates that provide services to or on behalf of the marketplace;

(m) new or changes in outsourcing arrangements for key marketplace services or systems; and

(n) new or changes in custody arrangements.

(5) Changes to information in Form 21-101F1 or Form 21-101F2 that

(a) do not have a significant impact on the marketplace, its market structure, marketplace participants, investors, issuers or the Canadian capital markets, or

(b) are housekeeping or administrative changes such as

(i) changes in the routine processes, policies, practices, or administration of the marketplace,

(ii) changes due to standardization of terminology,

(iii) corrections of spelling or typographical errors,

(iv) necessary changes to conform to applicable regulatory or other legal requirements,

(v) minor system or technology changes that would not significantly impact the system or its capacity, and

(vi) changes to the list of marketplace participants and the list of all persons or entities denied or limited access to the marketplace,

would be filed in accordance with the requirements outlined in subsection 3.2(3) of the Instrument.

(6) As indicated in subsection (4) above, the Canadian securities regulatory authorities consider a change in a marketplace's fees or fee model to be a significant change. However, the Canadian securities regulatory authorities recognize that in the current, competitive multiple marketplace environment, which may at times require that frequent changes be made to the fees or fee model of marketplaces, marketplaces may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3.2(2) of the Instrument provides that marketplaces may provide information describing the change in fees or fee structure in a shorter timeframe, at least seven business days before the expected implementation date of the change in fees or fee structure.

(7) For the changes referred to in subsection 3.2(3) of the Instrument, the Canadian securities regulatory authorities may review these filings to ascertain the appropriateness of the categorization of such filings. The marketplace will be notified in writing if there is disagreement with respect to the categorization of the filing.

(8) The Canadian securities regulatory authorities will make best efforts to review amendments to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of the Instrument. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes. The Canadian securities regulatory authorities will review changes to the information in Forms 21-101F1 and 21-101F2 in accordance with staff practices in each jurisdiction.

(8.1) In order to ensure records regarding the information in a marketplace's Form 21-101F1 or Form 21-101F2 are kept up to date, subsection 3.2(4) of the Instrument requires the chief executive officer of a marketplace to certify, within 30 days after the end of each calendar year, that the information contained in the marketplace's Form 21-101F1 or Form 21-101F2 as applicable, is true, correct and complete and the marketplace is operating as described in the applicable form. This certification is required at the same time as the updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, is required to be filed pursuant to subsection 3.2(5) of the Instrument. The certification under subsection 3.2(4) is also separate and apart from the form of certification in Form 21-101F1 and Form 21-101F2.

(8.2) The Canadian securities regulatory authorities expect that the certifications provided pursuant to subsection 3.2(4) of the Instrument will be preserved by the marketplace as part of its books and records obligation under Part 11 of the Instrument.

(9) Section 3.3 of the Instrument requires a marketplace to file Form 21-101F3 by the following dates: April 30 (for the calendar quarter ending March 31), July 30 (for the calendar quarter ending June 30), October 30 (for the calendar quarter ending September 30) and January 30 (for the calendar quarter ending December 31).

6.2 Filing of Financial Statements

Part 4 of the Instrument sets out the financial reporting requirements applicable to marketplaces. Subsections 4.1(2) and 4.2(2) respectively require an ATS to file audited financial statements initially, together with Form 21-101F2, and on an annual basis thereafter. These financial statements may be in the same form as those filed with IIROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IIROC.

PART 7 MARKETPLACE REQUIREMENTS

7.1 Access Requirements

(1) Section 5.1 of the Instrument sets out access requirements that apply to a marketplace. The Canadian securities regulatory authorities note that the requirements regarding access for marketplace participants do not restrict the marketplace from maintaining reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, and fees, as applicable, of the marketplace do not unreasonably create barriers to access to the services provided by the marketplace.

(2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, a marketplace should permit fair and efficient access to

(a) a marketplace participant that directly accesses the marketplace,

(b) a person or company that is indirectly accessing the marketplace through a marketplace participant, or

(c) another marketplace routing an order to the marketplace.

The reference to "a person or company" in paragraph (b) includes a system or facility that is operated by a person or company.

(3) The reference to "services" in section 5.1 of the Instrument means all services that may be offered to a person or company and includes all services relating to order entry, trading, execution, routing, data and includes co-location.

(4) Marketplaces that send indications of interest to a selected smart order router or other system should send the information to other smart order routers or systems to meet the fair access requirements of the Instrument.

(5) Marketplaces are responsible for ensuring that the fees they set are in compliance with section 5.1 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, a marketplace should consider a number of factors, including

(a) the value of the security traded,

(b) the amount of the fee relative to the value of the security traded,

(c) the amount of fees charged by other marketplaces to execute trades in the market,

(d) with respect to market data fees, the amount of market data fees charged relative to the market share of the marketplace, and,

(e) with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by a marketplace unreasonably condition or limit access to its services. With respect to trading fees, it is the view of the Canadian securities regulatory authorities that a trading fee equal to or greater than the minimum trading increment as defined in IIROC's Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to a marketplace's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to a marketplace's services when taking into account factors including those listed above.

7.2 **Public Interest Rules -** Section 5.3 of the Instrument sets out the requirements applicable to the rules, policies and similar instruments adopted by recognized exchanges and recognized quotation and trade reporting systems. These requirements acknowledge that recognized exchanges and quotation and trade reporting systems perform regulatory functions. The Instrument does not require the application of these requirements to an ATS's trading requirements. This is because, unlike exchanges, ATSs are not permitted to perform regulatory functions, other than setting requirements regarding conduct in respect of the trading by subscribers on the marketplace, i.e. requirements related to the method of trading or algorithms used by their subscribers to execute trades in the system. However, it is the expectation of the Canadian securities regulatory authority that the requirement in section 5.7 of the Instrument that marketplaces take reasonable steps to ensure they operate in a manner that does not interfere with the maintenance of fair and orderly markets, applies to an ATS's requirements. Such requirements may include those that deal with subscriber qualification, access to the marketplace, how orders are entered, interact, execute, clear and settle.

7.3 **Compliance Rules -** Section 5.4 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to have appropriate procedures to deal with violations of rules, policies or other similar instruments of the exchange or quotation and trade reporting system. This section does not preclude enforcement action by any other person or company, including the Canadian securities regulatory authorities or the regulation services provider.

7.4 **Filing of Rules -** Section 5.5 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to file all rules, policies and other similar instruments and amendments as required by the securities regulatory authority. Initially, all rules, policies and other similar instruments will be reviewed before implementation by the exchange or quotation and trade reporting system. Subsequent to recognition, the securities regulatory authority may develop and implement a protocol that will set out the procedures to be followed with respect to the review and approval of rules, policies and other similar instruments and amendments.

7.5 **Review of Rules -** The Canadian securities regulatory authorities review the rules, policies and similar instruments of a recognized exchange or recognized quotation and trade reporting system in accordance with the recognition order and rule protocol issued by the jurisdiction in which the exchange or quotation and trade reporting system is recognized. The rules of recognized exchanges and quotation and trade reporting systems are included in their rulebooks, and the principles and requirements applicable to these rules are set out in section 5.3 of the Instrument. For an ATS, whose trading requirements, including any trading rules, policies or practices, are incorporated in Form 21-101F2, any changes would be filed in accordance with the filing requirements applicable to changes to information in Form 21-101F2 set out in subsections 3.2(1) and 3.2(3) of the Instrument and reviewed by the Canadian securities regulatory authorities in accordance with staff practices in each jurisdiction.

7.6 Fair and Orderly Markets

(1) Section 5.7 of the Instrument establishes the requirement that a marketplace take reasonable steps to ensure it operates in a way that does not interfere with the maintenance of fair and orderly markets. This applies both to the operation of the marketplace itself and to the impact of the marketplace's operations on the Canadian market as a whole.

(2) This section does not impose a responsibility on the marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or quotation and trade reporting system that has assumed responsibility for monitoring the conduct of its marketplace participants directly rather than through a regulation services provider. However, marketplaces are expected in the normal course to monitor order entry and trading activity for compliance with the marketplace's own operational policies and procedures. They should also alert the regulation services provider if they become aware that disorderly or disruptive order entry or trading may be occurring, or of possible violations of applicable regulatory requirements.

(3) Part of taking reasonable steps to ensure that a marketplace's operations do not interfere with fair and orderly markets necessitates ensuring that its operations support compliance with regulatory requirements including applicable rules of

a regulation services provider. This does not mean that a marketplace must system-enforce all regulatory requirements. However, it should not operate in a manner that to the best of its knowledge would cause marketplace participants to breach regulatory requirements when trading on the marketplace.

7.7 Confidential Treatment of Trading Information

(0.1) The Canadian securities regulatory authorities are of the view that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release a marketplace participant's order or trade information without obtaining its written consent, provided this information is used solely for capital markets research and only if certain terms and conditions are met. Subsection 5.10(1.1) is not intended to impose any obligation on a marketplace to disclose information if requested by a researcher and the marketplace may choose to maintain its marketplace participants' order and trade information in confidence. However, if the marketplace decides to disclose this information, it must ensure that certain terms and conditions are met to ensure that the marketplace participant's information is not misused.

(0.2) In order for a marketplace to disclose a marketplace participant's order or trade information, subparagraphs 5.10(1.1)(a)-(b) of the Instrument require a marketplace to reasonably believe that the information will be used by the recipient solely for the purposes of capital markets research and to reasonably believe that if information identifying, directly or indirectly, a marketplace participant, or a client of the marketplace participant is released, the information is necessary for the research and that the purpose of the research is not intended to identify the marketplace participant or client or to identify a trading strategy, transactions, or market positions of the marketplace participant or client. The Canadian securities regulatory authorities expect that a marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Where the information to be released to the recipient could identify a marketplace participant or a client of a marketplace participant, the Canadian securities regulatory authorities also expect the marketplace to make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the research and that the purpose of the research is not to identify a particular marketplace participant or a client of the marketplace participant or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.

(0.3) In considering releasing order or trade information, the Canadian securities regulatory authorities expect a marketplace to exercise caution regarding information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.

(0.4) Subparagraph 5.10(1.1)(c) of the Instrument requires a marketplace that intends to provide its marketplace participants' order and trade information to a researcher to enter into a written agreement with each person or company that will receive such information. Subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that the person or company agrees to use the order and trade information only for capital markets research purposes. In the view of the Canadian securities regulatory authorities, commercialization of the information by the recipient, for example by using the information for the purposes of trading, advising others to trade or for reverse engineering a trading strategy, would not constitute use of the information for capital markets research purposes.

(0.5) Subparagraph 5.10(1.1)(c)(i) of the Instrument provides that the agreement must also prohibit the recipient from sharing the marketplace participants' order and trade data with any other person or company, such as a research assistant, without the marketplace's consent. The marketplace will be responsible for determining what steps are necessary to ensure the other person or company receiving the marketplace participants' data is not misusing this data. For example, the marketplace may enter into a similar agreement with each individual or company that has access to the data.

(0.6) To protect the identity of particular marketplace participants or their customers, subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that recipients will not publish or disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or its clients. Also, to protect the confidentiality of the data, the agreement must require that the order and trade information is securely stored at all times and that the data is kept for no longer than a reasonable period of time following the completion of the research and publication process.

(0.7) The agreement must also require that the marketplace be notified of any breach or possible breach of the confidentiality of the information. Marketplaces are required to notify the appropriate securities regulatory authorities of the breach or possible breach and have the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the agreement or of the confidentiality of the information provided. In the view of the Canadian securities regulatory authorities, reasonable steps in the event of an actual or apparent breach of the agreement or of the confidentiality of the information may include the marketplace seeking an injunction preventing any unauthorized use or disclosure of the information by a recipient.

(0.8) Subparagraph 5.10(1.1)(c)(ii) of the Instrument provides for a limited carve-out from the restraints on the use and disclosure of the information by a recipient for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the research prior to the publication of the results of the research. In particular, clause 5.10(1.1)(c)(ii)(C) requires a marketplace to enter into a written agreement with a person or company receiving order or trade information from the marketplace that provides that the person or company may disclose information used in connection with research submitted to a publication so long as the person or company obtains a written agreement from the publisher and anyone involved in the verification of the research that provides for certain restrictions on the use and disclosure of the information by the publisher or the other person or company. A marketplace may consider requiring a person or company that proposes to disclose order or trade information pursuant to subparagraph 5.10(1.1)(c)(ii) to acknowledge that it has obtained the agreement required by clause 5.10(1.1)(c)(ii)(C) at the time that it notifies the marketplace prior to disclosing the information for verification purposes, as required by clause 5.10(1.1)(c)(ii)(B).

(1) Subsection 5.10 (2) of the Instrument provides that a marketplace must not carry on business as a marketplace unless it has implemented reasonable safeguards and procedures to protect a marketplace participant’s trading information. These include

(a) limiting access to the trading information of marketplace participants, such as the identity of marketplace participants and their orders, to those employees of, or persons or companies retained by, the marketplace to operate the system or to be responsible for its compliance with securities legislation; and

(b) having in place procedures to ensure that employees of the marketplace cannot use such information for trading in their own accounts.

(2) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the marketplace, whether or not they have direct responsibility for the operation of the marketplace.

(3) Nothing in section 5.10 of the Instrument prohibits a marketplace from complying with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*. This statement is necessary because an investment dealer that operates a marketplace may be an intermediary for the purposes of National Instrument 54-101, and may be required to disclose information under that Instrument.

7.8 Management of Conflicts of Interest

(1) Marketplaces are required under section 5.11 of the Instrument to maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the marketplace or the services it provides. These may include conflicts, actual or perceived, related to the commercial interest of the marketplace, the interests of its owners or its operators, referral arrangements and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities.

(2) The marketplace’s policies should also take into account conflicts for owners that are marketplace participants. These may include inducements to send order flow to the marketplace to obtain a larger ownership position or to use the marketplace to trade against their clients’ order flow. These policies should be disclosed as provided in paragraph 10.1(e) of the Instrument.

7.9 Outsourcing – Section 5.12 of the Instrument sets out the requirements that marketplaces that outsource any of their key services or systems to a service provider, which may include affiliates or associates of the marketplace, must meet. Generally, marketplaces are required to establish policies and procedures to evaluate and approve these outsourcing agreements. Such policies and procedures would include assessing the suitability of potential service providers and the ability of the marketplace to continue to comply with securities legislation in the event of the service provider’s bankruptcy, insolvency or termination of business. Marketplaces are also required to monitor the ongoing performance of the service provider to which they outsourced key services, systems or facilities. The requirements under section 5.12 of the Instrument apply regardless of whether the outsourcing arrangements are with third- party service providers, or with affiliates of the marketplaces.

7.10 Access Arrangements with a Service Provider – If a third party service provider provides a means of access to a marketplace, section 5.13 of the Instrument requires the marketplace to ensure the third party service provider complies with the written standards for access the marketplace has established pursuant to paragraph 5.1(2)(a) of the Instrument when providing access services. A marketplace must establish written standards for granting access to each of its services under paragraph 5.1(2)(a) and the Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that these written standards are complied with when access to its platform is provided by a third party.

PART 8 RISK DISCLOSURE TO MARKETPLACE PARTICIPANTS

8.1 **Risk disclosure to marketplace participants –** Subsections 5.9(2) and 6.11(2) of the Instrument require a marketplace to obtain an acknowledgement from its marketplace participants. The acknowledgement may be obtained in a number of ways, including requesting the signature of the marketplace participant or requesting that the marketplace participant initial an initial box or check a check-off box. This may be done electronically. The acknowledgement must be specific to the information required to be disclosed under the relevant subsection and must confirm that the marketplace participant has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that an acknowledgement is obtained from the marketplace participant in a timely manner.

8.2 **[repealed]**

PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES

9.1 Information Transparency Requirements for Exchange-Traded Securities

(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. The Canadian securities regulatory authorities consider that a marketplace that sends information about orders of exchange-traded securities, including indications of interest that meet the definition of an order, to a smart order router is "displaying" that information. The marketplace would be subject to the transparency requirements of subsection 7.1(1) of the Instrument. The transparency requirements of subsection 7.1(1) of the Instrument do not apply to a marketplace that displays orders of exchange-traded securities to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace, as long as these orders meet a minimum size threshold set by the regulation services provider. In other words, the only orders that are exempt from the transparency requirements are those meeting the minimum size threshold. Section 7.2 requires a marketplace to provide accurate and timely information regarding trades of exchange-traded securities that it executes to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Some marketplaces, such as exchanges, may be regulation services providers and will establish standards for the information vendors they use to display order and trade information to ensure that the information displayed by the information vendors is timely, accurate and promotes market integrity. If the marketplace has entered into a contract with a regulation services provider under NI 23-101, the marketplace must provide information to the regulation services provider and an information vendor that meets the standards set by that regulation services provider.

(2) In complying with sections 7.1 and 7.2 of the Instrument, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.

(2.1) Subsections 7.1(3) and 7.2(2) prohibit a marketplace from making available order and trade information to any person or company before it makes the information available to the information processor or, if there is no information processor, to an information vendor. The Canadian securities regulatory authorities acknowledge that there may be differences between the time at which a marketplace participant that takes in market data directly from a marketplace receives the order and trade information and the time at which a marketplace participant that takes in market data from the information processor receives the information. However, in complying with subsections 7.1(3) and 7.2(2) of the Instrument, the Canadian securities regulatory authorities expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace.

(3) **[~~repealed~~deleted]**

(4) **[~~repealed~~deleted]**

(5) It is expected that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the

Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers.

9.2 [~~repealed~~deleted]

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

10.1 Information Transparency Requirements for Unlisted Debt Securities

(1) ~~(1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2018. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.~~The requirements for pre-trade transparency of orders for unlisted debt securities set out in sections 8.1 and 8.2 of the Instrument have not been implemented by reason of the exception provided for in section 8.6 of the Instrument and the fact that no pre-trade requirements have been set by an information processor for corporate debt securities.

(2) The requirements for post-trade transparency of trades in unlisted debt securities are set out in sections 8.1 and 8.2 of the Instrument. The detailed reporting requirements, determined by the Canadian securities regulatory authorities and implemented through the information processor, such as who must report information, deadlines for reporting, delays in publication of information and caps on displayed volume are articulated in this companion policy and in Form 21-101F5.

~~(2) (2) The requirements of the information processor for government debt securities are as follows:~~

(3) Sections 8.1 and 8.2 of the Instrument require persons or companies executing trades in unlisted debt securities by or through that person or company to report these trades to the information processor. Specifically, such persons or companies are currently marketplaces, dealers, inter-dealer bond brokers and banks listed in Schedule I, II and III of the *Bank Act* (Canada).

~~a. (a) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time quotation information displayed on the marketplace for all bids and offers with respect to government debt securities designated by the information processor, including details as to type, issuer, coupon and maturity of security, best bid price, best ask price and total disclosed volume at such prices; and~~

~~(b) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time details of trades of all government debt securities designated by the information processor, including details as to the type, issuer, series, coupon and maturity, price and time of the trade and the volume traded.~~

~~(3)~~

(4) The detailed reporting requirements ~~of the information processor for corporate debt securities are as follows:~~

~~(a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of~~for trades ~~of all corporate~~ in unlisted debt securities ~~designated by the information processor, including details as~~include, but are not limited to details as to the type of ~~counterparty,~~ issuer, ~~type of security, class, series,~~ coupon and maturity, last traded price, last traded yield, date and time of ~~the trade and,~~ execution, settlement date, the type of transaction, the volume transacted (subject to ~~the caps set out below, the~~ volume ~~traded, no later than one hour from the time of the trade or such shorter period of time determined~~caps), as required by the information processor.

(5) Details of the volume transacted will be subject to volume caps as follows:

a. If the total par value of a trade of an investment grade corporate debt security is greater than $2 million, the ~~trade details provided to the~~ information processor ~~are to be reported~~will display it as "$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than $200,000, the ~~trade details provided to the~~ information processor ~~are to be reported~~will display it as "$200,000+".

~~(b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.~~

~~(c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Instrument by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.~~

~~(4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.~~

~~(5) The information processor is required to use transparent criteria and a transparent process to select~~

b. For government debt securities ~~and designated corporate debt securities. The~~the volume transacted will be displayed by the information processor ~~is also required to make the criteria and the process publicly available.~~in accordance with the chart below:

$10M	**$5M**	**$2M**	**250K**
Government of Canada Bills (**GoC Bills**)	Government of Canada nominal bonds with over 10 years remaining to maturity (**GoC>10**)	All provincial debt securities including Real Return Bonds, Strip Coupons and Residuals	Québec municipal debt securities
Government of Canada nominal bonds with 10 or less years remaining to maturity (**GoC <=10**)		All municipal debt securities, except those issued in Québec	
		All other agency debt securities	
All Canada Mortgage Bonds (**CMB**)		Government of Canada Real Return Bonds	
		Government of Canada Strip Coupons and Residuals	

(6) ~~An "investment grade corporate debt security" is a corporate debt security that has a credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:~~

~~**Designated Rating Organization**~~	~~**Long Term Debt**~~	~~**Short Term Debt**~~
~~DBRS Limited~~	~~BBB~~	~~R-2~~
~~Fitch Ratings, Inc.~~	~~BBB~~	~~F3~~
~~Moody's Canada Inc.~~	~~Baa~~	~~Prime-3~~
~~S&P Global Ratings Canada~~	~~BBB~~	~~A-3~~

~~In this subsection,~~

~~"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;~~

~~"DRO affiliate" has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*; and~~

~~"successor credit rating organization" has the same meaning as in National Instrument 44-104 *Short Form Prospectus Distributions*.~~

~~(7) A "non-investment grade corporate debt security" is a corporate debt security that is not an investment grade corporate debt security.~~

~~(8) The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.~~

~~(9)~~ The information processor may ~~request~~propose changes to ~~the~~its transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. ~~The proposed changes to the~~Any initial transparency requirements and any proposed changes will ~~also~~ be subject to consultation with market participants through a notice and comment process, prior to approval by the Canadian securities regulatory authorities.

10.2- ~~**Availability of Information –** In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.~~[deleted]

10.3 **Consolidated Feed –** Section 8.3 of the Instrument requires the information processor to produce ~~a~~accurate consolidated ~~feed in real-time~~information on a timely basis showing the information provided to the information processor under sections 8.1 and 8.2 of the Instrument. The Canadian securities regulatory authorities have determined that information about trades in unlisted debt securities should be displayed by the information processor at 5:00 pm the day after the trade was executed by or through a person or company (T+1 at 5:00 pm ET).

PART 11 MARKET INTEGRATION

11.1 **[~~repealed~~deleted]**

11.2 **[~~repealed~~deleted]**

11.3 **[~~repealed~~deleted]**

11.4 **[~~repealed~~deleted]**

11.5 **Market Integration –** Although the Canadian securities regulatory authorities have removed the concept of a market integrator, we continue to be of the view that market integration is important to our marketplaces. We expect to achieve market integration by focusing on compliance with fair access and best execution requirements. We will continue to monitor developments to ensure that the lack of a market integrator does not unduly affect the market.

PART 12 TRANSPARENCY OF MARKETPLACE OPERATIONS

12.1 Transparency of Marketplace Operations

(1) Section 10.1 of the Instrument requires that marketplaces make publicly available certain information pertaining to their operations and services. While section 10.1 sets out the minimum disclosure requirements, marketplaces may wish to make publicly available other information, as appropriate. Where this information is included in a marketplace's rules, regulations, policies and procedures or practices that are publicly available, the marketplace need not duplicate this disclosure.

(2) Paragraph 10.1(a) requires marketplaces to disclose publicly all fees, including listing, trading, co-location, data and routing fees charged by the marketplace, an affiliate or by a third party to which services have been directly or indirectly outsourced or which directly or indirectly provides those services. This means that a marketplace is expected to publish and make readily available the schedule(s) of fees charged to any and all users of these services, including the basis for charging each fee (e.g., a per share basis for trading fees, a per subscriber basis for data fees, etc.) and would also include any fee rebate or discount and the basis for earning the rebate or discount. With respect to trading fees, it is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed in this context.

(3) Paragraph 10.1(b) requires marketplaces to disclose information on how orders are entered, interact and execute. This would include a description of the priority of execution for all order types and the types of crosses that may be executed on the marketplace. A marketplace should also disclose whether it sends information regarding indications of interest or order information to a smart order router.

(4) Paragraph 10.1(e) requires a marketplace to disclose its conflict of interest policies and procedures. For conflicts arising from the ownership of a marketplace by marketplace participants, the marketplace should include in its marketplace participant agreements a requirement that marketplace participants disclose that ownership to their clients at least quarterly. This is consistent with the marketplace participant's existing obligations to disclose conflicts of interest under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*. A marketplace should disclose if a marketplace or affiliated entity of a marketplace intends to trade for its own account on the marketplace against or in competition with client orders.

(5) Paragraph 10.1(f) requires marketplaces to disclose a description of any arrangements where the marketplace refers its participants to the services of a third-party provider where the marketplace receives some benefit (fee rebate, payment, etc.) if the marketplace participant uses the services of the third- party service provider, and has a potential conflict of interest.

(6) Paragraph 10.1(g) requires marketplaces that offer routing services to disclose a description of how routing decisions are made. The subsection applies whether routing is done by a marketplace-owned smart order router, by an affiliate of a marketplace, or by a third- party to which routing was outsourced.

(7) Paragraph 10.1(h) applies to marketplaces that disseminate indications of interest or any information in order to attract order flow. The Instrument requires that these marketplaces make publicly available information regarding their practices regarding the dissemination of information. This would include a description of the type of information included in the indication of interest displayed, and the types of recipients of such information. For example, a marketplace would describe whether the recipients of an indication of interest are the general public, all of its subscribers, particular categories of subscribers or smart order routers operated by their subscribers or by third party vendors.

PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

13.1 Recordkeeping Requirements for Marketplaces – Part 11 of the Instrument requires a marketplace to maintain certain records. Generally, under provisions of securities legislation, the securities regulatory authorities can require a marketplace to deliver to them any of the records required to be kept by them under securities legislation, including the records required to be maintained under Part 11.

13.2 Synchronization of Clocks – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the trading of the relevant securities on marketplaces, and by, as appropriate, inter-dealer bond brokers or dealers. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system are also required to coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.

PART 14 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

14.1 Systems Requirements - This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument whether operating in-house or outsourced.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations , information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines*' from the Canadian Institute of Chartered Accountants (CICA) and '*COBIT*' ® *5 Management Guidelines*, from the IT Governance Institute, © 2012 ISACA, *IT Infrastructure Library (ITIL) – Service Delivery best practices, ISO/IEC27002:2005 – Information technology – Code of practice for information security management*.

(2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(2.1) Paragraph 12.1(c) of the Instrument refers to a material security breach. A material security breach or systems intrusion is any unauthorized entry into any of the systems that support the functions listed in section 12.1 of the Instrument or any system that shares network resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the regulator. The onus would be on the marketplace to document the reasons for any security breach it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security breach. The criteria for public disclosure of a security breach should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected.

(3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment to ensure that the marketplace is in compliance with paragraph 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The focus of the assessment of any systems that share network resources with trading-related systems required under subsection 12.2(1)(b) would be to address potential threats from a security breach that could negatively impact a trading-related system. A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority.

(3.1) The Canadian securities regulatory authorities also note the critical importance of an appropriate system of cyber-security controls over the systems described in section 12.1 of the Instrument. We further note that, as a matter of best practices, marketplaces may also conduct a vulnerability assessment of these controls in addition to the independent systems review required by subsection 12.2(1) of the Instrument. To the extent that a marketplace carries out, or engages an independent party to carry out on its behalf, a vulnerability assessment and prepares a report of that assessment as part of the development and maintenance of the controls required by section 12.1 of the Instrument, we expect a marketplace to provide that report to the regulator or, in Québec, the securities regulatory authority in addition to the report required to be provided by subsection 12.2(2) of the Instrument.

(4) Paragraph 12.1(c) of the Instrument requires the marketplace to notify the regulator or, in Québec, the securities regulatory authority of any material systems failure. The Canadian securities regulatory authorities consider a failure, malfunction or delay to be "material" if the marketplace would in the normal course of operations escalate the matter to or inform its senior management ultimately accountable for technology. The Canadian securities regulatory authorities also expect that, as part of this notification, the marketplace will provide updates on the status of the failure, the resumption of service and the results of its internal review of the failure.

(5) Under section 15.1 of the Instrument, a regulator or the securities regulatory authority may consider granting a marketplace an exemption from the requirements to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or in Québec, the securities regulatory authority. The scope of the self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

In determining if the exemption is in the public interest and the length of the exemption, the regulator or securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, changes to systems or staff of the marketplace and whether the marketplace has experienced material systems failures, malfunction or delays.

14.2 Marketplace Technology Specifications and Testing Facilities

(1) Subsection 12.3(1) of the Instrument requires marketplaces to make their technology requirements regarding interfacing with or accessing the marketplace publicly available in their final form for at least three months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new three month period prior to operations. The subsection also requires that an operating marketplace make its technology specifications publicly available for at least three months before implementing a material change to its technology requirements.

The Canadian securities regulatory authorities consider a material change to a marketplace's technology requirements to include a change that would require a person or company interfacing with or accessing the marketplace to incur a significant amount of systems-related development work or costs in order to accommodate the change or to fully interact with the marketplace as a result of the change. Such material changes could include changes to technology requirements that would significantly impact a marketplace participant's trading activities, such as the introduction of an order type, or significant changes to a regulatory feed that a regulation services provider takes in from the marketplace.

(2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been made publicly available. Should the marketplace make its specifications publicly available for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations.

If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least two months before implementing the material systems change.

(2.1) Paragraph 12.3(3)(c) of the Instrument prohibits a marketplace from beginning operations before the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.

(2.2) In order to help ensure that appropriate testing procedures for material changes to technology requirements are being followed by the marketplace, subsection 12.3(3.1) of the Instrument requires the chief information officer of the marketplace, or an individual performing a similar function, to certify to the regulator or securities regulatory authority, as applicable, that a material change has been tested according to prudent business practices and is operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.

(3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.

14.2.1 Uniform Test Symbols

(1) Section 12.3.1 of the Instrument requires a marketplace to use uniform test symbols for the purpose of performing testing in its production environment. In the view of the Canadian securities regulatory authorities, the use of uniform test symbols is in furtherance to a marketplace's obligations at section 5.7 of the Instrument to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.

(2) The use of uniform test symbols is intended to facilitate the testing of functionality in a marketplace's production environment; it is not intended to enable stress testing by marketplace participants. The Canadian securities regulatory authorities are of the view that a marketplace may suspend access to a test symbol where its use in a particular circumstance reasonably represents undue risk to the operation or performance of the marketplace's production environment. The Canadian securities regulatory authorities also note that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces.

14.3 Business Continuity Planning

(1) Section 12.4 of the Instrument requires that marketplaces develop and maintain reasonable business continuity plans, including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. In fulfilling the requirement to develop and maintain reasonable business continuity plans, the Canadian securities regulatory authorities expect that marketplaces are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs.

(2) Paragraph 12.4(1)(b) of the Instrument also requires a marketplace to test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.

(3) Section 12.4 of the Instrument also establishes requirements for marketplaces meeting a minimum threshold of total dollar value of trading volume, recognized exchanges or quotation and trade reporting systems that directly monitor the conduct of their members, and regulation services providers that have entered into a written agreement with a marketplace to conduct market surveillance to establish, implement, and maintain policies and procedures reasonably designed to ensure that critical systems can resume operation within certain time limits following the declaration of a disaster. In fulfilling the requirement to establish, implement and maintain the policies and procedures prescribed by section 12.4, the Canadian securities regulatory authorities expect that these policies and procedures will form part of the entity's business continuity and disaster recovery plans and that the entities subject to the requirements at subsections 12.4(2) to (4) of the Instrument will be guided by their own business continuity plans in terms of what constitutes a disaster for purposes of the requirements.

14.4 Industry-Wide Business Continuity Tests - Section 12.4.1 of the Instrument requires a marketplace, recognized clearing agency, information processor, and participant dealer to participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority. The Canadian securities regulatory authorities expect that marketplaces will make their production environments available for purposes of all industry-wide business continuity tests.

PART 15 CLEARING AND SETTLEMENT

15.1 Clearing and Settlement - Subsection 13.1(1) of the Instrument requires all trades executed through a marketplace to be reported and settled through a clearing agency. Subsections 13.1(2) and (3) of the Instrument require that an ATS and its subscriber enter into an agreement that specifies which entity will report and settle the trades of securities. If the subscriber is registered as a dealer under securities legislation, the ATS, the subscriber or an agent for the subscriber that is a member of a clearing agency may report and settle trades. If the subscriber is not registered as a dealer under securities legislation, either the ATS or an agent for the subscriber that is a clearing member of a clearing agency may report and settle trades. The ATS is responsible for ensuring that an agreement with the subscriber is in place before any trade is executed for the subscriber. If the agreement is not in place at the time of the execution of the trade, the ATS is responsible for clearing and settling that trade if a default occurs.

15.2 Access to Clearing Agency of Choice – As a general proposition, marketplace participants should have a choice as to the clearing agency that they would like to use for the clearing and settlement of their trades, provided that such clearing agency is appropriately regulated in Canada. Subsection 13.2(1) of the Instrument thus requires a marketplace to report a trade in a security to a clearing agency designated by a marketplace participant.

The Canadian securities regulatory authorities are of the view that where a clearing agency performs only clearing services (and not settlement or depository services) for equity or other cash-product marketplaces in Canada, it would need to have access to the existing securities settlement and depository infrastructure on non-discriminatory and reasonable commercial terms.

Subsection 13.2(2) of the Instrument provides that subsection 13.2(1) does not apply to trades in standardized derivatives or exchange-traded securities that are options.

PART 16 INFORMATION PROCESSOR

16.1 Information Processor

(1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (i.e., orders).

(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all ~~marketplaces, inter-dealer bond brokers~~persons and ~~dealers~~companies that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any ~~marketplace, inter-dealer bond broker~~person or ~~dealer~~company when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to fair access, an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.

16.2 Selection of an Information Processor

(1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. ~~In Québec, a person or company may carry on the activity of an information processor only if it is recognized by the securities regulatory authority.~~ The Canadian securities regulatory authorities will look at a number of factors when reviewing the form filed, including,

(a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;

(b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms;

(c) personnel qualifications;

(d) whether the information processor has sufficient financial resources for the proper performance of its functions;

(e) the existence of another entity performing the proposed function for the same type of security;

(f) the systems report referred to in paragraph 14.5(c) of the Instrument.

(2) The Canadian securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.

(3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

(4) The specific authority of securities regulatory authorities to allow a person or company to act as an information processor for the purposes of the Instrument may differ, depending on the relevant legislative framework. For instance, in Québec, a person or company may carry on the activity of an information processor, only if it is recognized or exempted by the securities regulatory authority. In certain other jurisdictions, a person or company may be designated as an information processor, subject to the relevant requirements in securities legislation or may otherwise be allowed to act as an information processor, if it is in the public interest.

16.3 Change in Information - Under subsection 14.2(1) of the Instrument, an information processor is required to file an amendment to the information provided in Form 21-101F5 at least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, in the manner set out in Form 21-101F5. The Canadian securities regulatory authorities would consider significant changes to include:

(a) changes to the governance of the information processor, including the structure of its board of directors and changes in the board committees and their mandates;

(b) changes in control over the information processor;

(c) changes affecting the independence of the information processor, including independence from the ~~marketplaces, inter-dealer bond brokers~~persons and~~ dealers~~companies that provide their data to meet the requirements of the Instrument;

(d) changes to the services or functions performed by the information processor;

(e) changes to the data products offered by the information processor;

(f) changes to the fees and fee structure related to the services provided by the information processor;

(g) changes to the revenue sharing model for revenues from fees related to services provided by the information processor;

(h) changes to the systems and technology used by the information processor, including those affecting its capacity;

(i) new arrangements or changes to arrangements to outsource the operation of any aspect of the services of the information processor;

(j) changes to the means of access to the services of the information processor; and

(k) ~~where~~in the case of an information processor ~~is responsible~~ for ~~making a determination of the data which must be reported, including the~~corporate debt securities ~~for which~~or government debt securities, changes to the information ~~must be reported in accordance with~~referred to in paragraph 14.8(b) of the Instrument~~, changes in the criteria and process for selection and communication of these securities~~..

These would not include housekeeping or administrative changes to the information included in Form 21-101F5, such as changes in the routine processes, practice or administration of the information processor, changes due to standardization of terminology, or minor system or technology changes that do not significantly impact the system of the information processor or its capacity. Such changes would be filed in accordance with the requirements outlined in subsection 14.2(2) of the Instrument.

16.3.1 Filing of Financial Statements – Subsection 14.4(6) of the Instrument requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. However, where an information processor is operated as a division or unit of a person or company, which may be a marketplace, clearing agency, issuer or any other person or company, the person or company must file an income statement, a statement of cash flow and any other information necessary to demonstrate the financial condition of the information processor. In this case, the income statement, statement of cash flow and other necessary financial information pertaining to the operation of the information processor may be unaudited.

16.4 System Requirements – The guidance in section 14.1 of this Companion Policy applies to the systems requirements for an information processor.

ANNEX D

LIST OF COMMENTERS

The Canadian Advocacy Council for Canadian CFA Institute Societies

Canadian Bankers Association (letters dated Aug 29, 2018 and Sep 12, 2019)

Casgrain & Company Limited

GWN Capital Management Ltd.

Invesco Canada Ltd.

Investment Industry Association of Canada

Ontario Teachers' Pension Plan

Region of Peel

SUMMARY OF COMMENTS AND CSA RESPONSES

Topic	Summary of Comments	CSA Responses
General Comments	All commenters were supportive of initiatives to enhance debt transparency although they provided mixed views regarding what level of transparency would be appropriate. Some commenters expressed the view that there should be more transparency in the debt market, including pre-trade transparency, while others cautioned that too much transparency may negatively impact the liquidity of the market and dealers' ability to continue to provide market making services.	We do not intend to mandate pre-trade transparency at this time. We remain of the view that the debt market functions differently from the equity market. It is a dealer market with no central information exchange. In addition, we recognize the concerns expressed by commenters that too much transparency may negatively impact liquidity and have introduced mitigating factors, including the volume caps and dissemination delay.
Question 1: Should the Proposed Government Debt Framework be expanded to Banks, and, in particular, Schedule III banks? **Question 3: Should the Expanded Corporate Debt Proposal include Banks, and, in particular Schedule III banks?**	All commenters, with one exception, were supportive of extending the government and corporate debt transparency requirements to Banks, including Schedule III banks. Some commenters supportive of the inclusion of Banks suggested that if Banks, particularly Schedule III banks, execute trades in government or corporate debt securities with entities that are currently subject to the transparency requirements, they should not report these trades to the IP as this approach could lead to dual reporting, inefficiencies and errors. These commenters indicated that when Banks are transacting with non-reporting entities, they should be required to report. They further suggested that if Banks are included as reporting entities, the CSA should consider creating a reporting hierarchy to ensure the elimination of dual-sided reporting. One commenter expressed the view that expanding the regulatory requirements to Banks would lead to a change in the securities	We agree with most commenters that the government and corporate debt transparency requirements should be extended to Banks. We recognize the concerns expressed by commenters with respect to duplicative reporting but remain of the view that all persons or companies executing trades in government and corporate debt securities should report such trades to the IP. We note that IIROC, as the IP for corporate debt securities, already requires and synthesizes dual-sided reporting without issue while disseminating only one-sided information. IIROC will take the same approach for trades in government debt securities. With respect to the HKA, the CSA is of the view that the expansion of the debt transparency requirements to Banks does not change the regulatory regime applicable to them because they will continue to remain exempted from

	regulatory regime in violation of the Hockin-Kwinter Accord (**HKA**).[1] In addition, this commenter, while supportive of regulatory initiatives intended to enhance transparency in the capital markets, indicated that the Amendments, as currently drafted, might create significant operational challenges for both the CSA and market participants and create confusion in the market. After further discussions, this commenter requested that Banks be given additional time to implement the debt transparency requirements.	registration requirements under provincial securities laws. In addition, we are of the view that the expansion of the debt transparency requirements to Banks is required to achieve meaningful transparency. Furthermore, we note that five banks are already reporting details of trades in corporate and government debt securities to IIROC through the MTRS 2.0. The data available to date indicates that a large proportion of trades in government and corporate debt securities are executed with counterparties other than the persons or companies already subject to transparency requirements under NI 21-101 (i.e. 65 percent of the trades reported in all debt securities and 52 percent of the volume reported in all debt securities). Based on this information, the CSA is of the view that not extending the transparency requirements to Banks would lead to an informational gap, undermine transparency and create an unlevel playing field among debt market participants, allowing for arbitrage opportunities. With respect to any operational burden, while the debt transparency requirements will be new for those Banks not currently reporting, they will have three reporting options and will be able to choose the one that best suits their transaction volume and existing infrastructure in the most cost-effective manner. As a result, we continue to be of the view that the nine-month delay in implementation provided to those Banks that do not currently report their transactions to the MTRS 2.0 is appropriate.
Question 2: Are the volume caps and publication delays appropriate, particularly for the most illiquid government debt securities such as those issued by municipalities, or those held by a number of investors?	The comments received provided mixed views regarding what would represent appropriate delays for different types of government debt securities. While many commenters expressed support for the proposed volume caps and publication delay, one of these commenters added the caveat that the proposed volume caps and publication delay should be harmonized with the TRACE system in the United States in the near term whenever possible. Below is a summary of the comments made by commenters in relation to the proposed publication delay and volume caps: - longer publication delays should be	We recognize the concerns that have been raised about the potential impact of transparency on liquidity and the willingness of dealers to provide liquidity if information about their transactions becomes immediately available. To address this, we have included volume caps and a dissemination delay. After considering all comments received, we are of the view that the publication of trade details on T+1 at 5:00 pm ET is appropriate. After additional analysis and with the benefit of the comments received, we created an additional, lower volume cap for trades in securities issued

[1] Under the Accord, the government of Ontario and the federal government agreed that the Office of the Superintendent of Financial Institutions will regulate securities-related activities of federal institutions that are carried on directly by these institutions.

	considered for those corporate and government debt securities that trade less frequently; - there are no evident benefits of shortening the publication delay from T+2 (midnight) to T+1 (5:00 pm ET) for market participants given that although market participants may have access to publicly available information more rapidly (to a maximum of seven hours), they may not use the information or trade on it before T+2, which is currently the disseminating timing for corporate bonds; - municipal debt securities should have a lower volume cap of $250K to reflect their smaller average transaction size evidenced by debt market committee members; - the municipal volume cap should be lowered to $0.5M to account for illiquidity, lower average transaction size and daily volume; and - GoC Bills, GoC <= 10 years, GoC > 10 years and CMB should have a volume cap of $3M, as at $3M, large market participant trades will be properly masked with trades from smaller participants.	by Québec municipalities. The publication delay, together with the volume caps, provide dealers with sufficient time to manage their inventory risk before information about their transactions becomes publicly available. We intend to monitor the impact of transparency over time and will adjust the dissemination delays and the volume caps should any unintended consequences be uncovered.

ANNEX E

LOCAL MATTERS

In Ontario, under section 21.2.3 of the *Securities Act* (Ontario), the Ontario Securities Commission will issue an order designating IIROC as the IP for both corporate and government debt securities (**Designation Order**). The undertakings given by IIROC IP in connection with its operations as the IP for corporate debt securities will be converted to terms and conditions of the Designation Order. Schedule 1 to this Annex contains the proposed Designation Order and the terms and conditions applicable to IIROC IP.

SCHEDULE 1

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

AND

IN THE MATTER OF
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

ORDER
(Section 21.2.3 of the Act)

WHEREAS Part 8 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) requires persons or companies to provide to an information processor (**IP**) accurate and timely information regarding trades in corporate and government debt securities (together **Unlisted Debt Securities**) executed by or through the person or company, as required by the IP;

AND WHEREAS The terms used in this order are defined in the *Securities Act* (Ontario) and/or NI 21-101, as the case may be;

AND WHEREAS The Investment Industry Regulatory Organization of Canada (**IIROC** or the **Applicant**) has filed an application dated [Insert Date] (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order pursuant to subsection 21.2.3(1) of the Act designating IIROC as an IP for Unlisted Debt Securities;

AND WHEREAS the Applicant is currently the IP for corporate debt securities as permitted by a letter dated July 4, 2016 and has operated in compliance with the undertakings (**Undertakings**) contained in that letter;

AND WHEREAS the Applicant has filed Form 21-101F5 with respect to Unlisted Debt Securities;

AND WHEREAS subsection 21.2.3 of the Act allows the Commission to designate a person or company as an IP if the Commission considers it to be in the public interest;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant has the necessary systems in place to collect and disseminate information regarding trades in Unlisted Debt Securities;

2. The Applicant currently disseminates information regarding trades in corporate debt securities in a manner approved by the Canadian Securities Administrators (**CSA**);

3. The Applicant has sufficient financial and human resources to comply with the requirements applicable to an IP to collect and disseminate consolidated information regarding trades in Unlisted Debt Securities;

4. The Applicant will make available comprehensive information regarding trades in Unlisted Debt Securities to all market participants, including investors, at no cost; and

5. The Applicant has an appropriate governance structure and conflicts of interest policies and procedures in place;

AND WHEREAS, based on the Application, the Commission has determined that it is in the public interest to designate the Applicant as an IP for Unlisted Debt Securities;

IT IS ORDERED by the Commission that, pursuant to section 21.2.3 of the Act, the Applicant is designated as an IP for Unlisted Debt Securities,

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule A.

DATED [Insert Date]

[Insert Signature] [Insert Signature]

Schedule A

TERMS AND CONDITIONS APPLICABLE TO THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA AS AN INFORMATION PROCESSOR FOR UNLISTED DEBT SECURITIES

1. DEFINITIONS AND INTERPRETATION

"Bank" means a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

"Data Contributor" means an IIROC Dealer Member that reports trades in debt securities to IIROC under IIROC Dealer Member Rule 2800C and a Bank;

"IIROC" means The Investment Industry Regulatory Organization of Canada;

"IIROC IP" means IIROC acting as an information processor;

2. PUBLIC INTEREST RESPONSIBILITIES

(a) IIROC IP shall conduct the business and operations of the designated IP for Unlisted Debt Securities in a manner that is consistent with the public interest.

(b) IIROC IP shall provide a written report to the Commission, as required by the Commission, describing how, as the designated IP for Unlisted Debt Securities, it is meeting its regulatory and public interest functions.

3. CHANGES TO FORM F5

(a) As required by section 14.2 of NI 21-101, IIROC IP will file with the Commission amendments to the information provided in Form F5. IIROC IP must not implement a significant change to the information in its Form F5 without the prior approval of the Commission.

(b) IIROC IP will file with Commission Staff all material contracts related to the IP services.

4. RESOURCES

(a) IIROC IP will maintain sufficient financial resources to ensure its ability to conduct its operations.

(b) IIROC IP will ensure that sufficient human resources are available and appropriately trained to enable IIROC IP to properly perform its functions, including monitoring the timeliness of data concerning Unlisted Debt Securities reported to IIROC and displayed by IIROC IP.

5. PROVISION OF TRADE INFORMATION

(a) IIROC IP shall receive information from Data Contributors regarding trades executed by or through the Data Contributors no later than 2:00 p.m. on the next business day the trades were executed and in accordance with its Form F5.

6. FAIR AND REASONABLE TERMS

(a) IIROC IP will ensure that Data Contributors are given access to IIROC IP on fair and reasonable terms.

7. FEES, FEE STRUCTURE AND REVENUE SHARING

(a) IIROC IP will make available, on its website, the fee schedule for the dissemination of Unlisted Debt Securities.

(b) IIROC IP will make available, on its website, any payment arrangements with Data Contributors.

8. DATA REPORTED TO AND DISSEMINATED BY IIROC IP

(a) IIROC IP staff will monitor the timeliness and accuracy of information received by and disseminated by the IP on an ongoing basis and take adequate measures to resolve any data integrity issues on a timely basis.

(b) Within 45 days from the end of each quarter, IIROC will provide Commission Staff quarterly reports on the timeliness and integrity of the information reported to and disseminated by IIROC IP, highlighting significant issues and proposed steps for resolution. These reports will include significant data integrity issues identified in the field examinations of Data Contributors conducted by IIROC.

9. REVIEW OF THE DISSEMINATION MODEL

(a) On request by the Commission, IIROC IP will

(i) review the continuing adequacy of the publication delay for the Unlisted Debt Securities trade data made available by IIROC IP (T+1 5:00 pm ET), and

(ii) review the continuing adequacy of the volume caps applied to trade data in Unlisted Debt Securities by IIROC IP.

(b) No later than 30 days following completion of the review, IIROC IP will file with the Commission the results of the review and any recommendations for changes to the publication delay or the volume caps.

1.1.6 Notice of Ministerial Approval of Amendments to National Instrument 24-101 Institutional Trade Matching and Settlement

Notice of Ministerial Approval of Amendments to
National Instrument 24-101
Institutional Trade Matching and Settlement

The Minister of Finance recently approved, pursuant to section 143.3 of the *Securities Act* (Ontario), amendments made by the Ontario Securities Commission (**OSC** or the **Commission**) to National Instrument 24-101 Institutional Trade Matching and Settlement (the **Amendments**).

The Amendments were published in the OSC Bulletin at (2020), 43 OSCB 3063 and OSC website at www.osc.gov.on.ca on March 26, 2020. The Amendments are reproduced in Chapter 5 of this Bulletin. The Amendments come into force on July 1, 2020.

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 First Class Crypto Inc. et al. – ss. 127(1), 127.1

FILE NO.: 2020-9

**IN THE MATTER OF
FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE
AND
NEILL KLOSS**

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

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated May 26, 2020 between Staff of the Commission and First Class Crypto Inc., Johnathan Harris, Mitchell Carnie and Neill Kloss in respect of the Statement of Allegations filed by Staff of the Commission dated May 27, 2020.

REPRESENTATION

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

FAILURE TO PARTICIPATE

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 27th day of May 2020.

"Grace Knakowski"
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

IN THE MATTER OF
FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE
AND
NEILL KLOSS

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

A. OVERVIEW

1. Between December 2017 and May 2018, First Class Crypto Inc. (**FCCI**) and its principals Johnathan Harris, Mitchell Carnie and Neill Kloss encouraged Ontarians to invest approximately $365,000 into their business. Investors were led to believe that FCCI would use their funds to purchase computing hardware that mines crypto assets (known as “mining rigs”). Investors were told that their original investment with FCCI was guaranteed and that they could earn significant monthly returns from the company’s crypto asset mining activities.

2. However, investors were not told that FCCI’s principals had no experience in crypto asset mining, no business plan and no ability to protect, much less guarantee, investments and returns. This did not stop the Respondents from soliciting and accepting investments from members of the public. The Respondents lacked the skills, knowledge and experience needed to manage investor funds and purchase mining rigs. While the Respondents attempted to find mining rigs, investor funds were being held in crypto assets that were rapidly decreasing in value. The Respondents also failed to maintain even basic documentation regarding FCCI's operations, which hindered FCCI’s ability to pay the promised monthly returns and track repayments to investors. When FCCI was finally shut down in June 2018, a substantial amount of investor funds had been lost.

3. Although new and innovative crypto asset products can seem appealing, investors should be cautious when promised risk-free investments. The Respondents raised funds from the public without being registered as dealers and without disclosing the risks of the investments in a prospectus. The importance of protecting investor interests by complying with registration and prospectus requirements and maintaining accurate and complete books and records is heightened when operating in the crypto asset sector.

B. FACTS

(a) Solicitation of Investors

4. FCCI is an Ontario company that was purportedly in the business of crypto asset mining. Harris and Carnie are founding shareholders, directors, officers and directing minds of FCCI. Subsequently, Kloss became a shareholder and de facto director or officer of FCCI. Kloss represented himself as the Chief Financial Officer and a Vice-President of FCCI.

5. From December 2017 to May 2018, the Respondents solicited investments in FCCI using two forms of investment contracts (**FCCI Investment Contracts**):

   a. the Lending Mining Contract (**LMC**), also referred to as the “Investment Mining Contract”, which promised investors compounded monthly returns and that investor funds would not be subject to the volatility of the crypto asset market, but instead would be used to purchase mining rigs; and

   b. the Crypto Security Plan (**CSP**), which promised investors annual returns on investor funds held in the crypto asset market.

6. The Respondents promoted FCCI Investment Contracts to the public in marketing materials, including using PowerPoint presentations, flyers, social media and a website.

7. The Respondents held weekly investment seminars at FCCI’s office in Whitby, Ontario to promote the FCCI Investment Contracts. At these seminars, the Respondents encouraged members of the public to invest in FCCI. The Respondents also promoted FCCI Investment Contracts from a booth at a flea market in Pickering, Ontario.

8. In addition to soliciting investors directly, the Respondents encouraged individuals to become “recruiters” of FCCI. FCCI recruiters were promised referral fees for soliciting investments in the FCCI Investment Contracts. The Respondents held training seminars and created training materials for FCCI recruiters.

9. The Respondents raised $364,082 from 43 Ontario investors between December 2017 and May 2018 by entering into FCCI Investment Contracts. Most investors entered into the LMC investment contract.

10. Each of the Respondents engaged in, or held themselves out as engaging in, the business of trading in securities, contrary to s. 25(1) of the Act. None of the Respondents were registered with the Commission and no exemptions from registration were available to them.

11. The sales of the FCCI Investment Contracts were trades in securities not previously issued and therefore "distributions" under the Act. No preliminary prospectus or prospectus was filed with the Commission, nor were prospectus receipts obtained from the Director pursuant to s. 53(1) of the Act. The investments in the FCCI Investment Contracts did not qualify for any exemption from the prospectus requirement, and no reports of exempt distributions were filed with the Commission. Accordingly, each of the Respondents also participated in a distribution of securities, contrary to s. 53(1) of the Act.

(b) Prohibited Representations

12. The Respondents made numerous false or misleading statements that induced investors into signing FCCI Investment Contracts. Statements made to investors also omitted facts that FCCI investors would consider relevant. False and misleading statements were made in person, in marketing materials and in the FCCI Investment Contracts, and include the following:

a. the Respondents had mining rig facilities and enough mining rigs to meet obligations to investors;

b. LMC investment funds would be used to purchase mining rigs;

c. LMC investment funds were guaranteed and not subject to the fluctuation of the crypto asset markets;

d. FCCI had insurance that could protect LMC investment funds;

e. FCCI's crypto asset holdings and mining rigs were protected by physical and technological security; and

f. FCCI would pay compounded monthly returns to investors in LMCs and annual returns to investors in CSP.

13. In reality, FCCI did not have established mining facilities. From December 2017 to May 2018, the Respondents could not purchase mining rigs to meet FCCI's obligations under the LMCs. While the Respondents attempted to source mining rigs, LMC investment funds were being held in volatile crypto assets, which were deceasing in value. Further, FCCI had no insurance on any mining rigs and no insurance that would purportedly protect principal investments of LMC investors.

14. Harris was primarily responsible for inducing individuals to invest with FCCI. He conducted the weekly presentations to prospective investors and prepared the marketing materials used at the presentations. While Carnie also had significant involvement in presentations to investors and preparing marketing materials, he was primarily responsible for purchasing mining rigs to meet obligations to investors and arranging for insurance on the mining rigs. Kloss' involvement with prospective investors was more limited and included executing FCCI Investment Contracts on behalf of the company, representing the company at the flea market in Pickering and overseeing the development of FCCI's website.

15. By the time the Respondents decided to shut the business down in June 2018, a substantial amount of investor funds had been lost. The Respondents asked investors to sign documents purporting to cancel the FCCI Investment Contracts and acknowledge that investors had been paid in full. For some investors, the Respondents also issued promissory notes promising to repay investor losses. Not only did the Respondents fail to repay the principal amounts originally invested in FCCI, the Respondents also failed to pay investors the monthly and annual returns promised.

16. A reasonable investor would consider the misrepresentations described above as relevant in deciding whether to enter into or maintain investments with FCCI. Accordingly, each of the Respondents made prohibited representations, contrary to s. 44(2) of the Act.

(c) Liability of Directors and Officers

17. From December 2017 to May 2018, Harris, Carnie and Kloss, as directors, officers or de facto directors or officers of FCCI, authorized, permitted or acquiesced in FCCI's breaches of ss. 25(1), 53(1) and 44(2) of the Act (as described above) and thereby are deemed to have not complied with Ontario securities law, pursuant to s. 129.2 of the Act.

(d) Conduct Contrary to the Public Interest

18. The Respondents engaged in conduct contrary to the public interest by breaching the Act as described above.

19. The Respondents also engaged in conduct contrary to the public interest by failing to operate the business in a manner that protected FCCI investors and investor funds.

20. The Respondents assumed the role of registrants, but lacked the proficiency, integrity and solvency necessary to protect investors. The Respondents accepted investor funds without any business plan and lacked the skills, knowledge and experience needed to manage those funds.

21. The Respondents failed to adequately maintain basic documentation regarding FCCI's operations, including a complete list of investors and contracts, support for the receipt, exchange, segregation and partial return of investor funds and a complete list of the blockchain wallet addresses used by the Respondents.

22. Further, upon winding down the business, the Respondents cancelled access to corporate email accounts, liquidated crypto asset balances and deleted records, including all records of blockchain wallet addresses. The importance of protecting investor interests by maintaining accurate and complete books and records is heightened when operating in the crypto asset sector. The lack of records impeded the Respondents' ability to make repayments to investors after FCCI was shut down. While Kloss assumed the role of Chief Financial Officer and responsibility for recordkeeping and administrative tasks, each of the individual Respondents had some involvement in collecting, managing or tracking of investor funds and each had a responsibility to ensure FCCI kept accurate and complete books and records.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

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

    a. the Respondents made statements that were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the Respondents, contrary to s. 44(2) of the Act;

    b. the Respondents engaged, or held themselves out as engaging, in the business of trading in securities without being registered in accordance with Ontario securities law, and where no exemption to the registration requirement was available, contrary to s. 25(1) of the Act;

    c. the Respondents engaged in a distribution of securities without a preliminary prospectus or prospectus, or an exemption from the prospectus requirements, contrary to s. 53(1) of the Act;

    d. Harris, Carnie and Kloss, as directors, officers or de facto directors or officers of FCCI, authorized, permitted or acquiesced in FCCI's breaches of ss. 25(1), 53(1) and 44(2) and thereby are deemed to have not complied with Ontario securities law, pursuant to s. 129.2 of the Act; and

    e. the Respondents engaged in conduct that is contrary to the public interest.

24. Enforcement Staff reserve the right to amend these allegations and to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

D. ORDER SOUGHT

25. Enforcement Staff request that the Commission make the following orders:

    a. trading in any securities or derivatives by the Respondents cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of s. 127(1) of the Act;

    a. the acquisition of any securities by the Respondents be prohibited permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of s. 127(1) of the Act;

    b. any exemptions contained in Ontario securities law not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of s. 127(1) of the Act;

    c. the Respondents be reprimanded, pursuant to paragraph 6 of s. 127(1) of the Act;

d. Harris, Carnie and Kloss resign any positions they may hold as a director or officer of any issuer or registrant, pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act;

e. Harris, Carnie and Kloss be prohibited from becoming or acting as a director or officer of any issuer or registrant permanently or for such period as is specified by the Commission, pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act;

f. the Respondents be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of s. 127(1) of the Act;

g. each Respondent pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of s. 127(1) of the Act;

h. each Respondent disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of s. 127(1) of the Act;

i. that each Respondent pay costs of the Commission investigation and the hearing, pursuant to s. 127.1 of the Act; and

j. such other orders as the Commission may consider appropriate in the public interest.

DATED this 27th day of May, 2020.

Staff of the Ontario Securities Commission

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

Charlie Pettypiece
Litigation Counsel, Enforcement Branch
Tel: (416) 596-4297
Email: cpettypiece@osc.gov.on.ca

1.4 Notices from the Office of the Secretary

1.4.1 MOAG Copper Gold Resources Inc. et al.

FOR IMMEDIATE RELEASE
May 27, 2020

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

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

A copy of the Order dated May 27, 2020 is available at www.osc.gov.on.ca

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.2 First Class Crypto Inc. et al.

FOR IMMEDIATE RELEASE
May 27, 2020

FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE AND
NEILL KLOSS,
File No. 2020-9

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and First Class Crypto Inc., Johnathan Harris, Mitchell Carnie and Neill Kloss in the above named matter.

A copy of the Notice of Hearing dated May 27, 2020 and Statement of Allegations dated May 27, 2020 are available at www.osc.gov.on.ca

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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media_inquiries@osc.gov.on.ca

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inquiries@osc.gov.on.ca

1.4.3 First Class Crypto Inc. et al.

FOR IMMEDIATE RELEASE
May 28, 2020

FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE AND
NEILL KLOSS,
File No. 2020-9

TORONTO – Following a written hearing, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and First Class Crypto Inc., Johnathan Harris, Mitchell Carnie and Neill Kloss.

A copy of the Order dated May 28, 2020, Settlement Agreement dated May 26, 2020 and Reasons and Decision for Approval of Settlement dated May 28, 2020 are available at www.osc.gov.on.ca

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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1.4.4 Money Gate Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
May 29, 2020

MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN,
File No. 2017-79

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

A copy of the Order dated May 29, 2020 is available at www.osc.gov.on.ca

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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inquiries@osc.gov.on.ca

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Guardian Capital LP and Guardian Strategic Income Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), 15.8(3)(a.1) and 15.1.1 of National Instrument 81-102 Investment Funds to permit an alternative mutual fund, that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months, (i) to include in their sales communications performance data for the period when the fund was not a reporting issuer, and (ii) to permit a mutual fund to use performance data from periods prior the fund being a reporting issuer in calculating fund's investment risk level in accordance with Appendix F Investment Risk Classification Methodology – relief also granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of the relief requested from Item 5 of Part I of Form 81-101F3 Contents of Fund Facts Document, to permit the mutual fund to include in its fund facts the past performance data for the periods when the fund was not a reporting issuer.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1, to permit a mutual fund to include in annual and interim management reports of fund performance the financial highlights and past performance of the fund that are derived from the fund's annual financial statements that pertain to time periods when the fund was not a reporting issuer.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), 15.8(3)(a.1), 15.1.1, 19.1.
National Instrument 81-101 Investment Fund Prospectus Disclosure, ss. 2.1, 6.1.
Form 81-101F1 Contents of Simplified Prospectus, Item 9.1(b) of Part B.
Form 81-101F3 Contents of Fund Facts Document, Item 5 of Part I.
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4, 17.1.
Form 81-0106F1 Contents of Annual and Interim Management Report of Fund Performance, Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1), 4.3(2) of Part B and Items 3(1), 4 of Part C.

May 21, 2020

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
GUARDIAN CAPITAL LP
(the Filer)

AND

GUARDIAN STRATEGIC INCOME FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Fund for a decision under the securities legislation of the regulator (the **Legislation**) exempting the series A, series F and series I units (collectively, the **Units**) of the Fund from:

(a) sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit the Fund to include performance data in sales communications notwithstanding that the performance data will relate to a period prior to the Fund offering its Units under a simplified prospectus;

(b) section 15.1.1(a) of NI 81-102 and Items 2 and 4 of Appendix F *Investment Risk Classification Methodology to NI 81-102* (**Appendix F**) to permit the Fund to include its past performance data in determining its investment risk level in accordance with Appendix F;

(c) section 15.1.1(b) of NI 81-102 and Item 4(2)(a) and Instruction (1) of Item 4 of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**) to permit the Fund to disclose its investment risk level as determined by including its past performance data in accordance with Appendix F;

(d) Item 9.1(b) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) to permit the Fund to use its past performance data to calculate its investment risk rating in its simplified prospectus;

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

(f) Items 5(2), 5(3) and 5(4) and Instructions (1) and (5) of Part I of Form 81-101F3 in respect of the requirement to comply with sections 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102 to permit the Fund to include in its fund facts documents the past performance data of the Fund notwithstanding that (i) such performance data relates to a period prior to the Fund offering its securities under a simplified prospectus, and (ii) the Fund has not distributed its securities under a simplified prospectus for 12 consecutive months;

(g) section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for the purposes of relief requested herein from Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**); and

(h) Items 3.1(7), 4.1(1) in respect of the requirement to comply with subsections 15.3(2) and 15.3(4)(c) of NI 81-102, 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 and Items 3(1) and 4 of Part C of Form 81-106F1 to permit the Fund to include in its annual and interim management reports of fund performance (**MRFP**) the past performance data of the Fund notwithstanding that such performance data relates to a period prior to the Fund offering its securities under a simplified prospectus.

(collectively, the Exemption Sought).

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

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

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

Interpretation

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

Representations

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

1. The Fund is an open-ended mutual fund trust created under the laws of the Province of Ontario and governed by an amended and restated declaration of trust dated March 14, 2011, as amended and restated as of December 13, 2019.

2. The Filer is the investment fund manager of the Fund. The head office of the Filer is located in Toronto, Ontario.

3. The Filer is registered as a portfolio manager and exempt market dealer in each province of Canada and as an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador. The Filer is also registered as a commodity trading counsel and commodity trading manager in Ontario.

4. Between May 27, 2013 and December 13, 2019, the Units of the Fund were distributed to investors on a prospectus-exempt basis in accordance with National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) in the Canadian Jurisdictions. Since May 27, 2013, series X units of the Fund have been distributed to investors on a prospectus-exempt basis in accordance with NI 45-106 in the Canadian Jurisdictions.

5. The Filer filed a simplified prospectus, annual information form and fund facts documents dated December 13, 2019 under which the Fund distributes Units to the public. Accordingly, since December 13, 2019, the Fund is a reporting issuer under the securities legislation of the Canadian Jurisdictions. In addition, the Fund is subject to the requirements of NI 81-102 that relate to alternative mutual funds and to the requirements of NI 81-106 that apply to investment funds that are reporting issuers. The series X units of the Fund continue to be offered only on a prospectus-exempt basis.

6. The investment objectives of the Fund are to generate capital gains, preserve capital and make monthly distributions by investing primarily in securities that can benefit from changes to interest rates and credit spreads and to maintain low volatility and low correlation with traditional equity and fixed income markets.

7. In order to seek to achieve its investment objectives, the Fund primarily invests in, or sells short securities of, issuers located primarily in North America. The Fund uses leverage, through the cash borrowing, short selling of securities and the use of derivatives, to hedge or enhance returns.

8. The Fund is managed substantially similarly after it became a reporting issuer as it was prior to becoming a reporting issuer. As a result of the Fund becoming a reporting issuer:

   (a) the Fund's investment objectives did not change, other than minor grammatical changes;

   (b) the only changes to the fee structure associated with the Units were that the management fee associated with the series A units and the series F units was reduced, the administration fee associated with all series was reduced, and the methodology for calculating the Fund's performance fee was simplified. Based on its calculations, the Filer believes that the change to the performance fee calculation methodology is immaterial; and

   (c) the day-to-day administration of the Fund did not change, other than to comply with exemptive relief obtained on behalf of, among others, the Fund and the additional regulatory requirements associated with being a reporting issuer (none of which impact the portfolio management of the Fund) and to provide additional features that are available to investors of mutual funds managed by the Filer, as described in the Fund's simplified prospectus, annual information form and fund facts documents.

9. Since its inception as a "mutual fund in Ontario", the Fund has complied with its obligation to prepare and send audited annual and unaudited interim financial statements to all holders of its securities in accordance with NI 81-106.

10. Since the inception of the Fund and prior to the Fund becoming a reporting issuer, the Filer produced a monthly fund profile for series A units and series F units, which included performance analysis for such units for each of the preceding month, year to date, 1 year, 3 year and 5 year periods, and the period since the applicable series' inception. The fund profile was produced for marketing purposes, distributed to registered dealers whose clients were holders of such series, and generally available to any holder upon request.

11. Since the inception of the Fund and prior to January 2, 2019, the Fund did not comply with the investment restrictions and practices contained in NI 81-102. On and after January 3, 2019 and except as set out in any exemptive relief received by, among others, the Fund, the Fund has complied with the investment restrictions and practices contained in NI 81-102 that relate to alternative mutual funds.

12. The Filer and the Fund are not in default of securities legislation in any of the Canadian Jurisdictions.

13. The Filer proposes to present the performance data of each series of the Units for the time period since the Fund's inception in sales communications pertaining to the Fund. Without the Exemption Sought, the sales communications pertaining to the Fund cannot include performance data of the Fund that relate to a period prior to its becoming a

reporting issuer, and the Fund cannot provide performance data in its sales communications until it has distributed securities under a simplified prospectus for at least 12 consecutive months.

14. As a reporting issuer, the Fund is required under NI 81-101 to prepare and file a simplified prospectus and fund facts documents.

15. The Filer proposes to use the Fund's past performance data to determine its investment risk level and to disclose that investment risk level in the simplified prospectus and the fund facts document for each series of Units. Without the Exemption Sought, the Filer, in determining and disclosing the Fund's investment risk level in the simplified prospectus and the fund facts documents for each series of Units, cannot use performance data of the Fund that relates to a period prior to the Fund becoming a reporting issuer.

16. The Filer proposes to include in the fund facts document for each series of Units past performance data in the chart required by Items 5(2), 5(3) and 5(4) under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to periods prior to the Fund becoming a reporting issuer in the Canadian Jurisdictions. Without the Exemption Sought, the fund facts documents of the Fund cannot include performance data of the Fund that relate to a period prior to its becoming a reporting issuer.

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

18. The performance data and other financial data of the Fund for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors of Units.

Decision

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

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

(a) any sales communication, fund facts documents and MRFP that contains performance data of the Units of the Fund relating to a period of time prior to when the Fund was a reporting issuer discloses:

(i) that the Fund was not a reporting issuer during such period;

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

(iii) the Filer obtained exemptive relief on behalf of the Fund to permit the disclosure of performance data of the Units relating to a period prior to when the Fund was a reporting issuer; and

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

(b) the Filer posts the financial statements of the Fund since its inception on the Fund's website and makes those financial statements available to investors upon request.

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

2.1.2 Chartwell Retirement Residences and BMO Nesbitt Burns Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into an equity distribution agreement to make "at the market" (ATM) distributions of trust units over the facilities of the TSX or other Canadian marketplace – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreements on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate 25 months after the issuance of a receipt for the shelf prospectus – decision and application also held in confidence by decision makers until the earlier of the entering into of an equity distribution agreement, publicly announcing the ATM distribution, waiver of confidentiality or 90 days from the date of the decision.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71, 147.

January 31, 2020

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
CHARTWELL RETIREMENT RESIDENCES
(the Issuer)

AND

BMO NESBITT BURNS INC.
(the Agent and together with the Issuer, the Filers)

DECISION

Background

The Ontario Securities Commission (the **Decision Maker**), being the principal regulator in the Jurisdiction has received an application (the **Application**) from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for the following relief (the **Exemptions Sought**):

(a) that the requirement that a dealer, not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, send or deliver to the purchaser the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to the Agent or any other TSX participating organization or other marketplace participant acting as selling agent for the Agent (each, a **Selling Agent**) in connection with any at-the-market distribution (each, an **ATM Distribution** and collectively, the **ATM Offering**), as defined in National Instrument 44-102 - *Shelf Distributions* (**NI 44-102**) of trust units (**Units**) of the Issuer pursuant to an equity distribution agreement (the **Equity Distribution Agreement**) to be entered into between the Issuer and the Agent; and

(b) that the requirements to include in a base shelf prospectus or prospectus supplement or an amendment thereto:

(i) a forward-looking issuer certificate of the Issuer in the form specified in section 2.1 or section 2.4, as applicable, of Appendix A to NI 44-102;

(ii) a forward-looking underwriter certificate in the form specified by section 2.2 or section 2.4, as applicable, of Appendix A to NI 44-102; and

(iii) a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 - *Short Form Prospectus*;

(collectively, the **Prospectus Form Requirements**) do not apply to the Shelf Prospectus (as defined below), the Prospectus Supplement (as defined below) or an amendment thereto provided that the Issuer includes in the Prospectus Supplement or an amendment thereto the form of issuer certificate and form of underwriter certificate and includes in the Prospectus Supplement or an amendment thereto the revised description of a purchaser's statutory rights of withdrawal and remedies for rescission or damages described below, in each case (other than with respect to the underwriter certificate) superseding and replacing the corresponding language in the Shelf Prospectus solely with regards to the ATM Offering.

The Decision Maker has also received a request from the Filers 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: (a) the date on which the Filers publicly announce the ATM Offering, (b) the date on which the Filers first enter into an Equity Distribution Agreement; (c) the date any of the Filers advise the Decision Maker that there is no longer any need for the Confidential Material to remain confidential; and (d) the date that is 90 days after the date of this decision (the **Confidentiality Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for this Application as the Issuer's head office is located in the Province of Ontario; and

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

Interpretation

Terms defined in National Instrument 14-101 - *Definitions*, in National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval* (**SEDAR**), in MI 11-102 or in NI 44-102 have the same meaning if used in this decision, unless otherwise defined herein. All dollar figures in this decision refer to Canadian dollars.

Representations

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

The Issuer

1. The Issuer is an unincorporated, open-ended trust governed by the laws of the Province of Ontario. The head office of the Issuer is located at 100 Milverton Drive, Suite 700, Mississauga, Ontario, L5R 4H1.

2. The Issuer is a reporting issuer in each province of Canada and is not in default of securities legislation in any jurisdiction of Canada.

3. The Units are listed on the Toronto Stock Exchange (the **TSX**).

4. The Issuer currently intends to file a short form base shelf prospectus (a **Shelf Prospectus**) to provide for the distribution from time to time of Units, and to the extent the Equity Distribution Agreement is entered into among the Issuer and the Agent, a prospectus supplement in each of the provinces of Canada to qualify the distribution of Units in connection with the ATM Offering.

The Agent

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

6. The Agent is registered as an investment dealer under the securities legislation in each province of Canada, is a member of the Investment Industry Regulatory Organization of Canada and is a participating organization of the TSX.

7. The Agent is not in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada.

Proposed ATM Distribution

8. Subject to mutual agreement on terms and conditions, the Filers propose to enter into the Equity Distribution Agreement for the purpose of the ATM Offering involving the periodic sale of Units by the Issuer through the Agent, as agent, under the shelf prospectus procedures prescribed by Part 9 of NI 44-102.

9. If the Equity Distribution Agreement is entered into, the Issuer will immediately do both of the following:

   (a) issue and file a news release pursuant to section 3.2 of NI 44-102 announcing the Equity Distribution Agreement and indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and specifying where and how purchasers of Units under the ATM Offering may obtain copies; and

   (b) file the Equity Distribution Agreement on SEDAR.

10. Prior to making an ATM Distribution, the Issuer will have filed: (i) in each province of Canada, the Shelf Prospectus and will have received a receipt for the Shelf Prospectus from the Decision Maker; and (ii) a prospectus supplement describing the terms of the ATM Offering, including the terms of the Equity Distribution Agreement and otherwise supplementing the disclosure in the Shelf Prospectus (the **Prospectus Supplement**).

11. Under the proposed Equity Distribution Agreement, the Issuer may conduct one or more ATM Distributions subject to the 10% limitation set out in subsection 9.1(1) of NI 44-102.

12. The Issuer will not, during the period that the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Units that exceeds 10% of the aggregate market value of Units, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made.

13. The Issuer will conduct ATM Distributions only through the Agent (as agent) directly or via a Selling Agent, and only through (a) the TSX or (b) another marketplace (as defined in National Instrument 21-101 – *Marketplace Operation*) upon which the Units are listed, quoted or otherwise traded (each, a **Marketplace**).

14. The Agent will act as the sole agent of the Issuer in connection with an ATM Distribution directly or through one or more Selling Agents on the TSX or any other Marketplace, and will be paid an agency fee or commission by the Issuer in connection with such sales. If sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on behalf of the Agent. The Agent will sign an agent’s certificate, in the form set out in paragraph 31 below, in the Prospectus Supplement.

15. A purchaser’s rights and remedies under applicable securities legislation against the Agent, as agent of an ATM Distribution through a Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent.

16. The aggregate number of Units sold on one or more Marketplaces pursuant to an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Units on all Marketplaces on that day.

17. The Equity Distribution Agreement will provide that, at the time of each sale of Units pursuant to an ATM Distribution, the Issuer will represent to the Agent that the Shelf Prospectus, as supplemented by the Prospectus Supplement, including the documents incorporated by reference in the Shelf Prospectus (which shall include any news release that has been designated and filed as a Designated News Release (as defined below)) and any subsequent amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, the Prospectus), contains full, true and plain disclosure of all material facts relating to the Issuer and the Units being distributed. The Issuer will, therefore, be unable to proceed with sales pursuant to an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Issuer or the Units.

18. During the period after the date of the Prospectus Supplement and before the termination of any ATM Distribution, if the Issuer disseminates a news release disclosing information that, in the Issuer's determination, constitutes a “material fact” (as such term is defined in the Legislation), the Issuer will identify such news release as a “designated news release” for the purposes of the Prospectus Supplement. This designation will be made on the face page of the version

of such news release filed on SEDAR (any such news release, a **Designated News Release**). The Prospectus Supplement will provide that any such Designated News Release will be deemed to be incorporated by reference into the Prospectus Supplement. A Designated News Release will not be used to update disclosure in the Prospectus Supplement by the Issuer in the event of a "material change" (as such term is defined in the Legislation).

19. If, after the Issuer delivers a sell notice to the Agent directing the Agent to sell Units on the Issuer's behalf pursuant to the Equity Distribution Agreement (a **Sell Notice**), the sale of the Units specified in the Sell Notice, taking into consideration prior sales under the ATM Offering, would constitute a material fact or material change, the Issuer will suspend sales under the Equity Distribution Agreement until either: (a) it has filed a Designated News Release or material change report, as applicable, or amended the Prospectus; or (b) circumstances have changed such that a sale would no longer constitute a material fact or material change.

20. In determining whether the sale of the number of Units specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation:

    (a) the parameters of the Sell Notice, including the number of Units proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution;

    (b) the percentage of the outstanding Units that the number of Units proposed to be sold pursuant to the Sell Notice represents;

    (c) sales under earlier Sell Notices;

    (d) trading volume and volatility of the Units;

    (e) recent developments in the business, operations or capital of the Issuer; and

    (f) prevailing market conditions generally.

21. It is in the interest of the Issuer and the Agent to minimize the market impact of sales under an ATM Distribution. Therefore, the Agent will closely monitor the market's reaction to trades made on any Marketplace pursuant to an ATM Distribution in order to evaluate the likely market impact of future trades. The Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices. If the Agent has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Units, the Agent will recommend against effecting the trades pursuant to the sell order at that time.

Disclosure of Units Sold in ATM Offering

22. The Issuer will disclose the number and average price of Units sold pursuant to ATM Distributions, as well as gross proceeds, commissions and net proceeds, in its annual and interim financial statements and management discussion and analysis filed on SEDAR.

Prospectus Delivery Requirement

23. Pursuant to the Prospectus Delivery Requirement, a dealer effecting a trade of securities offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits.

24. Delivery of a prospectus is not practicable in the circumstances of an ATM Distribution, because neither the Agent nor a Selling Agent, as applicable, effecting the trade will know the identity of the purchasers.

25. The Shelf Prospectus and Prospectus Supplement will be filed and readily available electronically via SEDAR to all purchasers under ATM Distributions. As stated in paragraph 9 above, the Issuer will issue a news release that specifies where and how copies of the Shelf Prospectus and Prospectus Supplement may be obtained.

26. The liability of an issuer or an underwriter (or others) for a misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Prospectus Delivery Requirement because purchasers of securities offered by a prospectus during the period of distribution have a right of action for damages or rescission, without regard to whether or not the purchaser relied on the misrepresentation or in fact received a copy of the prospectus.

Withdrawal Right and Right of Action for Non-Delivery

27. Pursuant to the Legislation, an agreement to purchase a security in respect of a distribution to which the prospectus requirement applies is not binding upon the purchaser if the dealer from whom the purchaser purchases the security receives, not later than midnight on the second day (exclusive of Saturdays, Sundays and holidays) after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale (the **Withdrawal Right**).

28. Pursuant to the Legislation, a purchaser of securities to whom a prospectus was required to be sent or delivered in compliance with the Prospectus Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Prospectus Delivery Requirement (the **Right of Action for Non-Delivery**).

29. Neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of the ATM Offering because of the impracticability of delivering the Prospectus to a purchaser of Units thereunder.

Modified Certificates and Statements

30. To reflect the fact that the ATM Offering is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following issuer certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such issuer certificate to supersede and replace the issuer certificate to be included in the Shelf Prospectus solely with regard to the ATM Offering:

> *The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities under the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of each of the provinces of Canada.*

31. The Prospectus Supplement and any amendment thereto will include the following underwriter certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102):

> *To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities under the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of each of the provinces of Canada.*

32. A different statement of purchasers' rights than that required by the Legislation is necessary so that the Prospectus Supplement will accurately reflect the relief granted from the Prospectus Delivery Requirement. Accordingly, the Prospectus Supplement will state the following, with the date reference completed:

> *Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Units under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Units and will not have remedies of rescission or, in some jurisdictions, revisions of the price, or damages for non-delivery of the prospectus supplement, the accompanying prospectus and any amendment thereto relating to Units purchased by such purchaser because the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the Units purchased by such purchaser will not be delivered as permitted under a decision dated ● 2020 and granted pursuant to National Policy 11-203 - Process for Exemptive Relief Applications in Multiple Jurisdictions.*
>
> *Securities legislation in certain of the provinces of Canada further provides purchasers with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus, prospectus supplements and any amendment thereto relating to securities purchased by a purchaser contains a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of Units under an at-the-market distribution by the Issuer may have against the Issuer or the Agent for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus supplement, the accompanying prospectus*

and any amendment thereto relating to securities purchased by a purchaser and any amendment contain a misrepresentation will remain unaffected by the non-delivery and the decision referred to above.

A purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province and the decision referred to above for the particulars of these rights or consult with a legal adviser.

33. The Prospectus Supplement will disclose that, solely with regards to the ATM Offering, the statement prescribed in paragraph 32 above supersedes and replaces the statement of purchasers' rights to be included in the Shelf Prospectus.

Decision

The Decision Maker is satisfied that this decision satisfies the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Exemptions Sought are granted, provided:

(a) during the 60-day period ending not earlier than 10 days prior to the commencement of an ATM Distribution, the Units have traded, in total, on one or more Marketplaces, as reported on a consolidated market display:

(i) an average of at least 100 times per trading day, and

(ii) with an average trading value of at least $1,000,000 per trading day;

(b) the Issuer does not, during the period that the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Units that exceeds 10% of the aggregate market value of Units, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made;

(c) the Issuer complies with the disclosure requirements set out in paragraphs 22 and 30 through 33 above; and

(d) the Issuer and Agent respectively comply with the representations made in paragraphs 9, 13, 14 and 16 through 21 above.

This decision will terminate on the date that is 25 months from the date on which the receipt for the Shelf Prospectus is issued.

The further decision of the Decision Maker is that Confidentiality Relief is granted.

As to the Exemptions Sought from the Prospectus Delivery Requirement and the Confidentiality Relief:

"Heather Zordel"
Commissioner
Ontario Securities Commission

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

As to the Exemptions Sought from the Prospectus Delivery Requirement, the Prospectus Form Requirements and the Confidentiality Relief:

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.1.3 I.G. Investment Management, Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from related party transaction reporting requirements in s.117 of the Securities Act (Ontario) – monthly reporting not required provided that substantially similar disclosure is made in the annual and interim management reports on fund performance for each investment fund and that certain records of related party portfolio transactions are kept by the investment fund.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 117(1) 1, 3.

May 22, 2020

**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

**THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(referred to as "IGIM" or the "Filer")**

DECISION

BACKGROUND

The principal regulator of the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from the obligation in Section 117 of the Legislation to file a report of every transaction of purchase or sale of securities between Mackenzie - IG Canadian Corporate Bond Pool (the "Fund") and any related person or company, and of every purchase or sale effected by the Fund with respect to which the related person or company received a fee either from the Fund or from the other party to the transaction, or both, within 30 days after the end of the month in which it occurs (the "**Exemption Sought**").

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, and Newfoundland and Labrador to the extent such jurisdictions have, or enact, comparable legislative provisions.

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. The following additional terms shall have the following meanings:

"NI 81-102" means National Instrument 81-102 *Investment Funds*;

"NI 81-106" means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"NI 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

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

"NP 29" means National Policy Statement No. 29 *Mutual Funds Investing in Mortgages*; and

"Related Party" means Investors Group Trust Co. Ltd. and its affiliates.

REPRESENTATIONS

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

1. The Filer is a corporation continued under the laws of Ontario and is the manager, portfolio advisor and trustee of the Fund. The head office of the Filer is located in Winnipeg, Manitoba. The Ontario Securities Commission is the principal regulator for the Exemption Sought because there are no equivalent provisions in the legislation of Manitoba.

2. The Filer is registered as a Portfolio Manager and an Investment Fund Manager in Manitoba, Ontario and Quebec and as an Investment Fund Manager in Newfoundland and Labrador.

3. The Fund is or will be a trust established under the laws of Manitoba. The Fund's investment objective and strategies permit it to invest in mortgages. To achieve its investment objective, the Fund intends to invest up to 10% of its net assets in a diversified portfolio of first insured mortgages. Most of the Fund's mortgage portfolio will be invested in single family residential

mortgages, as well as in mortgages on condominiums, multi-unit dwellings and commercial properties, all as permitted under NP 29.

4. The Fund will follow the standard investment restrictions and practices applicable to mutual funds pursuant to NI 81-102 and applicable Legislation, except to the extent that the Fund has obtained (or is in the process of obtaining) regulatory relief to deviate from such requirements and, in particular, relief from the self-dealing restrictions under Section 4.2 of NI 81-102. Also, as the Filer is registered as an advisor under NI 31-103 and is a "responsible person" as defined in the Legislation, the Filer is seeking relief from section 13.5(2) of NI 31-103 which prohibits certain trades between the Fund and a responsible person. The Manitoba Securities Commission is the principal regulator for purposes of these applications.

5. The Fund is or will be an open-end mutual fund and is or will be a reporting issuer in each province and territory of Canada. IGIM and the Fund are not in default of any of the requirements of securities legislation of any province and territory of Canada.

6. The Related Party is an associate or affiliate of the Filer. The Fund wishes to purchase mortgages for up to 10% of its portfolio from the Related Party.

7. The Fund may acquire mortgages from both the Related Party and from arm's length sources. Most often, however, it is expected that all, or substantially all, of its mortgages will be acquired from or through the Related Party. The valuation methods for mortgages acquired by the Fund are stipulated in Section III of NP 29, which will be applicable to the Fund.

8. The Filer (or its affiliates) has agreed to repurchase from the Fund any mortgage that is not a valid first mortgage or if a mortgage purchased from the Related Party is in default.

9. In all circumstances, the decisions to purchase mortgages from the Related Party for the Fund's portfolio are made based on the judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

10. The Filer and its Related Party are "affiliates" within the meaning of the Legislation and accordingly, the Filer is deemed to own securities beneficially owned by the Related Party.

11. The Filer has appointed an independent review committee ("**IRC**") under NI 81-107 for the Funds. The IRC of the Fund will consider the policies and procedures of the Filer and the Fund will not rely on the Exemption Sought until the IRC has determined that the proposed Related Party transactions in mortgages achieve a fair and reasonable result for the Fund in accordance with section 5.2(2) of NI 81-107.

12. To the extent that the Fund is purchasing mortgages from, or selling mortgages to, a Related Party, this fact is set out, and will continue to be set out, in the annual information form of the Fund.

13. The legislation in the Jurisdiction requires the filing of a report by the Filer with respect to each transaction in mortgages between the Fund and a Related Party and with respect to each transaction in mortgages effected by the Filer in respect of which the Related Party receives a fee either from the Filer or from the other party to the transaction or from both.

14. Such report is to be filed within 30 days after the end of the month in which the transaction occurs, disclosing the issuer of the securities purchased or sold, the class or designation of the securities, the amount and number of securities and the consideration paid, together with the name of any related person receiving a fee on the transaction, the name of the person or company that paid the fee and the amount of the fee paid.

15. NI 81-106 requires that the Fund prepare and file annual and interim management reports of fund performance (each an "**MRFP**") that include a discussion of transactions involving the Related Parties to the Fund. When discussing portfolio transactions with Related Parties, NI 81-106 requires the Fund to include the dollar amount of commission, spread, or any other fee paid to any Related Party in connection with a portfolio transaction.

16. It is costly and time consuming for the Filer to also provide the reports for the Fund required by the mutual fund conflict of interest reporting requirements in the Legislation, which are substantially similar to the information required by NI 81-106 to be disclosed in the MRFP.

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 Exemption Sought is granted provided that:

(1) the annual and interim management reports of fund performance for the Fund disclose:

(i) the name of the Related Party;

(ii) the amount of fees paid to each Related Party; and

(iii) the person or company who paid the fees if they were not paid by the Fund; and

(2) the records of portfolio transactions maintained by the Fund include, separately for every portfolio transaction effected by the Fund through a Related Party:

(i) the name of the Related Party;

(ii) the amount of fees paid to each Related Party; and

(iii) the person or company who paid the fees.

"Heather Zordel"
Commissioner
Ontario Securities Commission

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

2.1.4 Canada Life Capital Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – passport application – Exemption granted to a trust from continuous disclosure requirements under National Instrument 51-102 Continuous Disclosure Obligations and certification obligations under National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, subject to certain conditions – Trust established for purpose of effecting offerings of trust securities in order to provide insurance company with a cost-effective means of raising capital for Canadian insurance company regulatory purposes – Without relief, trust would have to comply with continuous disclosure and certification requirements – Given the nature, terms and conditions of the trust securities, the meaningful information to public holders of trust securities is information with respect to the insurance company, rather than the trust.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 4.1, 4.3, 5.1, 7.1, 12.2, 13.1, 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 4.1, 5.1, 6.1, 6.2, 8.6.

May 25, 2020

**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
CANADA LIFE CAPITAL TRUST
(the Trust or the Filer)**

DECISION

Background

Canada Life Financial Corporation (**CLFC**), The Canada Life Assurance Company (**CLA**) and the Filer received an order dated May 14, 2002 (the **2002 Order**) exempting the Trust from the continuous disclosure requirements of securities legislation as specified in the 2002 Order. CLFC and the Filer received an order dated May 28, 2004 (the **2004 Order**) exempting the Trust from the certification requirements of securities legislation as specified in the 2004 Order.

This application is submitted by the Filer in connection with the amalgamation of certain entities pursuant to Letters Patent of Amalgamation issued by the Minister of Finance (Canada) effective on January 1, 2020 (the **Amalgamation**). Pursuant to the Amalgamation, CLA, CLFC, The Great-West Life Assurance Company, London Insurance Group Inc. and London Life Insurance Company became one entity, The Canada Life Assurance Company (hereinafter referred to as **Amalco**).

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) to revoke and replace the 2002 Order and the 2004 Order to account for the Amalgamation and to provide that:

1. the Trust be granted an exemption (the **Continuous Disclosure Exemption**) from the requirements contained in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) to file and deliver, as applicable,

   (a) audited annual financial statements including management's discussion and analysis (**MD&A**) thereon required by sections 4.1 and 5.1 of NI 51-102;

   (b) unaudited interim financial reports including MD&A thereon required by sections 4.3 and 5.1 of NI 51-102;

   (c) press releases and material change reports required by section 7.1 of NI 51-102 in the case of material changes that are also material changes in the affairs of Amalco; and

   (d) other material contracts required by section 12.2 of NI 51-102 in the case of material contracts that are also material contracts of Amalco (collectively, the **Continuous Disclosure Filings**) pursuant to section 13.1 of NI 51-102; and

2. the Trust be granted an exemption (the **Certification Exemption**) from the requirements to file (a) annual certificates (as defined in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**)) under sections 4.1 and 6.1, as applicable, of NI 52-109; and (b) interim certificates (as defined in NI 52-109) under sections 5.1 and 6.2, as applicable, of NI 52-109 (the **Certification Requirements**) pursuant to section 8.6 of NI 52-109;

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

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the provinces and territories other than Ontario.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision, unless they are defined in this decision.

Representations

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

CLA

Incorporation and Status

1. CLA was established on August 21, 1847 and incorporated on April 25, 1849. On November 4, 1999 CLA demutualized and became a stock life insurance company under Letters Patent of Conversion issued under the *Insurance Companies Act* (**ICA**). CLA amalgamated with CLFC, The Great-West Life Assurance Company, London Insurance Group Inc. and London Life Insurance Company under Letters Patent of Amalgamation issued by the Minister of Finance (Canada) pursuant to the ICA effective on January 1, 2020.

2. CLA had, and Amalco has, a financial year end of December 31.

3. CLA was a reporting issuer (or the equivalent) in each of the provinces and territories of Canada and was not in default of any requirement of the Legislation immediately prior to the Amalgamation.

Capital Structure

4. Effective on January 1, 2020 following the Amalgamation, the authorized share capital of Amalco consists of an unlimited number of: (i) common shares; (ii) Class A Shares, issuable in series; and (iii) Class B Shares, issuable in series; (the Class A Shares and the Class B Shares being collectively referred to as the Amalco Preferred Shares). As at February 24, 2020, 2,407,384 common shares, 18,000 Class A Shares, Series 1 and 40,000,000 Class A Shares, Series 6 were issued and outstanding.

5. Amalco is unable to provide a guarantee or alternative credit support pursuant to section 13.4 of NI 51-102 and remain in compliance with

insurance regulatory capital requirements. Therefore, Amalco does not qualify as a "credit supporter" pursuant to section 13.4 of NI 51-102.

Disclosure

6. Prior to the Amalgamation, each of CLA and the Trust relied on the Continuous Disclosure Filings of CLFC pursuant to relief granted in the 2002 Order, the 2004 Order and the decision document dated August 31, 2004 granting relief to CLA from certain continuous disclosure obligations and certification requirements, subject to certain specified conditions. Post-Amalgamation, Amalco as successor to CLFC, will prepare and file all applicable Continuous Disclosure Filings, including financial statements and MD&A. Amalco will prepare the audited annual financial statements of Amalco (the **ICA Financial Statements**) in order to comply with section 331 of the ICA, which requires that such financial statements be placed before its shareholders and policyholders at every annual meeting. Amalco is also required to send the ICA Financial Statements to its registered shareholders and policyholders and to file them with the Superintendent of Financial Institutions (Canada) (the **Superintendent**), in each case not later than 21 days before the date of the annual meeting pursuant to sections 334(1) and 335(1) of the ICA, respectively. Amalco will, in the same way that CLFC has done in the past, file its annual financial statements on the System for Electronic Document Analysis and Retrieval (**SEDAR**).

The Trust

Formation and Status

7. The Trust is an open-end trust established under the laws of the Province of Ontario by The Canada Trust Company (Trustee), as trustee, under a declaration of trust made as of February 6, 2002 (the **Declaration of Trust**).

8. The Trust is a reporting issuer, or the equivalent, in each of the Jurisdictions as a result of the filing of a final prospectus in connection with the Offering dated March 7, 2002 (the Prospectus) and the issuance of a final MRRS Decision Document in relation to the Prospectus. The Trust is not in default of any of its reporting issuer obligations under the securities legislation of any of the provinces or territories of Canada.

Capital Structure

9. The beneficial interests of the Trust are divided into two classes of units, issuable in series. The outstanding securities of the Trust consist of: (i) Special Trust Securities (the **Special Trust Securities**); and (ii) Canada Life Capital Securities - Series B (the **CLiCS**). Post-Amalgamation, the Special Trust Securities are held in their entirety by Amalco, as successor to CLA. The Special Trust Securities and the CLiCS are collectively referred to herein as the **Trust Securities**. The CliCS and the Special Trust Securities are not quoted or listed on any exchange or organized market.

Business of the Trust

10. The Trust was established solely for the purpose of effecting a public offering of Canada Life Capital Securities (the **Offering**) and possible future offerings of securities in order to provide CLA with a cost effective means of raising capital for Canadian insurance company regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which consists primarily of a debenture issued by CLA (the **CLA Debenture**). The CLA Debenture generates income for distribution to holders of the Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with the Offering and any future offerings.

CLiCS

11. The Trust issued two series of CLiCS, Canada Life Capital Securities - Series A and Canada Life Capital Securities - Series B under the Prospectus. The Canada Life Capital Securities – Series A were redeemed in full on June 30, 2012.

12. The Trust also issued and sold 1,000 Special Trust Securities, which are voting securities of the Trust, to CLA in connection with the Offering.

13. Holders of CLiCS are entitled to receive fixed, semi-annual non-cumulative distributions (each, an **Indicated Yield**) on the basis described below (**Distributions**). Distributions will not be made if Amalco fails to declare dividends on certain of its preferred shares (namely, the Class A Shares Series 1) in accordance with their terms in the 3-month period preceding each 6-month distribution period (a **Distribution Diversion Event**). In that circumstance, all of the income of the Trust will be paid to Amalco as the holder of the Special Trust Securities. In addition, if a Distribution Diversion Event occurs, and Amalco does not have more than $100 million of Amalco Preferred Shares which: (i) have been issued to the public (excluding any Amalco Preferred Shares held beneficially by affiliates of Amalco); (ii) are listed on a recognized stock exchange; and (iii) have an aggregate liquidation entitlement of at least $100 million (the **Public Preferred Shares**) outstanding, then Amalco will be prevented from declaring dividends on certain of its outstanding shares. If there is more than one class of Public Preferred Shares outstanding, then the most senior class or classes of outstanding Public

Preferred Shares shall, for all purposes, be the Public Preferred Shares. Once a Distribution Diversion Event no longer exists, the Indicated Yield will once again be paid to holders of CLiCS.

14. Upon the Amalgamation, Amalco automatically succeeded to the obligations of CLA and CLFC under a Share Exchange Agreement entered into among CLA, CLFC, the Trust and a party acting as Exchange Trustee (the **Share Exchange Agreement**). As a result, Amalco has agreed, for the benefit of the holders of CLiCS, that in the event that the Trust fails on any Regular Distribution Date to pay the Indicated Yield on the CLiCS in full: (i) Amalco will not declare or pay Dividends on the Public Preferred Shares; or (ii) if no Public Preferred Shares are then outstanding, Amalco will not declare or pay Dividends on any of its preferred shares or on its common shares, in each case, until the twelfth month following such Regular Distribution Date, unless the Trust first pays such Indicated Yield (or the unpaid portion thereof) to holders of CLiCS (the **Dividend Stopper Undertaking**). Accordingly, it is in the interest of Amalco to ensure, to the extent within its control, that the Trust complies with its obligation to pay the Indicated Yield on each Regular Distribution Date so as to avoid triggering the Dividend Stopper Undertaking.

15. Under the terms of the CLiCS and the Share Exchange Agreement, the CLiCS may be exchanged, at the option of the holders of CLiCS, for newly issued Amalco Class A Shares Series 4.

16. The CLiCS will be automatically exchanged, without the consent of the holder, for Amalco Class A Shares Series 5 (the **Automatic Exchange**) in the event that any one of the following occurs: (A) the Attorney General of Canada files an application for a winding-up order in respect of Amalco pursuant to the *Winding-up and Restructuring Act* (Canada) or a court grants a winding-up order in respect of Amalco pursuant to that act; (B) the Superintendent advises Amalco in writing that the Superintendent has taken control of Amalco or its assets pursuant to the ICA; (C) the Superintendent advises Amalco in writing that Amalco has a net Tier 1 capital ratio (as determined in accordance with the Minimum Continuing Capital Surplus Requirements (or its equivalent) for Canadian federally regulated insurance companies issued from time to time by the Superintendent (**MCCSR**)) of less than 75% or an MCCSR ratio (as determined in accordance with the MCCSR) of less than 120%; (D) the Board of Directors of Amalco advises the Superintendent in writing that Amalco has a net Tier 1 capital ratio of less than 75% or an MCCSR ratio of less than 120%; or (E) the Superintendent directs Amalco, pursuant to the ICA, to increase its capital or provide additional liquidity and (x) Amalco elects to cause the automatic exchange as a consequence of the issuance of the direction or (y) Amalco does not comply with such direction to the satisfaction of the Superintendent within the time specified in the direction (each, a **Loss Absorption Event**).

17. The terms of the Amalco Class A Shares Series 4 and Series 5 each provide, among other things, that such shares are exchangeable at the option of the holder for common shares of Amalco at certain times and in certain circumstances, but in any event the Amalco Class A Shares Series 4 and Series 5 are not exchangeable into Amalco common shares until December 31, 2032. These exchange rights are not operative at any time that an event giving rise to the Automatic Exchange in respect of the CLiCS has occurred and is continuing.

18. The Trust may, subject to regulatory approval, on any Distribution Date, redeem the CLiCS. The price payable in respect of any such redemption will include an early redemption compensation component (such price being the **Early Redemption Price**) in the event of a redemption of CLiCS prior to June 30, 2032 (the **Early Redemption Date**). The price payable in all other cases will be $1,000 per CLiCS together with any unpaid Indicated Yield thereon (the **Redemption Price**).

19. Upon the occurrence of certain regulatory or tax events affecting Amalco or the Trust, the Trust may, subject to regulatory approval, redeem at any time all but not less than all of the CLiCS at the Early Redemption Price (if the CLiCS are redeemed prior to the applicable Early Redemption Date) and at the Redemption Price (if the CLiCS are redeemed on or after the applicable Early Redemption Date).

20. CLA covenanted, under the Share Exchange Agreement, that CLA or its affiliates would maintain ownership, directly or indirectly, of 100% of the outstanding Special Trust Securities. As a result, the financial results of the Trust are consolidated with those of Amalco following the Amalgamation. The CLiCS will constitute Tier 1 Capital of Amalco.

21. As long as any CLiCS are outstanding, the Trust may only be terminated with the approval of the holder of Special Trust Securities and with the approval of the Superintendent for any reason on any Distribution Date. Holders of Trust Securities rank *pari passu* in the distribution of the property of the Trust in the event of a termination of the Trust, after the discharge of any creditor claims. As long as any CLiCS are outstanding, Amalco will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Early Redemption Price in the case of a termination prior to the Early Redemption Date, or the

Redemption Price in the case of any other termination.

22. As set forth in the Declaration of Trust, the CLiCS are non-voting except in limited circumstances and Special Trust Securities entitle the holders to vote.

23. Except to the extent that the Distributions are payable to CLiCS holders and, other than in the event of termination of the Trust (as set forth in the Declaration of Trust), CLiCS holders have no claim or entitlement to the income of the Trust or the assets held by the Trust.

24. Because of the terms of the Trust, the return to a CLiCS holder depends upon the financial condition of Amalco and not that of the Trust.

25. Under an Administration Agreement between the Trustee and Amalco, the Trustee delegates to Amalco certain of its obligations in relation to the administration of the Trust. Amalco, as administrative agent, provides advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.

26. The Trust has not requested relief for the purposes of filing a short form prospectus pursuant to National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) (including, without limitation, any relief which would allow the Trust to use Amalco's annual information form as a current annual information form of the Trust) and no such relief is provided by this Decision Document from any of the requirements of NI 44-101.

27. The Trust may, from time to time, issue further series of Canada Life Capital Securities, the proceeds of which would be used to acquire additional debentures from Amalco.

The Exemption Sought

28. The Exemption Sought is a revocation and replacement of the relief granted pursuant to the 2002 Order and the 2004 Order.

29. The obligation to prepare and, where applicable, print and distribute, continuous disclosure materials for the Trust would be costly, time consuming and not meaningful to holders of the Trust Securities.

Continuous Disclosure and Certification Exemptions of the Trust

30. Because of the terms of the CLiCS, the Share Exchange Agreement and the various covenants to be binding on Amalco, information about the affairs and financial performance of Amalco, as opposed to that of the Trust, is more meaningful to holders of CLiCS and will continue to be made available to holders of Trust Securities and the general investing public. Amalco's Continuous Disclosure Filings will provide holders of CLiCS and the general investing public with all information required in order to make an informed decision relating to an investment in CLiCS. Information regarding Amalco is relevant both to an investor's expectation of being paid the Indicated Yield on the CLiCS as well as the return of the investor's principal. As noted above, holders of CLiCS have always relied upon CLFC Continuous Disclosure Filings and this exemptive relief is seeking to amend the existing orders to account for the Amalgamation and the successor entity to CLFC (Amalco).

31. The Certification Filings are intended to improve the quality and reliability of (i) an issuer's interim financial reports and interim MD&A filed pursuant to NI 51-102 (the **Interim Filings**) and (ii) an issuer's annual information form (if applicable), annual financial statements and annual MD&A filed pursuant to NI 51-102 (the **Annual Filings**).

32. Investors in CLiCS are ultimately concerned about the affairs and financial performance of Amalco, as opposed to that of the Trust itself, and therefore, it is appropriate that Amalco's Certification Filings be available to them on the same basis as the Interim and Annual Filings of Amalco.

33. For the avoidance of doubt, for so long as the Trust qualifies for the Continuous Disclosure Exemption, Amalco is considered a "responsible issuer" for the purposes of determining the Trust's liability under Part XXIII.1 of the Securities Act (Ontario) and the CLiCS constitute "issuer's securities" of Amalco for the purposes of such part.

Decision

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

The decision of the principal regulator under the Legislation is that the Continuous Disclosure Exemption and the Certification Exemption be granted to the Trust provided that:

(a) Amalco remains a reporting issuer under the Legislation;

(b) Amalco continues to be regulated by the Office of the Superintendent of Financial Institutions (Canada) or any successor;

(c) Amalco files with the principal regulator, in electronic format under the Trust's

SEDAR profile, or the Trust's profile on any successor system to SEDAR, the Continuous Disclosure Filings, at the same time as they are required under the Legislation to be filed by Amalco;

(d) Amalco complies with the Certification Requirements and files the necessary certifications under the Trust's SEDAR profile, or the Trust's profile on any successor system to SEDAR, at the same time as they are required under the Legislation to be filed by Amalco;

(e) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the Continuous Disclosure Filings;

(f) Amalco sends its Annual Filings, where applicable, to holders of Trust Securities at the same time and in the same manner as if the holders of Trust Securities were holders of Amalco common shares;

(g) the Trust does not carry on any material operating activity other than in connection with the administration and repayment of the Trust Securities;

(h) the Trust does not have any material assets other than the CLA Debenture, has minimal assets, operations, revenues or cash flows other than those related to the CLA Debenture or the issuance, administration and repayment of the Trust Securities and has no material liabilities other than those related to the repayment of the Trust Securities;

(i) the Trust immediately issues in Canada a news release and files a material change report for all material changes in respect of the affairs of the Trust that are not also material changes in the affairs of Amalco;

(j) all outstanding securities of the Trust are either CLiCS or Special Trust Securities or are additional series of Canada Life Capital Trust Securities where the rights and obligations (other than the economic terms) of the holders of such additional securities are the same in all material respects as the rights and obligations of the holders of the CLiCS at the date hereof;

(k) the rights and obligations (other than the economic terms thereof) of holders of additional series of Canada Life Capital Trust Securities are the same in all material respects as the rights and obligations of the holders of CLiCS at the date hereof;

(l) for so long as any CLiCS or additional series of Canada Life Capital Trust Securities that are the same in all material respects as the CLiCS are outstanding, Amalco continues to provide the Dividend Stopper Undertaking;

(m) the CLiCS will be automatically exchanged, without the consent of the holder, for Amalco Class A Shares Series 5 pursuant to the Automatic Exchange upon the occurrence of a Loss Absorption Event;

(n) Amalco or its affiliates are the beneficial owners of all Special Trust Securities; and

(o) this decision will expire on the earlier of:

(i) 30 days after the date that a material adverse change occurs in the representations in this decision; and

(ii) three months after the coming into force of any substantive amendments to section 13.4(2) of NI 51-102 that materially adversely affect the Continuous Disclosure Exemption.

The further decision of the principal regulator is that the 2002 Order and the 2004 Order are revoked and replaced by this decision.

In respect of granting the Continuous Disclosure Exemption, granting the Certification Exemption, revoking the 2004 Order, and revoking the 2002 Order in respect of the AIF and MD&A Requirements (as defined in the 2002 Order):

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

In respect of revoking the 2002 Order in respect of the Financial Statements, Annual Filing and Annual Report (as defined in the 2002 Order):

"Lawrence Haber"
Commissioner
Ontario Securities Commission

"Craig Hayman"
Commissioner
Ontario Securities Commission

2.1.5 Aphria Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into an equity distribution agreement to make “at the market” (ATM) distributions of common shares over the facilities of the TSX, NYSE or other marketplaces – ATM distribution to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreements on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate on December 22, 2021 (being that date is 25 months after the issuance of a receipt for the shelf prospectus) – decision and application also held in confidence by decision makers until the earlier of, entrance into of an equity distribution agreement, waiver of confidentiality or 90 days from the date of the decision.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71, 147.

Applicable Rules

National Instrument 44-101 Short Form Prospectus Distributions, Part 8 and Item 20 of Form 44-101F1.
National Instrument 44-102 Shelf Distributions, ss. 6.3, 6.7, Part 9, ss. 2.1, 2.2 of Appendix A.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

January 21, 2020

**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
APHRIA INC.
(the Issuer),
CANACCORD GENUITY CORP.
AND
JEFFERIES SECURITIES, INC.
(collectively, the Canadian Agents)**

AND

**CANACCORD GENUITY LLC
AND
JEFFERIES LLC
(collectively, the U.S. Agents and together with the Canadian Agents,
the Agents, and together with the Issuer, the Filers)**

DECISION

Background

The Ontario Securities Commission (the **Decision Maker**), being the principal regulator in the Jurisdiction, has received an application (the **Application**) from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for the following relief (the **Exemptions Sought**):

(a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, send or deliver to the purchaser the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to the Agents or any other TSX participating organization or other marketplace participant acting as selling agent for the Agents (each, a **Selling Agent**) in connection with any at-the-market distribution (each, an **ATM Distribution**, and any ATM Distributions made under the Shelf Prospectus (as defined below) collectively referred to herein as an **ATM Offering**) as defined in National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) of common shares (**Common Shares**) of the Issuer in Canada and the United States pursuant to one or more substantially identical equity distribution agreements (each, an **Equity Distribution Agreement**) to be entered into between the Issuer and the Agents; and

(b) that the requirements to include in a base shelf prospectus or prospectus supplement or an amendment thereto:

(i) a forward-looking issuer certificate of the Issuer in the form specified in section 2.1 or section 2.4, as applicable, of Appendix A to NI 44-102;

(ii) a forward-looking underwriter certificate in the form specified in section 2.2 or section 2.4, as applicable, of Appendix A to NI 44-102; and

(iii) a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus*;

(collectively, the **Prospectus Form Requirements**) do not apply to the Shelf Prospectus (as defined below), the Prospectus Supplement (as defined below) or an amendment thereto provided that the Issuer include in the Prospectus Supplement or an amendment thereto the form of issuer certificate and form of underwriter certificate and include in the Prospectus Supplement or an amendment thereto the revised description of a purchaser's statutory rights of withdrawal and remedies for rescission or damages described below, in each case (other than with respect to the underwriter certificate) superseding and replacing the corresponding language in the Shelf Prospectus solely with regards to an ATM Offering.

The Decision Maker has also received a request from the Filers for a decision that the Application and this decision (together, the **Confidential Material**) be kept confidential and not be made public until the earlier of: (i) the date on which the Filers first enter into an Equity Distribution Agreement; (ii) the date any of the Filers advise the Decision Maker that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision (collectively, the **Confidentiality Relief**).

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 as the Issuer's head office is located in Ontario; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (**SEDAR**), in MI 11-102 or in NI 44-102 have the same meaning if used in this decision, unless otherwise defined herein. Unless otherwise noted, all dollar figures in this decision refer to Canadian dollars.

Representations

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

The Issuer

1. The Issuer is a corporation continued under the *Business Corporations Act* (Ontario). The head office of the Issuer is located in Leamington, Ontario.

2. The Issuer is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada.

3. The Common Shares are listed on the Toronto Stock Exchange (the **TSX**) and the New York Stock Exchange (the **NYSE**) in each case under the trading symbol “APHA”.

4. The Issuer is subject to reporting obligations under the *U.S. Securities Exchange Act of 1934*, as amended (the **U.S. Exchange Act**), and files its continuous disclosure documents with the Securities and Exchange Commission (the **SEC**) in the United States.

5. The Issuer filed a short form base shelf prospectus (the **Shelf Prospectus**) in the Reporting Jurisdictions and a corresponding registration statement and base shelf prospectus under the U.S. Securities Act of 1933, as amended, on Form F-10 with the SEC on November 22, 2019 under the multi-jurisdictional disclosure system qualifying the distribution from time to time of Common Shares, debt securities, warrants, subscription receipts, convertible securities and units having an aggregate offering price of up to US$500,000,000 (or the equivalent in Canadian dollars or other currencies).

6. The Ontario Securities Commission issued a receipt for the Shelf Prospectus on November 22, 2019, which receipt was deemed pursuant to MI 11-102 to have been issued by the securities regulatory authority in each of the other Reporting Jurisdictions.

7. The Issuer plans to enter into one or more substantially identical Equity Distribution Agreements with the Agents and file a prospectus supplement in each of the provinces and territories of Canada and with the SEC to qualify the distribution of Common Shares in connection with an ATM Offering (the **Prospectus Supplement**).

The Agents

8. Canaccord Genuity Corp. is a corporation established under the laws of British Columbia, with its head office in Toronto, Ontario, and is: (i) registered as an investment dealer under the applicable securities legislation of each Reporting Jurisdiction; (ii) a member of the Investment Industry Regulatory Organization of Canada; and (iii) a participating organization of the TSX.

9. Jefferies Securities, Inc. is a corporation established under the laws of British Columbia, with its head office in Toronto, Ontario, and is: (i) registered as an investment dealer under the applicable securities legislation of the provinces of British Columbia, Alberta, Saskatchewan, Ontario and Quebec; (ii) a member of the Investment Industry Regulatory Organization of Canada; and (iii) a participating organization of the TSX.

10. Canaccord Genuity LLC is a company established under the laws of Delaware, with its head office in New York, New York.

11. Jefferies LLC is a company established under the laws of Delaware, with its head office in New York, New York.

12. Each of the U.S. Agents is a broker-dealer registered with the SEC under the U.S. Exchange Act.

13. None of the Agents are in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada.

Proposed ATM Offering

14. Subject to mutual agreement on terms and conditions, the Filers propose to enter into the Equity Distribution Agreements for the purpose of conducting an ATM Offering involving the periodic sale of Common Shares by the Issuer through the Agents, as agents, under the shelf prospectus procedures prescribed by Part 9 of NI 44-102.

15. If an Equity Distribution Agreement is entered into, the Issuer will immediately do both of the following:

    (a) issue and file a news release pursuant to section 3.2 of NI 44-102 announcing such Equity Distribution Agreement and indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on

SEDAR and specifying where and how purchasers of Common Shares under such ATM Offering may obtain copies; and

(b) file the Equity Distribution Agreement on SEDAR.

16. Prior to making an ATM Distribution, the Issuer will have filed, in each of the provinces and territories of Canada and with the SEC, the Prospectus Supplement describing the terms of such ATM Offering, including the terms of the applicable Equity Distribution Agreement and a description of any exemptions granted by the Canadian securities regulatory authorities in any of the Reporting Jurisdictions (including, for greater certainty, the Exemptions Sought), and otherwise supplementing the disclosure in the Shelf Prospectus.

17. Under the proposed Equity Distribution Agreements and in accordance with subsection 9.1(1) of NI 44-102, the Issuer will not, during the period that the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Common Shares that exceeds 10% of the aggregate market value of Common Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made.

18. The Issuer will conduct ATM Distributions only through one or more of the Agents (as agents) directly or through a Selling Agent, and only through methods constituting “at-the-market distributions” within the meaning of NI 44-102, including sales made on (i) the TSX, (ii) the NYSE, or (iii) another “marketplace” (as defined in National Instrument 21-101 *Marketplace Operation*) upon which the Common Shares are listed, quoted or otherwise traded (each, a **Marketplace**).

19. The Canadian Agents will act as the sole agents of the Issuer in connection with ATM Distributions directly or through one or more Selling Agents on the TSX or any other Marketplace in Canada (a **Canadian Marketplace**), and will be paid an agency fee or commission by the Issuer in connection with such sales. If sales are effected through a Selling Agent, the Selling Agent will be paid a seller’s commission for effecting the trades on behalf of the Canadian Agents. The Canadian Agents will each sign an agent’s certificate, in the form set out in paragraph 36 below, in the Prospectus Supplement.

20. A purchaser’s rights and remedies under applicable securities legislation against the Canadian Agents, as agents of ATM Distributions through a Canadian Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent.

21. The aggregate number of Common Shares sold on one or more Canadian Marketplaces pursuant to ATM Distributions on any trading day will not exceed 25% of the trading volume of the Common Shares on all Canadian Marketplaces on that day.

22. Each Equity Distribution Agreement will provide that, at the time of each sale of Common Shares pursuant to an ATM Distribution, the Issuer will represent to the Agents that the Shelf Prospectus, as supplemented by the Prospectus Supplement, including the documents incorporated by reference in the Shelf Prospectus (which shall include any news release that has been designated and filed as a Designated News Release (as defined below)) and any subsequent amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, the **Prospectus**), contains full, true and plain disclosure of all material facts relating to the Issuer and the Common Shares being distributed. The Issuer will, therefore, be unable to proceed with sales pursuant to an ATM Offering when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Issuer or the Common Shares.

23. During the period after the date of the Prospectus Supplement and before the termination of any ATM Offering, if the Issuer disseminates a news release disclosing information that, in the Issuer’s determination, constitutes a “material fact” (as such term is defined in the Legislation), the Issuer will identify such news release as a “designated news release” for the purposes of the Prospectus. This designation will be made on the face page of the version of such news release filed on SEDAR (any such news release, a **Designated News Release**). The Prospectus Supplement will provide that any such Designated News Release filed since the end of the financial year in respect of which the Issuer’s “current AIF” (as defined in National Instrument 44-101 *Short Form Prospectus Distributions*) is filed will be deemed to be incorporated by reference into the Prospectus. A Designated News Release will not be used to update disclosure in the Prospectus by the Issuer in the event of a “material change” (as such term is defined in the Legislation).

24. If, after the Issuer delivers a sell notice to the Agents directing the Agents to sell Common Shares on the Issuer’s behalf pursuant to an Equity Distribution Agreement (a **Sell Notice**), the sale of the Common Shares specified in the Sell Notice, taking into consideration prior sales under an ATM Offering, would constitute a material fact or material change, the Issuer will suspend sales under such Equity Distribution Agreement until either: (a) it has filed a

Designated News Release or material change report, as applicable, or amended the Prospectus; or (b) circumstances have changed such that a sale would no longer constitute a material fact or material change.

25. In determining whether the sale of the number of Common Shares specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation:

(a) the parameters of the Sell Notice, including the number of Common Shares proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution;

(b) the percentage of the outstanding Common Shares that the number of Common Shares proposed to be sold pursuant to the Sell Notice represents;

(c) sales under earlier Sell Notices;

(d) trading volume and volatility of the Common Shares;

(e) recent developments in the business, operations or capital of the Issuer; and

(f) prevailing market conditions generally.

26. It is in the interest of the Issuer and the Agents to minimize the market impact of sales under an ATM Offering. Therefore, the Agents will monitor closely the market's reaction to trades made on any Marketplace pursuant to an ATM Offering in order to evaluate the likely market impact of future trades. The Agents have experience and expertise in managing sell orders to limit downward pressure on trading prices. If any of the Agents have concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Common Shares, the Agents will recommend against effecting the trades pursuant to the applicable Sell Notice at that time.

Disclosure of Common Shares sold in ATM Offering

27. The Issuer will disclose the number and average price of Common Shares sold pursuant to an ATM Offering, as well as gross proceeds, commissions and net proceeds, in its annual and interim financial statements and management's discussion and analysis filed on SEDAR.

Prospectus Delivery Requirement

28. Pursuant to the Prospectus Delivery Requirement, a dealer effecting a trade of securities offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits.

29. Delivery of a prospectus is not practicable in the circumstances of an ATM Offering as neither the Agents nor any Selling Agent, as applicable, effecting the trade will know the identity of the purchasers.

30. The Prospectus (together with all documents incorporated by reference therein) will be filed and readily available electronically via SEDAR to all purchasers under an ATM Offering. As stated in paragraph 15 above, the Issuer will issue a news release that specifies where and how copies of the Prospectus can be obtained.

31. The liability of an issuer or an underwriter (or others) for a misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Prospectus Delivery Requirement, as purchasers of securities offered by a prospectus during the period of distribution have a right of action for damages or rescission, without regard to whether or not the purchaser relied on the misrepresentation or in fact received a copy of the prospectus.

Withdrawal Right and Right of Action for Non-Delivery

32. Pursuant to the Legislation, an agreement of purchase and sale in respect of a distribution to which the prospectus requirement applies is not binding upon the purchaser if the dealer from whom the purchaser purchases the security receives, not later than midnight on the second day (exclusive of Saturdays, Sundays and holidays) after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale (the **Withdrawal Right**).

33. Pursuant to the Legislation, a purchaser of securities to whom a prospectus was required to be sent or delivered in compliance with the Prospectus Delivery Requirement, but was not so sent or delivered, has a right of action for

rescission or damages against the dealer who did not comply with the Prospectus Delivery Requirement (the **Right of Action for Non-Delivery**).

34. Neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of an ATM Offering because of the impracticability of delivering the Prospectus to a purchaser of Common Shares thereunder.

Modified Certificates and Statements

35. To reflect the fact that an ATM Offering is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following issuer certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such issuer certificate to supersede and replace the issuer certificate included in the Shelf Prospectus solely with regard to an ATM Offering:

> *The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities under the prospectus and this prospectus supplement, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this prospectus supplement, as required by the securities legislation of each of the provinces and territories of Canada.*

36. The Prospectus Supplement and any amendment thereto will include the following underwriter certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102):

> *To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities under the prospectus and this prospectus supplement, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this prospectus supplement, as required by the securities legislation of each of the provinces and territories of Canada.*

37. A different statement of purchasers' rights than that required by the Legislation is necessary so that the Prospectus Supplement will accurately reflect the relief granted from the Prospectus Delivery Requirement. Accordingly, the Prospectus Supplement will state the following, with the date reference completed:

> *Securities legislation in certain of the provinces and territories of Canada provide purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price or damages if the prospectus, prospectus supplements relating to the securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Common Shares under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Common Shares and will not have remedies of rescission or, in some jurisdictions, revisions of the price, or damages for non-delivery of the prospectus supplement, the accompanying prospectus and any amendment thereto relating to Common Shares purchased by such purchaser because the prospectus supplements, the accompanying prospectus and any amendment thereto relating to the Common Shares purchased by such purchaser will not be delivered as permitted under a decision dated January 21, 2020 and granted pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.*
>
> *Securities legislation in certain of the provinces and territories of Canada further provides purchasers with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contains a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of Common Shares under an at-the-market distribution by the Issuer may have against the Issuer or the Agents for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus supplement, the accompanying prospectus and any amendment thereto relating to securities purchased by a purchaser and any amendment contain a misrepresentation will remain unaffected by the non-delivery and the decision referred to above.*
>
> *A purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory and the decision referred to above for the particulars of these rights or consult with a legal adviser.*

38. The Prospectus Supplement will disclose that, solely with regards to an ATM Offering, the statement prescribed in paragraph 37 above supersedes and replaces the statement of purchasers' rights included in the Shelf Prospectus.

Decision

The Decision Maker is satisfied that this decision satisfies the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Exemptions Sought are granted, provided:

(a) at least one of the following is true:

(i) during the 60-day period ending not earlier than 10 days prior to the commencement of an ATM Offering, the Common Shares have traded, in total, on one or more Marketplaces, as reported on a consolidated market display:

(A) an average of at least 100 times per trading day, and

(B) with an average trading value of at least $1,000,000 per trading day; or

(ii) at the commencement of an ATM Offering, the Common Shares are subject to Regulation M under the U.S. Exchange Act and are an "actively-traded security" as defined thereunder;

(b) the Issuer does not, during the period that the Shelf Prospectus is effective, distribute by way of any one ATM Distribution a total market value of Common Shares that exceeds 10% of the aggregate market value of Common Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first distribution is made under such ATM Distribution;

(c) the Issuer complies with the disclosure requirements set out in paragraphs 27 and 35 through 38 above; and

(d) the Issuer and Agents respectively comply with the representations made in paragraphs 15, 18, 19, and 21 through 26 above.

This decision will terminate on December 22, 2021 (being the date that is 25 months from the date of the receipt for the Shelf Prospectus).

The further decision of the Decision Maker is that the Confidentiality Relief in respect of the Exemptions Sought is granted.

As to the Exemptions Sought from the Prospectus Delivery Requirement and the Confidentiality Relief:

"Heather Zordel"
Commissioner
Ontario Securities Commission

"Mary Anne De-Whelan"
Commissioner
Ontario Securities Commission

As to the Exemptions Sought from the Prospectus Delivery Requirement, the Prospectus Form Requirements and the Confidentiality Relief:

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

2.1.6 Canopy Growth Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief from the filing deadline under section 4.3(4) of NI 51-102 in respect of the issuer's restated interim financial reports prepared in accordance with U.S. GAAP for the interim periods since its most recently completed financial year for which annual financial statements have been filed – pursuant to subsection 4.3(4)(d) of NI 51-102, the issuer is required to file its restated interim financial reports and the accompanying MD&A on or before the filing deadline for its audited annual financial statements for the year ended March 31, 2020, being June 1, 2020 – as a result of the COVID-19 outbreak, the issuer has encountered unanticipated delays in its work plan and the required restated interim financial reports will not be finalized when its annual financial statements are filed on June 1, 2020 – relief granted subject to conditions set out in decision document, including that the Issuer files its restated interim financial reports and related MD&A on or before July 16, 2020, being 45 days following the filing deadline – relief consistent with OSC Instrument 51-502 Temporary Exemption from Certain Corporate Finance Requirements – decision and application held in confidence by decision maker until the earlier of June 1, 2020 and the issuer's waiver of confidentiality.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 4.3(4)(d), Part 13.
Ontario Securities Commission Instrument 51-502 Temporary Exemption from Certain Corporate Finance Requirements.

May 28, 2020

**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
CANOPY GROWTH CORPORATION
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**). Under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), the Filer is required to file restated interim financial reports prepared in accordance with the generally accepted accounting principles in the United States that the U.S. Securities and Exchange Commission (the **SEC**) has identified as having substantial authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act (**U.S. GAAP**) for the interim periods since its most recently completed financial year for which annual financial statements have been filed (the **Restated Interim Financial Reports**) on or before the deadline for the Filer to file its audited annual financial statements for the year ended March 31, 2020 (the **Annual Financial Statements**), being June 1, 2020 (the **Deadline**).

The Filer is requesting relief from the requirement to file the Restated Interim Financial Reports on or before the Deadline in accordance with subsection 4.3(4)(d) of NI 51-102 (the **Exemption Sought**), provided that Filer files the Restated Interim Financial Reports and related management's discussion and analysis (**MD&A**) on or before July 16, 2020, being 45 days following the Deadline.

The principal regulator in the Jurisdiction 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 earlier of: (i) the date the Filer advises the principal regulator that there is no longer any need for the Confidential Material to remain confidential; and (ii) the Deadline, being June 1, 2020 (the **Confidentiality Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation existing under the *Canada Business Corporations Act*. The head and

register office of the Filer is located at 1 Hershey Drive, Smiths Falls, Ontario K7A 0A8.

2. The common shares of the Filer are listed on the Toronto Stock Exchange under the symbol "WEED" and are also listed on the New York Stock Exchange under the symbol "CGC".

3. The Filer is a reporting issuer in each province of Canada, other than Quebec. The Filer is not in default of securities legislation in any such jurisdiction of Canada.

4. The Filer is subject to reporting obligations under the United States Securities Exchange Act of 1934, as amended (the **1934 Act**).

5. As part of the Filer's obligations under the 1934 Act, the Filer was required by the SEC, at the end of every second fiscal quarter, to test whether it continued to qualify as a foreign private issuer as defined in Rule 405 of Regulation C under the United States Securities Act of 1933, as amended (the **1933 Act**) and Rule 3b-4 under the 1934 Act.

6. As of September 30, 2019, the Filer determined that it no longer met the criteria for qualification as a foreign private issuer because (a) more than 50% of the outstanding voting securities of the Filer were held by residents of the United States, and (b) the majority of the Filer's directors are United States citizens.

7. Effective as of April 1, 2020, the Filer is now subject to the reporting requirements applicable to U.S. domestic registrants and a "large accelerated filer" as such term is defined in Rule 12b-2 promulgated under the 1934 Act.

8. In accordance with Section 6120.4 of the SEC's Division of Corporation Finance Financial Reporting Manual, as of April 1, 2020, the Filer is required, to prepare its Annual Financial Statements in conformity with U.S. GAAP.

9. Furthermore, as of April 1, 2020, the Filer, is considered an "SEC issuer" within the meaning of NI 51-102, and files its continuous disclosure documents with the SEC in the United States pursuant to the U.S.-Canada multi-jurisdictional disclosure system.

10. As an "SEC issuer", the Filer must file Restated Interim Financial Reports prepared in accordance with U.S. GAAP for the interim periods since its most recently completed financial year for which annual financial statements have been filed, on or before the Deadline for the Filer to file its Annual Financial Statements.

11. Recognizing that market participants may be unable to meet certain obligations under securities law as a result of the coronavirus disease 2019 (**COVID-19**) outbreak, the Canadian Securities Administrators announced temporary relief orders that provide a 45-day extension from certain regulatory filings required to be made during the period from March 23, 2020 to June 1, 2020.

12. In Ontario, this relief is provided to corporate finance issuers by Ontario Securities Commission Instrument 51-502 *Temporary Exemption from Certain Corporate Finance Requirements* (**OSC Instrument 51-502**) issued March 23, 2020. In particular, OSC Instrument 51-502 provides non-investment fund reporting issuers with an additional 45 days from the deadline otherwise applicable under the Legislation to make certain filings, including but not limited to, annual financial statements required by section 4.2 of NI 51-102 and an interim financial report required by section 4.4 of NI 51-102 and related MD&A.

13. Since the Filer intends to file its Annual Financial Statements on or before the Deadline, the 45-day extension provided under OSC Instrument 51-502 does not apply to the filing of Restated Interim Financial Reports in accordance with subsection 4.3(4)(d) of NI 51-102.

14. As a result of the COVID-19 outbreak, employees of the Filer and its advisors have been required to work remotely since mid-March, which has caused unanticipated delays in the Filer's work plan related to preparing the Restated Interim Financial Reports in accordance with U.S. GAAP.

15. Due to these new working conditions as well as the emergence of a number of novel and time sensitive matters with respect to the COVID-19 outbreak that have diverted the attention of management, the Filer will not be in a position to finalize and file the Restated Interim Financial Reports and related MD&A by the Deadline.

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, subject to all of the following conditions:

(a) on or before July 16, 2020, the Filer files the Restated Interim Financial Reports prepared in accordance with U.S. GAAP, and related MD&A, for the interim periods since its most recently completed financial year for which annual financial statements have been filed;

(b) the Filer issues and files on SEDAR, as soon as reasonably practicable, and in any event, no later than June 1, 2020, a news release that discloses:

a. it is relying on this exemption;

b. that its management and other insiders are subject to an insider trading black-out policy that reflects the principles in section 9 of National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions*; and

c. the anticipated date by which the required Restated Interim Financial Reports prepared in accordance with U.S. GAAP and related MD&A are expected to be filed; and

(c) the Filer does not file a preliminary prospectus or a final prospectus for an offering of securities until it has filed all documents for which it is relying on this exemption.

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

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

2.1.7 Arrow Capital Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from requirement in National Instrument 81-102 Investment Funds to permit alternative mutual funds to short sell up to 100% of net asset value in connection with "market neutral" or other short selling strategies – NI 81-102 would allow funds to achieve similar short exposure through derivatives – Physical short selling is cheaper and more efficient and will not increase risk to the funds compared to short exposure through derivatives – Relief also granted from the requirement in section 6.1 of NI 81-102 that all portfolio assets of an investment fund must be held under the custodianship of one custodian – Relief needed because plain reading of exemption in section 6.8.1 of NI 81-102 from the requirement in section 6.1 of NI 81-102 results in unintended consequences – Relief subject to condition that the aggregate market value of the securities held by the Prime Broker after such deposit excluding the aggregate of the market value of the proceeds from all then outstanding short sales of securities, must not, (a) in the case of a Fund, other than an Alternative Fund, exceed 10% of the net asset value of the Fund at the time of deposit, and (b) in the case of an Alternative Fund, exceed 25% of the net asset value of the Alternative Fund at the time of deposit – Relief also granted from the single custodian requirement to permit the use of more than one custodian for securities lending purposes only – Relief is required to appoint a securities lending agent that is not a custodian or sub-custodian of the funds – Funds will have a single administrator that will reconcile all the portfolio assets of the funds and provide valuation services – Other custodians will meet all the Part 6 requirements of NI 81-102 – Other custodians will only act as custodian and securities lending agent for securities of the funds transferred to them.

Applicable Legislative Provisions

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

May 29, 2020

**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
ARROW CAPITAL MANAGEMENT INC.
(the Filer)**

AND

**EXEMPLAR GROWTH AND INCOME FUND,
EXEMPLAR INVESTMENT GRADE FUND,
EXEMPLAR PERFORMANCE FUND,
ARROW CANADIAN ADVANTAGE ALTERNATIVE CLASS,
ARROW GLOBAL ADVANTAGE ALTERNATIVE CLASS,
EAST COAST INVESTMENT GRADE INCOME FUND
(the Existing Funds)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Existing Funds, of which the Filer is the investment fund manager, and similarly structured investment funds managed by the Filer (the **Future Funds** and together with the Existing Funds, the **Funds** or individually, a **Fund**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that exempts:

1) a Fund that is an Alternative Fund (as defined below), in order to permit the Alternative Fund to short sell securities having an aggregate market value of up to 100% of the Alternative Fund's net asset value (**NAV**), from the following provisions (the **Short Selling Restrictions**)

   a) subparagraph 2.6.1(1)(c)(v) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), which restricts an alternative mutual fund from selling a security short if, at the time, the aggregate market value of the securities sold short by the Fund exceeds 50% of the Funds' NAV; and

   b) section 2.6.2 of NI 81-102, which prohibits an alternative mutual fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the fund would exceed 50% of the Fund's NAV;

   (the **Market-Neutral Strategy Relief**);

2. a Fund from the requirement in subsection 6.1(1) of NI 81-102, which provides that, except as provided in sections 6.8, 6.8.1 and 6.9 of NI 81-102, all portfolio assets of an investment fund must be held under the custodianship of one custodian that satisfies the requirement of section 6.2 of NI 81-102, in order to permit a Fund to deposit portfolio assets with a borrowing agent that is not the Fund's custodian or sub-custodian in connection with a short sale of securities, if the aggregate market value of the portfolio assets held by the borrowing agent after such deposit, excluding the aggregate market value of the proceeds from outstanding short sales of securities held by the borrowing agent, does not:

   a) in the case of a Conventional Fund (as defined below) exceed 10% of NAV of the Conventional Fund at the time of deposit; and

   b) in the case of an Alternative Fund, exceed 25% of the NAV of the Alternative Fund at the time of deposit;

   (the **Short Sale Collateral Relief**); and

3. a Fund from the requirement in subsection 6.1(1) of NI 81-102 solely to permit the Fund to appoint more than one custodian, each of which is qualified to be a custodian under section 6.2 of NI 81-102 and each of which is subject to all of the other requirements in Part 6 of NI 81-102 other than the prohibition against the Fund appointing more than one custodian in subsection 6.1(1) of NI 81-102

   (the **Custodian Relief**, and collectively with the Market-Neutral Strategy Relief and the Short Sale Collateral Relief, the **Exemption Sought**).

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

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

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

Interpretation

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

AIF means an annual information from of a Fund prepared in accordance with Form 81-102 F2 – Contents of Annual Information Form under National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), as the same may be amended from time to time;

Alternative Fund means a Fund that is an alternative mutual fund under NI 81-102;

Conventional Fund means a Fund that is not an alternative mutual fund under NI 81-102;

Prime Broker means any entity that acts as a lender or borrowing agent, as the case may be, to one or more investment funds, whether the investment fund is an alternative mutual fund or a mutual fund;

Prospectus means a simplified prospectus of a Fund prepared in accordance with Form 81-101 F1 – Contents of Simplified Prospectus under NI 81-101 as the same may be amended from time to time;

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

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

Representations

This decision is based on the following facts represented by the Filer on behalf of itself and the Funds:

The Filer

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

2. The Filer is the investment fund manager and portfolio manager of each Existing Fund. The Filer, or an affiliate, will be the investment fund manager and portfolio manager of the Future Funds.

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

   (a) Ontario: Portfolio Manager (**PM**), Investment Fund Manager (**IFM**); Exempt Market Dealer (**EMD**) and Commodity Trading Manager under the *Commodity Futures Act* (Ontario);

   (b) Alberta: EMD;

   (c) British Columbia: EMD;

   (d) Quebec: EMD and IFM; and

   (e) Newfoundland and Labrador: IFM.

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

The Funds

5. The Funds are or will be open-ended public Alternative Funds or Conventional Funds governed by NI 81-102.

6. The Funds are or will be organized as trusts or as part of a mutual fund corporation established under the laws of the Province of Ontario.

7. The Funds will distribute securities in each of the Canadian Jurisdictions pursuant to a simplified prospectus, annual information form and fund facts documents, prepared and filed in accordance with NI 81-101 and, accordingly, each Fund is, or will be, a reporting issuer in the Canadian Jurisdictions where the Exemption Sought is relied upon.

8. The Funds are not in default of applicable securities legislation in any of the Canadian Jurisdictions.

9. In a notice of special meeting and management information circular mailed to unitholders of the East Coast Investment Grade Income Fund (the **East Coast Fund**) dated May 13, 2020, the Filer proposed to unitholders of the East Coast Fund to restructure the East Coast Fund by converting it to an open-end alternative mutual fund from a closed-end investment fund whose units are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol ECF.UN (the **Restructuring**). It is expected that unitholders will approve the Restructuring at a special meeting of unitholders to be held on June 12, 2020. As part of the Restructuring the name of the East Coast Fund will be changed to Arrow EC Income Advantage Alternative Fund from East Coast Investment Grade Income Fund. It is expected that the units will be de-listed from the TSX as part of the Restructuring.

10. The East Coast Fund is filing a simplified prospectus, annual information form and fund facts documents such that the East Coast Fund will become an alternative mutual fund to which NI 81-102 applies in that the East Coast Fund has fundamental investment objectives that permits it to borrow, sell securities short and invest in specified derivatives in a manner not permitted for non-alternative mutual funds under NI 81-102.

Reasons for the Exemption Sought

Market-Neutral Strategy Relief

11. The investment strategies of each Alternative Fund will permit the Alternative Fund to borrow cash, enter into specified derivatives transactions or sell securities short, provided that immediately after entering into a cash borrowing, specified derivative or short selling transaction, the

aggregate value of cash borrowed combined with the aggregate market value of securities sold short by the Alternative Fund and aggregate notional amount of the Alternative Fund's specified derivatives positions, minus the aggregate notional amount of the specified derivative positions that are hedging transactions, would not exceed 300% of the NAV of the Alternative Fund (the **Leverage Limit**). If the Leverage Limit is exceeded, the Alternative Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and the aggregate notional amount of the Alternative Fund's specified derivatives positions, minus the aggregate notional amount of the specified derivative positions that are hedging transactions, to be within the Leverage Limit, in compliance with section 2.9.1 of NI 81-102.

12. A key investment strategy to be utilized by each of the Alternative Funds includes the use of market-neutral, offsetting, inverse or shorting strategies (**Market-Neutral Strategies**) requiring the use of short selling in excess of 50% of the NAV of the Alternative Fund.

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

14. Market-Neutral Strategies include strategies which offset exposure to certain markets or provide inverse exposure to particular sets of securities would also fall within the investment strategies of the Alternative Funds and serve to reduce market risk or keep market risk at a specified level or deliver a specific investment risk-return profile that investors and their advisors can utilize for the purposes of portfolio diversification.

15. In a Market-Neutral Strategy, short positions can serve as both a hedge against exposure to a long position, or group of long positions, and also as a source of returns with an offsetting long position or positions. The objective of Market-Neutral Strategies is to generate an attractive risk/return profile independent of the direction of broad equity markets.

16. The Alternative Funds require the flexibility to enter into physical short positions in order to implement Market-Neutral Strategies, when doing so is, in the opinion of the Filer, in the best interests of the Alternative Funds.

17. The Filer is an experienced investment fund manager and engages, or will engage, experienced portfolio managers that have an ability to effectively utilize Market-Neutral Strategies on behalf of their clients.

18. In addition, while there may be certain situations in which using a synthetic short position may be preferable, physical shorts are typically less costly, because of the ability to execute trades with a larger number of counterparties, compared to a single counterparty for synthetic shorts. This can result in wider options for borrowing securities resulting in lower borrowing costs. Alternative Funds may also be exposed to less counterparty risk than with a synthetic short position (e.g. counterparty default, counterparty insolvency and premature termination of derivatives).

19. Any physical short position entered into by an Alternative Fund will be consistent with the investment objectives and strategies of the applicable Alternative Fund.

20. The investment strategies of each Alternative Fund permit, or will permit, it to sell securities short provided that, at the time the Alternative Fund sells a security short (i) the aggregate market value of securities of any one issuer (other than "government securities" as defined in NI 81-102) sold short by the Alternative Fund does not exceed 10% of the NAV of the Alternative Fund and (ii) the aggregate market value of all securities sold short by the Alternative Fund does not exceed 100% of its NAV.

21. The investment strategies of each Alternative Fund permit, or will permit, it to enter into a cash borrowing (to a maximum of 50% of the Alternative Fund's NAV) or short selling transaction, provided that the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Alternative Fund does not exceed 100% of the Alternative Fund's NAV (the **Total Borrowing and Short Sales Limit**). If the Total Borrowing and Short Sales Limit is exceeded, the Alternative Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to be within the Total Borrowing and Short Sales Limit.

22. While the Filer could achieve the desired short position using specified derivatives under NI 81-102, it is requesting the Market-Neutral Strategy

Relief in order to have the flexibility to use physical short selling to achieve the desired short exposure as appropriate, rather than being required to use synthetic means to achieve the Market Neutral Strategies. The Market-Neutral Strategy Relief will provide the Filer, on behalf of the Alternative Funds, with the necessary flexibility to make timely trading decisions between physical short and synthetic short positions based on what is in the best interests of the Alternative Funds. The Filer, as registrant and fiduciary, is in the best position to determine whether an Alternative Fund should enter into a physical short position or a synthetic short position, depending on the relevant circumstances. The Filer has requested the Market-Neutral Relief in order to permit the Filer to engage in the most effective portfolio management available for the benefit of the Alternative Funds and their securityholders.

23. The Prospectus, AIF and fund facts documents will comply with the requirements of NI 81-101 applicable to alternative mutual funds, including cover page text box disclosure in the fund facts documents to highlight how the Alternative Fund differs from other mutual funds and emphasize that short selling strategies permitted by the Alternative Fund are outside the scope of NI 81-102 applicable to both mutual funds and alternative mutual funds.

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

25. The Filer will determine the risk rating for each Alternative Fund using the Investment Risk Classification Methodology as set out in Appendix F of NI 81-102.

26. The Filer has comprehensive risk management policies and procedures that address the risks associated with short selling in connection with the utilization of a market-neutral strategy.

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

(a) the Alternative Fund will assume the obligation to return to the Borrowing Agent (as defined in NI 81-102) the securities borrowed to effect the short sale;

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

(c) the Filer will monitor the short positions of the Alternative Fund at least as frequently as daily;

(d) the security interest provided by the Alternative Fund over any of its assets that is required to enable the Alternative Fund to effect a short sale transaction is made in accordance with section 6.8.1 of NI 81-102 and will otherwise be in accordance industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

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

(f) the Filer and the Alternative Fund will keep proper books and records of short sales and all of its assets deposited with Borrowing Agents as security.

28. The Filer believes that it is in the best interests of each of the Alternative Funds to be permitted to engage in physical short selling in excess of the current limits set out in NI 81-102 applicable to alternative mutual funds.

Short Sale Collateral Relief

29. As part of its investment strategies, each Fund that engages in short sales of securities is permitted to grant a security interest in favour of and to deposit pledged portfolio assets with its Prime Broker. If a Fund engages as its Prime Broker an entity that is not its custodian or sub-custodian, then a Conventional Fund may only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 10% of the NAV of the Conventional Fund at the time of deposit and an Alternative Fund may only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 25% of the NAV of the Alternative Fund at the time of deposit.

30. A Prime Broker may not wish to act as the borrowing agent for a Conventional Fund that wants to short sell securities having an aggregate market value of up to 10% of the Conventional Fund's NAV if the Prime Broker is only permitted to hold, as security for such transactions, portfolio assets having and aggregate market value that is not in excess of 10% of the NAV of the Conventional Fund. This issue is even greater in

the context of an Alternative Fund as a counterparty may not act as the Prime Broker for an Alternative Fund that wants to sell securities short that have an aggregate market value of up to 50% of the Alternative Fund's NAV (or more if the Market-Neutral Strategy Relief is granted) if the Prime Broker is only permitted to hold, as security for such transactions, portfolio assets having an aggregate market value that is not in excess of 25% of the NAV of the Alternative Fund.

31. As a result of the Short Sale Collateral Limits, the Funds are required to engage numerous Prime Brokers in order to fully utilize the ability of the Funds to engage in short selling of securities. Managing and overseeing relationships with multiple Prime Brokers introduces unnecessary operational and administrative complexities and additional potential costs to a Fund.

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

33. Given the typical collateral requirements that Prime Brokers impose on their customers who engage in the short sale of securities, if the Short Sale Collateral Limits apply, the Funds would need to retain multiple Prime Brokers in order to sell short securities to the extent permitted under section 2.6.1 of NI 81-102 and, if granted, the Market-Neutral Strategy Relief described above. This would result in inefficiencies for the Funds and would increase their costs of operations.

34. The Filer does not believe that there should be any policy reason to differentiate between its Alternative Funds and its Conventional Funds to the extent that these Funds also engage in the short selling of securities.

Custodian Relief

35. The Filer would like the flexibility for each Fund to engage Prime Brokers as additional custodians provided that such Prime Brokers are qualified to act as a custodian under section 6.2 of NI 81-102 (each, an **Additional Custodian**). The Filer and any Additional Custodians would be subject to all requirements applicable to custodians under Part 6 of NI 81-102, other than the requirement in subsection 6.1(1) of NI 81-102 that there only be one custodian. The Filer has requested the Custodian Relief in order to provide additional flexibility for the Funds to engage in the short selling of securities under section 6.8.1 of NI 81-102, as portfolio assets deposited with a borrowing agent that is the custodian or a sub-custodian of the Fund are not subject to the 10% and 25% of NAV limitations in subparagraph 6.8.1(1)(a) and 6.8.1(1)(b), respectively.

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

37. Prime Brokers are not widely appointed as sub-custodians by custodians under NI 81-102 as it can be both operationally challenging for the custodian and the Filer to appoint them to act in such capacity. This is especially true in circumstances where the custodian of a Fund is a Prime Broker.

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

39. The appointment of an Additional Custodian as a securities lending agent by the Funds would provide the Funds with the opportunity to participate in a greater number of Securities Lending Agreements than would be the case with a single custodian and would therefore have the potential to increase revenues to the Funds from securities lending activities.

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

41. The ability to terminate an Additional Custodian as custodian of the Relevant Assets of a Fund at any time without cause on written notice will ensure that the Filer maintains ultimate control over all of the portfolio assets of the Funds and can restore all assets to the custody of the Custodian at any time if the Filer considers it to be in the best

interests of the Funds and their respective securityholders to do so.

42. The appointment of an Additional Custodian should have no impact on the safety of the portfolio assets of the Funds while enhancing the Fund's abilities to engage in the short selling of securities under section 6.8.1 of NI 81-102 and to enter into additional Securities Lending Agreements.

43. Upon receipt of the Custodian Relief and appointment of an Additional Custodian, the Filer will provide notice of the appointment of any Additional Custodian to securityholders and amend the Prospectus and AIF of the applicable Funds to include disclosure regarding the Custodial Relief and particulars of the appointment of an Additional Custodian of the Funds with respect to the Relevant Assets.

Decision

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

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

<u>In respect of the Market-Neutral Strategy Relief:</u>

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

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

   (b) the aggregate value of cash borrowing by the Alternative Fund does not exceed 50% of the Alternative Fund's NAV;

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

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

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

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

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

3. The Prospectus under which units of an Alternative Fund are offered:

   (a) discloses that the Alternative Fund can short sell securities having an aggregate market value of up to 100% of the Alternative Fund's NAV; and

   (b) describes the material terms of this decision.

<u>In respect of the Short Sale Collateral Relief:</u>

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

<u>In respect of the Custodian Relief:</u>

5. A Fund may appoint one or more Additional Custodians if:

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

   (b) the Filer maintains such operational systems and processes, as between two or more custodians and the single entity referred to in clause 5(a), in order to keep a proper reconciliation of all the portfolio assets that will move amongst the custodians, as appropriate; and

   (c) Each Additional Custodian will act as custodian and securities lending agent only for the portion of portfolio assets of the Fund transferred to it.

"Darren McKall"
Investment Funds & Structured Products Branch
Ontario Securities Commission

2.2 Orders

2.2.1 MOAG Copper Gold Resources Inc. et al.

IN THE MATTER OF
MOAG COPPER GOLD RESOURCES INC.,
GARY BROWN
and
BRADLEY JONES

File No. 2018-41

M. Cecilia Williams, Commissioner and Chair of the Panel

May 27, 2020

ORDER

WHEREAS on May 27, 2020, the Ontario Securities Commission (the **Commission**) held a hearing by teleconference;

ON HEARING the submissions of the representative for Staff of the Commission (**Staff**) and the representative for Bradley Jones, and of Peter Cooper on behalf of MOAG Copper Gold Resources Inc., and no one participating on behalf of Gary Brown;

IT IS ORDERED THAT:

1. Staff shall serve and file written submissions on sanctions and costs by no later than June 17, 2020;

2. the Respondents shall serve and file written submissions on sanctions and costs, if any, by no later than July 8, 2020; and

3. the hearing with respect to sanctions and costs will commence on July 15, 2020 at 10:00 a.m., or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

“M. Cecilia Williams”

2.2.2 New Jersey Mining Company

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – application by a reporting issuer for an order that it is not a reporting issuer in Ontario, Alberta and British Columbia – based on diligent inquiry, residents of Canada (i) do not directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the issuer worldwide, and (ii) do not directly or indirectly comprise more than 2% of the total number of securityholders of the issuer worldwide – issuer is subject to U.S. securities law requirements – issuer has provided notice through a press release that it has submitted an application to cease to be a reporting issuer in the relevant jurisdictions.

Applicable Legislative Provisions

Securities Act (Ontario), s. 1(10)(a)(ii).

May 14, 2020

**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
NEW JERSEY MINING COMPANY
(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;

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 and Alberta.

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of the state of Idaho.

2. The Filer's head office is located at 201 North 3rd Street, Coeur d'Alene, Idaho, 83814, United States.

3. The Filer is engaged in the mining industry and is currently a gold producer with mining operations in Idaho.

4. As at March 30, 2020, the Filer's issued capital is 123,812,144 common shares (the "**Shares**"). The Filer has no other securities outstanding as at the date hereof.

5. The Shares have been listed on the OTCQB under the trading symbol "NJMC" since February 2015.

6. On June 19, 2018, the Shares became listed on the Canadian Securities Exchange (the "**CSE**") under the trading symbol "NJMC" and the Filer became a reporting issuer in the provinces of British Columbia, Alberta and Ontario. The Filer is not a reporting issuer in any other jurisdiction in Canada.

7. The Filer's securities have only been listed on the OTCQB and the CSE.

8. On March 24, 2020, the Filer requested that the Shares be voluntarily delisted from the CSE, and on March 26, 2020, the Shares were delisted from the CSE.

9. The average trading volume of the Shares in Canada during the 12 months prior to delisting was 0.7% of the worldwide daily average volume of trading of the Filer's securities during the same period.

10. None of the Filer's securities are listed, traded or quoted on a marketplace in Canada (as that term is defined in National Instrument 21-101 *Marketplace Operation*) and the Filer does not intend to have its securities listed, traded or quoted on any such marketplace in Canada.

11. Other than its prior listing on the CSE, the Filer has not taken any steps during the last 12 months indicating that there is a market for its securities in Canada.

12. The Filer has no current intention to seek public or private financing by way of an offering of securities in any jurisdiction of Canada.

13. The Filer files continuous disclosure materials in accordance with securities laws in the United States.

14. The Filer qualifies as an "SEC foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("**NI 71-102**") and has relied on and complied with the exemptions from Canadian disclosure requirements under Part 4 of NI 71-102.

15. The Filer is not eligible for the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because the Filer has greater than 51 securityholders worldwide and the Shares are listed on the OTCQB.

16. In support of the representations set forth below concerning the percentage of outstanding securities and the total number of securityholders in Canada, the Filer has:

    a. undertaken a thorough and diligent examination of the Filer's securityholder list maintained by the Filer's transfer agents, Nevada Agency and Transfer Company and AST Trust Company;

    b. undertaken a thorough and diligent examination of the Filer's non-objecting beneficial owner list; and

    c. undertaken a thorough and diligent examination regarding the beneficial ownership of the Filer's securities based on a security position report provided by the Depository Trust and Clearing Corporation.

17. The Filer has calculated Canadian resident shareholdings using the most recent data available to the Filer and the results of these calculations were as follows: 1,564,048 Shares are held by 19 securityholders in Canada, representing 1.5% of all securityholders worldwide and 1.26% of the total issued and outstanding Shares of the Filer (based on 123,812,144 Shares outstanding as at March 30, 2020.

18. Accordingly, based on the foregoing, on a fully-diluted basis, residents of Canada do not directly or indirectly beneficially own more than 2% of each class or series of outstanding securities (including debt securities) of the Filer worldwide, nor do they directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.

19. As a result of the Filer ceasing to be a reporting issuer, some of the outstanding Shares may be subject to resale restrictions within Canada under applicable Canadian securities laws. Canadian shareholders can trade Shares subject to resale restrictions provided that such trades are in compliance with sections 2.7 and 2.8 of OSC Rule 72-503 *Distributions Outside Ontario*, Alberta Securities Blanket Order 45-519 *Prospectus Exemptions for Resale Outside Canada*, and sections 2.14 and 2.15 of National Instrument 45-102 *Resale of Securities*.

20. The Filer is subject to the securities law of the United States.

21. The Filer undertakes to concurrently deliver to its Canadian securityholders all disclosure the Filer would be required to deliver to securityholders residing in the United States under United States securities law.

22. All public documents of the Filer are available on the Filer's EDGAR profile under the Filings section of the SEC website (www.sec.gov).

23. The Filer has provided advance notice to Canadian resident securityholders in a press release dated April 10, 2020 that it has applied to the OSC for an order stating that it is not a reporting issuer in the Jurisdictions and, if that order is made, the Filer will no longer be a reporting issuer in any jurisdiction of Canada.

24. 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.

"Ray Kindiak"
Commissioner
Ontario Securities Commission

"Frances Kordyback"
Commissioner
Ontario Securities Commission

2.2.3 Ontario Instrument 13-506 Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-502 Fees, No. 2

Ontario Securities Commission

Ontario Instrument 13-506

Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-502 Fees, No. 2

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective on June 2, 2020, Ontario Instrument 13-506 entitled "Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-502 *Fees*, No. 2" is made.

May 29, 2020

"Gant Vingoe"
Acting Chair

"Tim Mosely"
Vice-Chair

Authority under which the order is made:

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 13-506

Definitions

1. Terms defined in the *Securities Act* (Ontario) ("OSA"), Ontario Securities Commission Rule 14-501 *Definitions*, or Ontario Securities Commission Rule 13-502 Fees ("OSC Rule 13-502") have the same meaning in this order.

Exemptive relief

2. The coronavirus disease 2019 ("COVID-19") outbreak was declared a pandemic by the World Health Organization on March 11, 2020, and has led to a "Declaration of Emergency" under the *Emergency Management and Civil Protection Act* by the Lieutenant Governor of Ontario on March 17, 2020. The Ontario Securities Commission (the "Commission" or "OSC") acknowledges that this pandemic may present challenges for market participants in the meeting of certain obligations under Ontario securities law.

3. Under subsection 143.11(2) of the *Securities Act* (Ontario) ("OSA"), if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to clause (b) of subsection 143.11(3) of the OSA.

Order

4. (1) For the purposes of computing an amount determined under section 2.7 and 4.8 of OSC Rule 13-502, business days in the period beginning June 2, 2020, and ending August 31, 2020, shall be ignored.

   (2) For the purposes of computing an amount determined under section 3.4 of OSC Rule 13-502, business days in the period beginning June 2, 2020, and ending September 30, 2020, shall be ignored.

5. (1) Subject to subsection (2), the daily late fees accruing under Appendix D of OSC Rule 13-502 shall be deemed to be nil in the period beginning June 2, 2020, and ending August 31, 2020.

   (2) The daily late fees accruing under Appendix D of OSC Rule 13-502 in respect of the filing or delivery of documents or forms that are required to be filed by an investment fund, a registrant or an unregistered capital market participant shall be deemed to be nil in the period beginning June 2, 2020, and ending September 30, 2020.

6. The $100 fee in Row B of Appendix D of OSC Rule 13-502 for the late filing or delivery of Form 33-109F5 shall be deemed to be nil if the Form was required to be filed in the period beginning June 2, 2020, and ending September 30, 2020.

Effective date and term

7. This order comes into effect on June 2, 2020, and expires on September 30, 2020.

2.2.4 Ontario Instrument 13-507 Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-503 (Commodity Futures Act) Fees, No. 2

Ontario Securities Commission

Ontario Instrument 13-507

Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-503 (Commodity Futures Act) Fees, No. 2

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective on June 2, 2020, Ontario Instrument 13-507 entitled “Temporary Relief from Accrual of Late Fees Charged under Ontario Securities Commission Rule 13-503 *(Commodity Futures Act) Fees*, No. 2” is made.

May 29, 2020

“Gant Vingoe”
Acting Chair

“Tim Mosely”
Vice-Chair

Authority under which the order is made:

Act and section: *Commodity Futures Act*, subsection 75(2)

Ontario Securities Commission

Ontario Instrument 13-507

Exemptive relief

1. The coronavirus disease 2019 ("COVID-19") outbreak was declared a pandemic by the World Health Organization on March 11, 2020, and has led to a "Declaration of Emergency" under the *Emergency Management and Civil Protection Act* by the Lieutenant Governor of Ontario on March 17, 2020. The Ontario Securities Commission (the "Commission" or "OSC") acknowledges that this pandemic may present challenges for market participants in the meeting of certain obligations under Ontario commodity futures law.

2. Under subsection 75(2) of the *Commodity Futures Law* (Ontario) ("CFA") if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, contracts, trades or intended trades from any requirement of Ontario commodity futures law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to clause (b) of subsection 75(3) of the CFA.

Order

3. For the purposes of computing an amount determined under section 2.5 of Ontario Securities Commission Rule 13-503 *(Commodity Futures Act) Fees* ("OSC Rule 13-503"), business days in the period beginning June 2, 2020, and ending September 30, 2020, shall be ignored.

4. The daily late fees accruing under Appendix C of OSC Rule 13-503 shall be deemed to be nil in the period beginning June 2, 2020, and ending September 30, 2020.

5. The $100 fee in Row B of Appendix C of OSC Rule 13-503 for the late filing or delivery of Form 33-506F5 shall be deemed to be nil if the Form was required to be filed in the period beginning June 2, 2020, and ending September 30, 2020.

Effective date and term

6. This order comes into effect on June 2, 2020, and expires on September 30, 2020.

2.2.5 Money Gate Mortgage Investment Corporation et al.

IN THE MATTER OF
MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN
and
PAYAM KATEBIAN

File No. 2017-79

Timothy Moseley, Vice-Chair and Chair of the Panel

May 29, 2020

ORDER

WHEREAS on May 28, 2020, the Ontario Securities Commission (the **Commission**) held a hearing by teleconference;

ON HEARING the submissions of the representatives for Staff of the Commission, and for Money Gate Corp., Morteza Katebian and Payam Katebian (the **Remaining Respondents**), and no one appearing on behalf of Money Gate Mortgage Investment Corporation;

IT IS ORDERED THAT:

1. the hearing date of June 4, 2020 is vacated;

2. the Remaining Respondents shall serve the summary of Payam Katebian's anticipated evidence on Staff by no later than June 8, 2020; and

3. the hearing with respect to sanctions and costs will commence on July 14, 2020, at 10:00 a.m., and will continue on July 23, 2020, at 10:00 a.m., or such other dates and times as provided by the Office of the Secretary and agreed to by the parties.

"Timothy Moseley"

2.2.6 Ontario Instrument 45-505 Relief in Respect of the Distribution of Securities Through a Funding Portal Operated by Silver Maple Ventures Inc.

Ontario Securities Commission

Ontario Instrument 45-505

Relief in Respect of the Distribution of Securities Through a Funding Portal Operated by Silver Maple Ventures Inc.

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective May 28, 2020 Ontario Instrument 45-505 entitled "Relief in respect of the distribution of securities through a funding portal operated by Silver Maple Ventures Inc." is made.

May 28, 2020

"Grant Vingoe"
Acting Chair

"Tim Moseley"
Vice-Chair

Authority under which the order is made:

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 45–505

Relief in Respect of the Distribution of Securities Through a Funding Portal Operated by Silver Maple Ventures Inc. (the Order)

Background

The Ontario Securities Commission (the **Commission**) has received an application from Silver Maple Ventures Inc. (the **Filer**) for an order pursuant to section 74 of the *Securities Act* (Ontario) (the **Act**) that, in connection with the distribution of securities by an issuer (each, an **Issuer**) through the funding portal operated by the Filer, a distribution of a security of the Issuer be exempt from the requirement in section 53 of the Act to file a prospectus (the **Exemption Sought**).

On November 27, 2019, the Filer was granted substantially similar relief by the Commission pursuant to section 74 of the Act (the **November Order**). However, because the Commission did not at the time have authority to issue an order of general application, the relief was limited to specified issuers with which the Filer had an established relationship and which were included on a list provided to Commission staff (the **List**).

Since the Exemption Sought is intended to apply to any Issuer, provided that the conditions of this Order are satisfied, it requires that the Commission grant class relief pursuant to subsection 143.11(2) of the Act. This Order revokes the November Order and grants the Exemption Sought to all Issuers, being a class of Issuers, pursuant to subsection 143.11(2) of the Act.

Interpretation

1. Terms defined in the Act or National Instrument 14-101 - *Definitions* have the same meaning if used in this Order, unless otherwise defined.

2. In this Order:

   "BC Instrument 45-535" means British Columbia Securities Commission Instrument 45-535 *Start-up Crowdfunding Registration and Prospectus Exemptions*;

   "closing of the distribution" means, at the discretion of the Issuer, any time after the minimum offering amount is reached;

   "corresponding start-up crowdfunding order" means:

   (a) BC Instrument 45-535;

   (b) an order issued or a rule adopted by another securities regulatory authority or regulator in Canada, the terms of which are substantially similar to BC Instrument 45-535; and

   (c) Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses*;

   "eligible security" means:

   (a) a common share,

   (b) a non-convertible preference share,

   (c) a security convertible into a security referred to in (a) or (b),

   (d) a non-convertible debt security linked to a fixed or floating interest rate, and

   (e) a unit of a limited partnership;

   "funding portal" means a person or company through which a start-up crowdfunding distribution is made;

   "issuer group" means

   (a) an Issuer,

(b) an affiliate of the Issuer, and

(c) any other issuer

(i) that is engaged in a common enterprise with the Issuer or with an affiliate of the Issuer, or

(ii) whose business is founded or organized, directly or indirectly, by the same person or persons who founded or organized the Issuer;

"minimum offering amount" means the minimum amount disclosed in the offering document;

"offering document" means a completed Form 1 *Offering Document*, attached as Appendix 1 to this Order, as amended from time to time;

"participating jurisdictions" means British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and any other jurisdiction whose securities regulatory authority or regulator has adopted a corresponding start-up crowdfunding order;

"principal" means a promoter, director, officer or control person;

"risk warning" means the Form 2 *Risk Acknowledgement*, attached as Appendix 2 to this Order; and

"start-up crowdfunding distribution" means a distribution through the funding portal operated by the Filer that is exempt from the prospectus requirement under this Order or a distribution through a funding portal under a corresponding start-up crowdfunding order.

Representations

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

1. The Filer was incorporated under the *Business Corporations Act* (British Columbia) on October 18, 2013;

2. The Filer's head office is at 300-289 Abbott Street, Vancouver, British Columbia, V6B 5L1;

3. Since May 27, 2015, the Filer has owned and operated the funding portal known as "FrontFundr";

4. The Filer is registered as an exempt market dealer under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia;

5. To date, the Filer has facilitated 21 start-up crowdfunding distributions through its funding portal pursuant to BC Instrument 45-535;

6. Lendified Holdings Inc. (**Lendified**), an issuer with which the Filer had an established relationship at the time that the Commission granted the November Order, was inadvertently not included on the List provided to staff. On April 17, 2020, Lendified filed a Form 45-106F1 *Report of Exempt Distribution* with the Commission that discloses sales to Ontario purchasers that were completed over the FrontFundr funding portal pursuant to the November Order. When this discrepancy was brought to the Filer's attention by Commission staff, the Filer acknowledged its error in not verifying that Lendified was included on the List prior to distributing securities on Lendified's behalf. The Filer confirmed that Lendified was alerted to the error; and

7. The Filer requests that the Exemption Sought be granted on substantially similar conditions as required for issuers relying on the prospectus exemption contained in BC Instrument 45-535.

Order

The Commission is satisfied that it would not be prejudicial to the public interest to make an order pursuant to subsection 143.11(2) of the Act granting the Exemption Sought to a class of Issuers.

1. The decision of the Commission under the Act is that the November Order is revoked and the Exemption Sought is granted in respect of a distribution by an Issuer provided that:

 1.1. With respect to an Issuer, the following conditions are satisfied:

(a) the distribution is of an eligible security of the Issuer's own issue;

(b) the distribution and payment for the eligible security is facilitated through the funding portal operated by the Filer known as "FrontFundr";

(c) the Issuer is not a reporting issuer or an investment fund in any jurisdiction of Canada or foreign jurisdiction;

(d) the head office of the Issuer is located in a participating jurisdiction;

(e) the aggregate funds raised in any start-up crowdfunding distribution by a person or company in the issuer group does not exceed $250,000;

(f) the issuer group completes no more than two start-up crowdfunding distributions in a calendar year;

(g) the distribution occurs no later than the 90th day after the first date the offering document is made available on the Filer's website;

(h) the Issuer uses an offering document to conduct the distribution and provides the offering document to the Filer for the purpose of making it available to a purchaser through the funding portal's website;

(i) the Issuer amends the offering document in the event the offering document is no longer true and provides it to the Filer as soon as practicable for the purpose of making it available to a purchaser through the Filer's website;

(j) the Issuer provides a purchaser with a contractual right to withdraw an offer to purchase an eligible security that may be exercised by the purchaser delivering a notice to the Filer within 48 hours of (i) the purchaser's subscription or (ii) the Filer notifying the purchaser that the offering document has been amended;

(k) the offering document discloses how the Issuer intends to use the funds raised and the minimum offering amount to close the distribution;

(l) the issuer raises the minimum offering amount described in the offering document, which may be reduced by the amount of any concurrent distribution made under a prospectus exemption other than the prospectus exemption set out in this Order and a corresponding start-up crowdfunding order, provided that the funds from the concurrent distribution are unconditionally available to the Issuer;

(m) no concurrent start-up crowdfunding distribution is made by any person or company in the issuer group for the purpose described in the offering document;

(n) no commission, fee or other amounts are paid to the issuer group or any of their principals, employees or agents with respect to the distribution;

(o) a principal of the issuer group is not a principal of the Filer;

(p) each purchaser invests no more than:

(i) $1,500; or

(ii) $5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for that person;

(q) within 30 days after the closing of the distribution, the Issuer delivers or causes to be delivered to each purchaser a confirmation setting out the following:

(i) the date of subscription and the closing of the distribution;

(ii) the quantity and description of the eligible security purchased;

(iii) the price per eligible security paid by the purchaser; and

(iv) the total commission, fee and any other amounts paid by the Issuer to the Filer in respect of the distribution;

(r) the Issuer files no later than the 30th day after the closing of the distribution:

(i) the offering document; and

(ii) a report in Form 45-106F1 *Report of Exempt Distribution*.

1.2 With respect to the Filer, the Filer:

(a) prior to allowing any person entry to its website, requires the person to acknowledge that they are entering a website of a funding portal:

(i) that is operated by a registered dealer under Canadian securities legislation, and

(ii) that will provide advice about the suitability of the eligible security;

(b) receives payment for an eligible security electronically through the funding portal operated by the Filer;

(c) takes reasonable measures to ensure that the Issuer and the purchaser are residents of a participating jurisdiction where the offering document is made available;

(d) makes the offering document and the risk warning available to a purchaser through the funding portal operated by the Filer;

(e) does not allow a purchaser to subscribe for an eligible security until the purchaser confirms that the purchaser has read and understands the offering document and the risk warning;

(f) notifies a purchaser of any amendment to the offering document and the right of the purchaser to withdraw their subscription after receiving notification of the amendment;

(g) returns all funds to a purchaser within five business days of receiving a withdrawal notification from the purchaser;

(h) does not receive a commission, fee or other amount from a purchaser of an eligible security; and

(i) completes one the following:

(i) if the minimum offering amount has not been raised by the 90th day after the offering document is first made available on the funding portal operated by the Filer or the distribution is withdrawn, no later than five business days following such occurrence:

(A) returns, or causes to return, all funds to each purchaser, and

(B) notifies the Issuer and each purchaser that funds have been returned,

(ii) if each 48-hour period described in section 1(j) above has elapsed,

(A) releases, or causes to release, all funds due to the Issuer at the closing of the distribution, and

(B) no later than fifteen days after the closing of the distribution:

1. notifies each purchaser that the funds have been released to the Issuer, and

2. provides the Issuer with all information required to file the report described in section 1(r)(ii) above.

2. The decision of the Commission is that the first trade of a security acquired under this Order is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

Effective date and term

This decision comes into effect on this 28th day of May, 2020 and will cease to be effective on the earlier of the following:

(a) the date that is 18 months after the date of this Order unless extended by the Commission, and

(b) the effective date of proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*.

Appendix 1

Form 1

Start-Up Crowdfunding – Offering Document

GENERAL INSTRUCTIONS:

(1) ***Filing Instructions***

An issuer relying on the start-up crowdfunding prospectus exemption is required to file the offering document no later than the 30th day after the closing of the distribution as follows:

In all participating jurisdictions (except British Columbia and Ontario) *– file this form through the System for Electronic Document Analysis and Retrieval (SEDAR) in accordance with National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR).*

- ***In British Columbia*** *– through BCSC eServices at https://www.bcsc.bc.ca.*
- ***In Ontario*** *– through the OSC Electronic Filing Portal at https://www.osc.gov.on.ca/filings*

This offering document and all amendments must be filed where the issuer has made a start-up crowdfunding distribution, as well as in the participating jurisdiction where the issuer's head office is located.

(2) *This offering document must be completed and certified by an authorized individual on behalf of the issuer.*

(3) *Draft this offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms.*

(4) *Conform as closely as possible to the format set out in this form. Address the items in the order set out below. No variation of headings, numbering or information set out in the form is allowed and all are to be displayed as shown.*

(5) *This offering document is to be provided to your funding portal which has to make it available on its website. If the information contained in this offering document no longer applies or is no longer true, you must immediately amend the document and send the new version to the funding portal.*

Item 1: RISKS OF INVESTING

1.1 Include the following statement, in bold type:

"No securities regulatory authority or regulator has assessed reviewed or approved the merits of these securities or reviewed this offering document. Any representation to the contrary is an offence. This is a risky investment."

Item 2: THE ISSUER

2.1 Provide the following information for the issuer:

(a) Full legal name as it appears in the issuer's organizing documents,

(b) Head office address,

(c) Telephone,

(d) Fax, and

(e) Website URL.

2.2 Provide the following information for a contact person of the issuer who is able to answer questions from purchasers and security regulatory authority or regulator:

(a) Full legal name (first name, middle name and last name),

(b) Position held with the issuer,

(c) Business address,

(d) Business telephone,

(e) Fax, and

(f) Business e-mail.

Item 3: BUSINESS OVERVIEW

3.1 Briefly explain, in a few lines, the issuer's business and why the issuer is raising funds.

Include the following statement, in bold type:

"A more detailed description of the issuer's business is provided below."

Item 4: MANAGEMENT

4.1 Provide the information in the following table for each promoter, director, officer and control person of the issuer:

Full legal name municipality of residence and position at issuer	Principal occupation for the last five years	Expertise, education, and experience that is relevant to the issuer's business	Number and type of securities of the issuer owned	Date securities were acquired and price paid for the securities	Percentage of the issuer's securities held as of the date of this offering document

4.2 State whether each person listed in item 4.1 or the issuer, as the case may be:

(a) has ever, pled guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) of Canada,

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or

(iv) an offence under the criminal legislation of any other foreign jurisdiction,

(b) is or has been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last ten years related to his or her involvement in any type of business, securities, insurance or banking activity,

(c) is or has been the subject of a bankruptcy or insolvency proceeding,

(d) is a director or executive officer of an issuer that is or has been subject to a proceeding described in paragraphs (a), (b) or (c) above.

Item 5: START-UP CROWDFUNDING DISTRIBUTION

5.1 Provide the name of the funding portal the issuer is using to conduct its start-up crowdfunding distribution.

5.2 List the name of all the participating jurisdictions (Canadian province or territory) where the issuer intends to raise funds and make this offering document available.

5.3 Provide the following information with respect to the start-up crowdfunding distribution:

(a) the date before which the issuer must have raised the minimum offering amount for the closing of the distribution (no later than 90 days after the date this offering document is made available on the funding portal), and

(b) the date(s) and description of any amendment(s) made to this offering document, if any.

5.4 Indicate the type of eligible securities offered.

5.5 The eligible securities offered provide the following rights (choose all that apply):

☐ Voting rights,

☐ Dividends or interests (describe any right to receive dividends or interest),

☐ Rights on dissolution,

☐ Conversion rights (describe what each security is convertible into),

☐ Other (describe the rights).

5.6 Provide a brief summary of any other material restrictions or conditions that attach to the eligible securities being offered, such as tag-along, drag along or pre-emptive rights.

5.7 In a table, provide the following information:

	Total amount ($)	Total number of eligible securities issuable
Minimum offering amount		
Maximum offering amount		
Price per eligible security		

5.8 Indicate the minimum investment amount per purchaser, if any.

5.9 Include the following statement, in bold type:

"Note: The minimum offering amount stated in this offering document may be satisfied with funds that are unconditionally available to [insert name of issuer] that are raised by concurrent distributions using other prospectus exemptions without having to amend this offering document."

Item 6: ISSUER'S BUSINESS

6.1 Describe the issuer's business. Provide details about the issuer's industry and operations.

6.2 Describe the legal structure of the issuer and indicate the jurisdiction where the issuer is incorporated or organized.

6.3 Indicate where the issuer's articles of incorporation, limited partnership agreement, shareholder agreement or similar document are available to purchasers.

6.4 Indicate which statement(s) best describe the issuer's operations (select all that apply):

☐ Has never conducted operations,

☐ Is in the development stage,

☐ Is currently conducting operations,

☐ Has shown profit in the last financial year.

6.5 Indicate whether the issuer has financial statements available. If yes, include the following statement, in bold type:

“Information for purchasers: If you receive financial statements from an issuer conducting a start-up crowdfunding distribution, you should know that those financial statements have not been provided to or reviewed by a securities regulatory authority or regulator. They are not part of this offering document. You should ask the issuer which accounting standards were used to prepare the financial statements and whether the financial statements have been audited. You should also consider seeking advice of an accountant or an independent financial adviser about the information in the financial statements.”

6.6 Describe the number and type of securities of the issuer outstanding as at the date of the offering document. If there are securities outstanding other than the eligible securities being offered, please describe those securities.

Item 7: USE OF FUNDS

7.1 Provide information on all funds previously raised and how they were used by the issuer.

7.2 Using the following table, provide a detailed breakdown of how the issuer will use the funds from this start-up crowdfunding distribution. If any of the funds will be paid directly or indirectly to a promoter, director, officer or control person of the issuer, disclose in a note to the table the name of the person, the relationship to the issuer and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of funds listed in order or priority	Total amount ($)	
	Assuming minimum offering amount	Assuming maximum offering amount

Item 8: PREVIOUS START-UP CROWDFUNDING DISTRIBUTIONS

8.1 For each start-up crowdfunding distribution in which the issuer and each promoter, director, officer and control person of the issuer have been involved in any of the participating jurisdictions in the past five years, provide the information below:

(a) the full legal name of the issuer that made the distribution,

(b) the name of the funding portal, and

(c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which any of these occurred.

Item 9: COMPENSATION PAID TO FUNDING PORTAL

9.1 Describe the commission, fee and any other amounts expected to be paid by the issuer to the funding portal for this start-up crowdfunding distribution.

Item 10: RISK FACTORS

10.1 Describe in order of importance, starting with the most important, the main risks of investing in the issuer’s business for the purchasers.

Item 11: REPORTING OBLIGATIONS

11.1 Describe the nature and frequency of any disclosure of information the issuer intends to provide to purchasers after the closing of the distribution and explain how purchasers can access this information.

Item 12: RESALE RESTRICTIONS

12.1 Include the following statement, in bold type:

“The securities you are purchasing are subject to a resale restriction. You may never be able to resell the securities.”

Item 13: PURCHASERS' RIGHTS

13.1 Include the following statement, in bold type:

"If you purchase these securities, your rights may be limited and you will not have the same rights that are attached to a prospectus under applicable securities legislation. For information about your rights you should consult a lawyer.

You can cancel your agreement to purchase these securities. To do so, you must send a notice to the funding portal within 48 hours of your subscription. If there is an amendment to this offering document, you can cancel your agreement to purchase these securities by sending a notice to the funding portal within 48 hours of receiving notice of the amendment.

The offering of securities described in this offering document is made pursuant to a start-up crowdfunding prospectus exemption under Ontario Instrument 45-505 exempting the issuer from the prospectus requirement.

Item 14: DATE AND CERTIFICATE

14.1 Include the following statement, in bold type:

"On behalf of the issuer, I certify that the statements made in this offering document are true."

14.2 Provide the signature, date of the signature, name and position of the authorized individual certifying this offering document.

14.3 If this offering document is signed electronically, include the following statement, in bold type:

"I acknowledge that I am signing this offering document electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding."

Questions:

Refer any questions to:

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario
Toll free: 1-877-785-1555
E-mail: inquiries@osc.gov.on.ca
Website: www.osc.ca

Appendix 2

Form 2

Start-Up Crowdfunding – Risk Acknowledgement

Issuer Name:

Type of Eligible Security offered:

WARNING!
BUYER BEWARE: This investment is risky.
Don't invest unless you can afford to lose all the money you pay for this investment.

	Yes	No
1. Risk acknowledgment		
Risk of loss – Do you understand that this is a risky investment and that you may lose all the money you pay for this investment?		
No income – Do you understand that you may not earn any income, such as dividends or interest, on this investment?		
Liquidity risk – Do you understand that you may never be able to sell this investment?		
Lack of information – Do you understand that you may not be provided with any ongoing information about the issuer and/or this investment?		
2. No approval and no advice *[Instructions: Delete "no advice" if the funding portal is operated by a registered dealer.]*		
No approval – Do you understand that this investment has not been reviewed or approved in any way by a securities regulator?		
No advice – Do you understand that you will not receive advice about your investment? *[Instructions: Delete if the funding portal is operated by a registered dealer.]*		

	Yes	No
3. Limited legal rights		
Limited legal rights – Do you understand that you will not have the same rights as if you purchased under a prospectus or through a stock exchange? If you want to know more, you may need to seek professional legal advice.		
4. Purchaser's acknowledgement		
Investment risks – Have you read this form and do you understand the risks of making this investment?		
Offering document – Before you invest, you should read the offering document carefully. The offering document contains important information about this investment. If you have not read the offering document or if you do not understand the information in it, you should not invest. Have you read and do you understand the information in the offering document?		
First and last name:		
Electronic signature: By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding. The date of my electronic signature is the same as my acknowledgement.		
5. Additional information		
▪ **You have 48 hours to cancel your purchase by sending a notice to the funding portal at:** *[Instructions: Provide email address or fax number where purchasers can send their notice. Describe any other manner for purchasers to cancel their purchase.]* ▪ **If you want more information about your local securities regulation, go to www.securities-administrators.ca. Securities regulators do not provide advice on investment.** ▪ **To check if the funding portal is operated by a registered dealer, go to www.aretheyregistered.ca** *[Instructions: Delete if the funding portal is not operated by a registered dealer.]*		

2.3 Orders with Related Settlement Agreements

2.3.1 First Class Crypto Inc. et al. – ss. 127, 127.1

IN THE MATTER OF
FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE
AND
NEILL KLOSS

File No. 2020-9

M. Cecilia Williams, Commissioner and Chair of the Panel
Frances Kordyback, Commissioner
Craig Hayman, Commissioner

May 28, 2020

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

WHEREAS the Ontario Securities Commission held a hearing in writing to consider the request made jointly by First Class Crypto Inc. (**FCCI**), Johnathan Harris (**Harris**), Mitchell Carnie (**Carnie**) and Neill Kloss (**Kloss**) (collectively, the **Respondents**) for approval of a settlement agreement dated May 26, 2020 (the **Settlement Agreement**);

ON READING the Joint Application for a Settlement Hearing, including the Statement of Allegations dated May 27, 2020, and the Settlement Agreement, and on reading the written submissions of the representative for Staff, and on being advised by Staff that Staff has received payments from Harris, Carnie and Kloss of $5,000, $3,000 and $51,129 (respectively);

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;

2. Pursuant to paragraph 9 of s. 127(1) of the Act:

   (a) Harris shall pay an administrative penalty of $41,125;

   (b) Carnie shall pay an administrative penalty of $31,125;

   (c) Kloss shall pay an administrative penalty of $17,750;

3. Pursuant to paragraph 10 of s. 127(1) of the Act:

   (a) FCCI, Harris and Carnie, jointly and severally, shall disgorge to the Commission $120,000;

   (b) Kloss shall disgorge to the Commission $28,629;

4. Pursuant to s. 127.1 of the Act:

   (a) FCCI, Harris and Carnie, jointly and severally, shall pay costs to the Commission of $20,250;

   (b) Kloss shall pay costs to the Commission of $4,750;

5. Pursuant to paragraph 2 of s. 127(1) of the Act:

   (a) FCCI is permanently prohibited from trading in any securities or derivatives;

   (b) Harris is prohibited from trading in any securities or derivatives until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) Carnie is prohibited from trading in any securities or derivatives until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) Kloss is prohibited from trading in any securities or derivatives for a period of 5 years;

6. Pursuant to paragraph 2.1 of s. 127(1) of the Act:

(a) FCCI is permanently prohibited from acquiring any securities;

(b) Harris is prohibited from acquiring any securities until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) Carnie is prohibited from acquiring any securities until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) Kloss is prohibited from acquiring any securities for a period of 5 years;

7. Pursuant to paragraph 3 of s. 127(1) of the Act:

(a) all exemptions contained in Ontario securities law shall not apply to FCCI permanently;

(b) all exemptions contained in Ontario securities law shall not apply to Harris until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) all exemptions contained in Ontario securities law shall not apply to Carnie until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) all exemptions contained in Ontario securities law shall not apply to Kloss for a period of 5 years;

8. Pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act:

(a) Harris, Carnie and Kloss shall resign any positions they may hold as a director or officer of any issuer or registrant;

9. Pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act:

(a) Harris is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(b) Carnie is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(c) Kloss is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 5 years;

10. Pursuant to paragraph 8.5 of s. 127(1) of the Act:

(a) FCCI is prohibited from becoming or acting as a registrant or promoter permanently;

(b) Harris is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) Carnie is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) Kloss is prohibited from becoming or acting as a registrant or promoter for a period of 5 years;

11. Pursuant to paragraph 6 of s. 127(1) of the Act, the Respondents shall be reprimanded;

12. The amounts referred to in paragraphs 2 and 3 above shall be designated for allocation or use by the Commission in accordance with ss. 3.4(2)(b)(i) or (ii) of the Act;

13. Harris and Carnie shall each pay installments of $10,000 to the Commission every six months, starting on the date that is six months from the date on which the Settlement Agreement is approved, until the amounts ordered against them set out in paragraphs 2, 3 and 4 above are paid in full;

14. As an exception to the sanctions in paragraphs 5 and 6 above, Harris, Carnie and Kloss are permitted to trade securities and derivatives and acquire securities on their own behalf in a registered retirement savings plan, registered education saving plan, tax-free savings account or self-directed retirement savings plan, solely through a registered dealer or registered advisor that has first been given a copy of this Order;

15. As an exception to the sanctions in paragraphs 8 and 9 above, Harris is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

    (a) Harris must be the sole shareholder of the company;

    (b) the business operated by the company must be strictly limited to providing construction-related services, including the purchase, renovation and resale of residential properties (i.e. house flipping); and

    (c) the company shall not raise capital through the issuance of securities to the public;

16. As an exception to the sanctions in paragraphs 8 and 9 above, Carnie is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

    (a) Carnie must be the sole shareholder of the company;

    (b) the business operated by the company must be strictly limited to providing construction-related services, including landscaping; and

    (c) the company shall not raise capital through the issuance of securities to the public; and

17. Pursuant to s. 2(2) of the Tribunal *Adjudicative Records Act, 2019*, SO 2019, c 7 and Rule 22(4) of the Commission's *Rules of Procedure and Forms*, the sworn Statements of Financial Condition referred to in paragraph 37 of the Settlement Agreement shall be kept confidential.

"M. Cecilia Williams"

"Craig Hayman"

"Frances Kordyback"

IN THE MATTER OF
FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE
AND
NEILL KLOSS

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. Between December 2017 and May 2018, First Class Crypto Inc. (**FCCI**) and its principals Johnathan Harris, Mitchell Carnie and Neill Kloss encouraged Ontarians to invest approximately $365,000 into their business. Investors were led to believe that FCCI would use their funds to purchase computing hardware that mines crypto assets (known as "mining rigs"). Investors were told that their original investment with FCCI was guaranteed and that they could earn significant monthly returns from the company's crypto asset mining activities.

2. However, investors were not told that FCCI's principals had no experience in crypto asset mining, no business plan and no ability to protect, much less guarantee, investments and returns. This did not stop the Respondents from soliciting and accepting investments from members of the public. The Respondents lacked the skills, knowledge and experience needed to manage investor funds and purchase mining rigs. While the Respondents attempted to find mining rigs, investor funds were being held in crypto assets that were rapidly decreasing in value. The Respondents also failed to maintain even basic documentation regarding FCCI's operations, which hindered FCCI's ability to pay the promised monthly returns and track repayments to investors. When FCCI was finally shut down in June 2018, a substantial amount of investor funds had been lost.

3. Although new and innovative crypto asset products can seem appealing, investors should be cautious when promised risk-free investments. The Respondents raised funds from the public without being registered as dealers and without disclosing the risks of the investments in a prospectus. The importance of protecting investor interests by complying with registration and prospectus requirements and maintaining accurate and complete books and records is heightened when operating in the crypto asset sector.

PART II - JOINT SETTLEMENT RECOMMENDATION

4. The parties will jointly file a request that the Ontario Securities Commission (the **Commission**) 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 ss. 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**), it is in the public interest for the Commission to make certain orders against FCCI, Johnathan Harris, Mitchell Carnie and Neill Kloss (collectively, the **Respondents**).

5. Staff of the Commission (**Staff**) recommend settlement of the proceeding (the **Proceeding**) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondents consent 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 herein.

6. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. SOLICITATION OF INVESTORS

7. FCCI is an Ontario company that was purportedly in the business of crypto asset mining. Harris and Carnie are founding shareholders, directors, officers and directing minds of FCCI. Subsequently, Kloss became a shareholder and *de facto* director or officer of FCCI. Kloss represented himself as the Chief Financial Officer and a Vice-President of FCCI.

8. From December 2017 to May 2018, the Respondents solicited investments in FCCI using two forms of investment contracts (**FCCI Investment Contracts**):

(a) the Lending Mining Contract (**LMC**), also referred to as the “Investment Mining Contract”, which promised investors compounded monthly returns and that investor funds would not be subject to the volatility of the crypto asset market, but instead would be used to purchase mining rigs; and

(b) the Crypto Security Plan (**CSP**), which promised investors annual returns on investor funds held in the crypto asset market.

9. The Respondents promoted FCCI Investment Contracts to the public in marketing materials, including using PowerPoint presentations, flyers, social media and a website.

10. The Respondents held weekly investment seminars at FCCI’s office in Whitby, Ontario to promote the FCCI Investment Contracts. At these seminars, the Respondents encouraged members of the public to invest in FCCI. The Respondents also promoted FCCI Investment Contracts from a booth at a flea market in Pickering, Ontario.

11. In addition to soliciting investors directly, the Respondents encouraged individuals to become “recruiters” of FCCI. FCCI recruiters were promised referral fees for soliciting investments in the FCCI Investment Contracts. The Respondents held training seminars and created training materials for FCCI recruiters.

12. The Respondents raised $364,082 from 43 Ontario investors between December 2017 and May 2018 by entering into FCCI Investment Contracts. Most investors entered into the LMC investment contract.

13. Ontarians invested funds with FCCI. In some cases, investor funds were delivered to the Respondents in Canadian dollars and the Respondents facilitated the exchange of investor funds into crypto assets using a third-party exchange service. Those crypto assets were subsequently transferred to wallets controlled by the Respondents. In other cases, investors invested in FCCI by transferring crypto assets directly to wallets controlled by the Respondents.

14. Investors expected to earn a profit from purchasing FCCI Investment Contracts. Investors were promised earnings between 3% and 6% compounded monthly for LMCs and 12% annually for CSPs. The success of the investment and the ability to deliver the promised returns depended on the undeniably significant efforts of the Respondents. The Respondents’ efforts, including sourcing, establishing and maintaining mining rigs for LMC investors and making and managing investments in the crypto asset market for CSP investors, were essential managerial efforts that affected the failure or success of the FCCI enterprise.

15. Accordingly, the FCCI Investment Contracts are “investment contracts” and therefore “securities” under the Act. Further, the Respondents’ business centered on the continuous sale of securities to investors, both directly by the individual Respondents and indirectly by enlisting investors to become recruiters of FCCI in exchange for referral fees.

16. Each of the Respondents engaged in, or held themselves out as engaging in, the business of trading in securities, contrary to s. 25(1) of the Act. None of the Respondents were registered with the Commission and no exemptions from registration were available to them.

17. The sales of the FCCI Investment Contracts were trades in securities not previously issued and therefore “distributions” under the Act. No preliminary prospectus or prospectus was filed with the Commission, nor were prospectus receipts obtained from the Director pursuant to s. 53(1) of the Act. The investments in the FCCI Investment Contracts did not qualify for any exemption from the prospectus requirement, and no reports of exempt distributions were filed with the Commission. Accordingly, each of the Respondents also participated in a distribution of securities, contrary to s. 53(1) of the Act.

B. PROHIBITED REPRESENTATIONS

18. The Respondents made numerous false or misleading statements that induced investors into signing FCCI Investment Contracts. Statements made to investors also omitted facts that FCCI investors would consider relevant. False and misleading statements were made in person, in marketing materials and in the FCCI Investment Contracts, and include the following:

(a) the Respondents had mining rig facilities and enough mining rigs to meet obligations to investors;

(b) LMC investment funds would be used to purchase mining rigs;

(c) LMC investment funds were guaranteed and not subject to the fluctuation of the crypto asset markets;

(d) FCCI had insurance that could protect LMC investment funds;

(e) FCCI's crypto asset holdings and mining rigs were protected by physical and technological security; and

(f) FCCI would pay compounded monthly returns to investors in LMCs and annual returns to investors in CSP.

19. In reality, FCCI did not have established mining facilities. From December 2017 to May 2018, the Respondents could not purchase mining rigs to meet FCCI's obligations under the LMCs. While the Respondents attempted to source mining rigs, LMC investment funds were being held in volatile crypto assets, which were deceasing in value. Further, FCCI had no insurance on any mining rigs and no insurance that would purportedly protect principal investments of LMC investors.

20. Harris was primarily responsible for inducing individuals to invest with FCCI. He conducted the weekly presentations to prospective investors and prepared the marketing materials used at the presentations. While Carnie also had significant involvement in presentations to investors and preparing marketing materials, he was primarily responsible for purchasing mining rigs to meet obligations to investors and arranging for insurance on the mining rigs. Kloss' involvement with prospective investors was more limited and included executing FCCI Investment Contracts on behalf of the company, representing the company at the flea market in Pickering and overseeing the development of FCCI's website.

21. By the time the Respondents decided to shut the business down in June 2018, a substantial amount of investor funds had been lost. The Respondents asked investors to sign documents purporting to cancel the FCCI Investment Contracts and acknowledge that investors had been paid in full. For some investors, the Respondents also issued promissory notes promising to repay investor losses. Not only did the Respondents fail to repay the principal amounts originally invested in FCCI, the Respondents also failed to pay investors the monthly and annual returns promised.

22. A reasonable investor would consider the misrepresentations described above as relevant in deciding whether to enter into or maintain investments with FCCI. Accordingly, each of the Respondents made prohibited representations, contrary to s. 44(2) of the Act.

C. LIABILITY OF DIRECTORS AND OFFICERS

23. From December 2017 to May 2018, Harris, Carnie and Kloss, as directors, officers or *de facto* directors or officers of FCCI, authorized, permitted or acquiesced in FCCI's breaches of ss. 25(1), 53(1) and 44(2) of the Act (as described above) and thereby are deemed to have not complied with Ontario securities law, pursuant to s. 129.2 of the Act.

D. CONDUCT CONTRARY TO THE PUBLIC INTEREST

24. The Respondents engaged in conduct contrary to the public interest by breaching the Act as described above.

25. The Respondents also engaged in conduct contrary to the public interest by failing to operate the business in a manner that protected FCCI investors and investor funds.

26. The Respondents assumed the role of registrants, but lacked the proficiency, integrity and solvency necessary to protect investors. The Respondents accepted investor funds without any business plan and lacked the skills, knowledge and experience needed to manage those funds.

27. The Respondents failed to adequately maintain basic documentation regarding FCCI's operations, including a complete list of investors and contracts, support for the receipt, exchange, segregation and partial return of investor funds and a complete list of the blockchain wallet addresses used by the Respondents.

28. Further, upon winding down the business, the Respondents cancelled access to corporate email accounts, liquidated crypto asset balances and deleted records, including all records of blockchain wallet addresses. The importance of protecting investor interests by maintaining accurate and complete books and records is heightened when operating in the crypto asset sector. The lack of records impeded the Respondents' ability to make repayments to investors after FCCI was shut down. While Kloss assumed the role of Chief Financial Officer and responsibility for recordkeeping and administrative tasks, each of the individual Respondents had some involvement in collecting, managing or tracking of investor funds and each had a responsibility to ensure FCCI kept accurate and complete books and records.

E. MITIGATING FACTORS

29. The Respondents have sought to reach an early resolution of this matter, prior to the commencement of proceedings.

30. The Respondents proactively facilitated the partial return of funds to certain investors upon shutting down FCCI in June 2018. The Respondents continued to make some additional repayments to certain investors subsequent to FCCI's shut down.

31. At the time of this Settlement Agreement, the Respondents have provided information to Staff that suggests that $215,453 of the principal amount originally raised from investors has been repaid.

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

32. The Respondents acknowledge and admit to the following breaches of Ontario securities law and conduct contrary to the public interest:

    (a) the Respondents made statements that were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the Respondents, contrary to s. 44(2) of the Act;

    (b) the Respondents engaged, or held themselves out as engaging, in the business of trading in securities without being registered in accordance with Ontario securities law, and where no exemption to the registration requirement was available, contrary to s. 25(1) of the Act;

    (c) the Respondents engaged in a distribution of securities without a preliminary prospectus or prospectus, or an exemption from the prospectus requirements, contrary to s. 53(1) of the Act;

    (d) Harris, Carnie and Kloss, as directors, officers or *de facto* directors or officers of FCCI, authorized, permitted or acquiesced in FCCI's breaches of ss. 25(1), 53(1) and 44(2) and thereby are deemed to have not complied with Ontario securities law, pursuant to s. 129.2 of the Act; and

    (e) the Respondents engaged in conduct that is contrary to the public interest.

PART V - TERMS OF SETTLEMENT

33. The Respondents agree to the terms of settlement set forth below.

34. The Respondents consent to the Order, which includes the following terms:

    Financial Sanctions

    (a) pursuant to paragraph 9 of s. 127(1) of the Act:

        (i) Harris shall pay an administrative penalty of $41,125;

        (ii) Carnie shall pay an administrative penalty of $31,125;

        (iii) Kloss shall pay an administrative penalty of $17,750;

    (b) pursuant to paragraph 10 of s. 127(1) of the Act:

        (i) FCCI, Harris and Carnie, jointly and severally, shall disgorge to the Commission $120,000;

        (ii) Kloss shall disgorge to the Commission $28,629;

    (c) pursuant to s. 127.1 of the Act:

        (i) FCCI, Harris and Carnie, jointly and severally, shall pay costs to the Commission of $20,250;

        (ii) Kloss shall pay costs to the Commission of $4,750;

    Other Sanctions

    (d) pursuant to paragraph 2 of s. 127(1) of the Act:

(i) FCCI is permanently prohibited from trading in any securities or derivatives;

(ii) Harris is prohibited from trading in any securities or derivatives until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iii) Carnie is prohibited from trading in any securities or derivatives until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iv) Kloss is prohibited from trading in any securities or derivatives for a period of 5 years;

(e) pursuant to paragraph 2.1 of s. 127(1) of the Act:

(i) FCCI is permanently prohibited from acquiring any securities;

(ii) Harris is prohibited from acquiring any securities until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iii) Carnie is prohibited from acquiring any securities until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iv) Kloss is prohibited from acquiring any securities for a period of 5 years;

(f) pursuant to paragraph 3 of s. 127(1) of the Act:

(i) all exemptions contained in Ontario securities law shall not apply to FCCI permanently;

(ii) all exemptions contained in Ontario securities law shall not apply to Harris until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iii) all exemptions contained in Ontario securities law shall not apply to Carnie until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iv) all exemptions contained in Ontario securities law shall not apply to Kloss for a period of 5 years;

(g) pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act:

(i) Harris, Carnie and Kloss shall resign any positions they may hold as a director or officer of any issuer or registrant;

(h) pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act:

(i) Harris is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(ii) Carnie is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iii) Kloss is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 5 years;

(i) pursuant to paragraph 8.5 of s. 127(1) of the Act:

(i) FCCI is prohibited from becoming or acting as a registrant or promoter permanently;

(ii) Harris is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iii) Carnie is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(iv) Kloss is prohibited from becoming or acting as a registrant or promoter for a period of 5 years;

Reprimand

(j) pursuant to paragraph 6 of s. 127(1) of the Act, the Respondents shall be reprimanded;

Conditions and Exceptions

(k) the amounts referred to in sub-paragraphs (a) and (b) above shall be designated for allocation or use by the Commission in accordance with ss. 3.4(2)(b)(i) or (ii) of the Act;

(l) Harris and Carnie shall each pay installments of $10,000 to the Commission every six months, starting on the date that is six months from the date on which the Settlement Agreement is approved, until the amounts ordered against them set out in sub-paragraphs (a), (b) and (c) above are paid in full;

(m) as an exception to the sanctions in sub-paragraphs (d) and (e) above, Harris, Carnie and Kloss are permitted to trade securities and derivatives and acquire securities on their own behalf in a registered retirement savings plan, registered education saving plan, tax-free savings account or self-directed retirement savings plan, solely through a registered dealer or registered advisor that has first been given a copy of the Order in this proceeding;

(n) as an exception to the sanctions in sub-paragraphs (g) and (h) above, Harris is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

(i) Harris must be the sole shareholder of the company;

(ii) the business operated by the company must be strictly limited to providing construction-related services, including the purchase, renovation and resale of residential properties (i.e. house flipping); and

(iii) the company shall not raise capital through the issuance of securities to the public;

(o) as an exception to the sanctions in sub-paragraphs (g) and (h) above, Carnie is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

(i) Carnie must be the sole shareholder of the company;

(ii) the business operated by the company must be strictly limited to providing construction-related services, including landscaping; and

(iii) the company shall not raise capital through the issuance of securities to the public; and

(p) pursuant to s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7 and Rule 22(4) of the Commission's *Rules of Procedure and Forms*, the sworn Statements of Financial Condition referred to in paragraph 37 of the Settlement Agreement shall be kept confidential.

35. To the extent the full amount of the financial sanctions for which Harris and Carnie are jointly and severally responsible set out in sub-paragraphs 34 (a), (b) and (c) above remain unpaid, Harris and Carnie agree to each provide Staff with an updated sworn Statement of Financial Condition within three business days of March 1, 2021 for the period starting January 1, 2019, and a further updated sworn Statement of Financial Condition within three business days of March 1, 2023 for the period starting January 1, 2021.

36. Prior to the Settlement Hearing, Harris agrees to pay $5,000 to the Commission towards the amount set out in paragraph 34(a)(i) above, Carnie agrees to pay $3,000 to the Commission towards the amount set out in paragraph 34(a)(ii) above and Kloss agrees to pay $51,129 to the Commission. With respect to the periodic payments specified in

paragraph 34(l) above, Harris and Carnie agree to make those periodic payments first towards the amounts set out in paragraph 34(a) above, then towards the amount set out in paragraph 34(b) above, and finally towards the amount set out in paragraph 34(c) above.

37. Harris and Carnie have each provided Staff with a sworn Statement of Financial Condition indicating a limited ability to make full, up-front payments of the agreed financial sanctions. These Statements of Financial Condition will be provided to the Commission at the confidential settlement conference and public settlement hearing, but will not be made public.

38. Any Respondent may apply to the Commission pursuant s. 144 of the Act to vary the terms of the Order, including to the extent payments are made to FCCI investors. Staff will consider any evidence of payments filed by the Respondent(s) on such an application in determining Staff's position on the amount owing to the Commission and the periodic payments specified in subparagraph 34 (l) above. For greater clarity, the Respondents acknowledge that the financial sanctions agreed in this Settlement Agreement in no way alter any existing or future obligations that the Respondents may have at law to make payments to FCCI investors. A template "Investor Confirmation Letter" for the Respondents to track FCCI investors who are being repaid is attached to this Settlement Agreement as Schedule "B".

39. The Respondents acknowledge that, in addition to any proceedings referred to in paragraphs 42 and 43, failure to pay the amounts ordered will result in the Respondents' names being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website.

40. The Respondents consent 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 34. These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

41. The Respondents acknowledge 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 respondents. The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intend to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VI - FURTHER PROCEEDINGS

42. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondents under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondents fail to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against any Respondent that failed to comply with a term in this Settlement Agreement. Such proceedings 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. Staff reserve the right to amend the Statement of Allegations in the Proceeding to include further and other allegations against the Respondents.

43. The Respondents acknowledge that, if the Commission approves this Settlement Agreement and the Respondents fail to comply with any term in it, Staff or the Commission are entitled to bring any proceedings necessary to, among other things, recover the amounts set out in subparagraphs 34 (a), (b) and (c) above. For greater clarity, if FCCI, Harris and Carnie fail to make any of the periodic payments specified in subparagraph 34 (l) above, Staff or the Commission are entitled to bring any proceedings necessary to, among other things, recover the full amounts set out in subparagraphs 34 (a), (b) and (c) above.

44. The Respondents waive any defences to a proceeding referenced in paragraph 43 above. The respondents waive any defenses to a proceeding referenced in paragraph 42 above 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.

45. Staff have relied in part upon representations by the Respondents that FCCI raised $364,082 from 43 Ontario investors and that $148,629 of the principal amount raised remains unpaid. Should materially more funds have been raised, materially more investors have been involved, materially more investors remain unpaid, or materially more funds remain unpaid to investors than as set out here, then Staff may bring proceedings under Ontario securities law against the Respondents despite this Settlement Agreement.

46. The Respondents agree and confirm that they have sought and received, or were provided with the opportunity to seek and receive, independent legal advice on this Settlement Agreement. The Respondents agree and confirm they have read and understood the terms of this Settlement Agreement and that the admissions they make are voluntary. The Respondents understand the Settlement Agreement is a legally binding contract and they agree to be bound by the

Settlement Agreement. The Respondents agree that this Settlement Agreement constitutes the entire agreement between Staff and the Respondents. The Respondents do not rely on any representations, warranties, conditions or collateral agreements made by Staff in respect of this settlement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

47. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the *Ontario Securities Commission Rules of procedure and Forms* (as amended).

48. The parties have consented to proceeding in writing for the Settlement Hearing.

49. 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.

50. If the Commission approves this Settlement Agreement:

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

(b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

51. Whether or not the Commission approves this Settlement Agreement, the Respondents 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's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

52. If the Commission does not make the Order:

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

(b) Staff and the Respondents 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. Staff reserve the right to amend the Statement of Allegations in the Proceeding to include further and other allegations against the Respondents. 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.

53. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED at Fort Lauderdale, Florida this 8th day of May, 2020.

"*Maria Ameijeiras*"	"*Johnathan Harris*"
Witness: Maria Ameijeiras	**JOHNATHAN HARRIS**

DATED at Whitby, Ontario this 26th day of May, 2020.

"*Kyle Falvo*"	"*Mitchell Carnie*"
Witness: Kyle Falvo	**MITCHELL CARNIE**

DATED at Toronto, Ontario this 30th day of April, 2020.

"*Christi Hunter*"
Witness: Christi Hunter

"*Neill Kloss*"
NEILL KLOSS

DATED at Fort Lauderdale, Florida this 8th day of May, 2020.

FIRST CLASS CRYPTO INC.

FIRST CLASS CRYPTO INC.

By: "*Johnathan Harris*"
Name: Johnathan Harris
Title: President

DATED at Toronto, Ontario, this 26th day of May, 2020.

ONTARIO SECURITIES COMMISSION

By: "*Jeff Kehoe*"
Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A"

FORM OF ORDER

**IN THE MATTER OF
FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE
AND
NEILL KLOSS**

File No. *[#]*

[Name(s) of Commissioner(s) comprising the Panel]

[Day and date Order made]

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

WHEREAS the Ontario Securities Commission held a hearing in writing to consider the request made jointly by First Class Crypto Inc. (**FCCI**), Johnathan Harris (**Harris**), Mitchell Carnie (**Carnie**) and Neill Kloss (**Kloss**) (collectively, the **Respondents**) for approval of a settlement agreement dated *[DATE]* (the **Settlement Agreement**);

ON READING the Joint Application for a Settlement Hearing, including the Statement of Allegations dated *[DATE]*, and the Settlement Agreement, and on reading the written submissions of the representative for Staff, and on being advised by Staff that Staff has received payments from Harris, Carnie and Kloss of $5,000, $3,000 and $51,129 (respectively);

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;

2. Pursuant to paragraph 9 of s. 127(1) of the Act:

   (a) Harris shall pay an administrative penalty of $41,125;

   (b) Carnie shall pay an administrative penalty of $31,125;

   (c) Kloss shall pay an administrative penalty of $17,750;

3. Pursuant to paragraph 10 of s. 127(1) of the Act:

   (a) FCCI, Harris and Carnie, jointly and severally, shall disgorge to the Commission $120,000;

   (b) Kloss shall disgorge to the Commission $28,629;

4. Pursuant to s. 127.1 of the Act:

   (a) FCCI, Harris and Carnie, jointly and severally, shall pay costs to the Commission of $20,250;

   (b) Kloss shall pay costs to the Commission of $4,750;

5. Pursuant to paragraph 2 of s. 127(1) of the Act:

   (a) FCCI is permanently prohibited from trading in any securities or derivatives;

   (b) Harris is prohibited from trading in any securities or derivatives until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) Carnie is prohibited from trading in any securities or derivatives until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) Kloss is prohibited from trading in any securities or derivatives for a period of 5 years;

6. Pursuant to paragraph 2.1 of s. 127(1) of the Act:

(a) FCCI is permanently prohibited from acquiring any securities;

(b) Harris is prohibited from acquiring any securities until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) Carnie is prohibited from acquiring any securities until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) Kloss is prohibited from acquiring any securities for a period of 5 years;

7. Pursuant to paragraph 3 of s. 127(1) of the Act:

(a) all exemptions contained in Ontario securities law shall not apply to FCCI permanently;

(b) all exemptions contained in Ontario securities law shall not apply to Harris until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) all exemptions contained in Ontario securities law shall not apply to Carnie until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) all exemptions contained in Ontario securities law shall not apply to Kloss for a period of 5 years;

8. Pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act:

(a) Harris, Carnie and Kloss shall resign any positions they may hold as a director or officer of any issuer or registrant;

9. Pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act:

(a) Harris is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(b) Carnie is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(c) Kloss is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 5 years;

10. Pursuant to paragraph 8.5 of s. 127(1) of the Act:

(a) FCCI is prohibited from becoming or acting as a registrant or promoter permanently;

(b) Harris is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

(c) Carnie is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;

(d) Kloss is prohibited from becoming or acting as a registrant or promoter for a period of 5 years;

11. Pursuant to paragraph 6 of s. 127(1) of the Act, the Respondents shall be reprimanded;

12. The amounts referred to in paragraphs 2 and 3 above shall be designated for allocation or use by the Commission in accordance with ss. 3.4(2)(b)(i) or (ii) of the Act;

13. Harris and Carnie shall each pay installments of $10,000 to the Commission every six months, starting on the date that is six months from the date on which the Settlement Agreement is approved, until the amounts ordered against them set out in paragraphs 2, 3 and 4 above are paid in full;

14. As an exception to the sanctions in paragraphs 5 and 6 above, Harris, Carnie and Kloss are permitted to trade securities and derivatives and acquire securities on their own behalf in a registered retirement savings plan, registered education saving plan, tax-free savings account or self-directed retirement savings plan, solely through a registered dealer or registered advisor that has first been given a copy of this Order;

15. As an exception to the sanctions in paragraphs 8 and 9 above, Harris is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

    (a) Harris must be the sole shareholder of the company;

    (b) the business operated by the company must be strictly limited to providing construction-related services, including the purchase, renovation and resale of residential properties (i.e. house flipping); and

    (c) the company shall not raise capital through the issuance of securities to the public;

16. As an exception to the sanctions in paragraphs 8 and 9 above, Carnie is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

    (a) Carnie must be the sole shareholder of the company;

    (b) the business operated by the company must be strictly limited to providing construction-related services, including landscaping; and

    (c) the company shall not raise capital through the issuance of securities to the public; and

17. Pursuant to s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7 and Rule 22(4) of the Commission's *Rules of Procedure and Forms*, the sworn Statements of Financial Condition referred to in paragraph 37 of the Settlement Agreement shall be kept confidential.

____
[Commissioner]

____
[Commissioner]

____
[Commissioner]

SCHEDULE "B"

INVESTOR CONFIRMATION LETTER TEMPLATE

INVESTOR CONFIRMATION LETTER
FOR INVESTMENTS IN FIRST CLASS CRYPTO INC.

First Class Crypto Inc.

Johnathan Harris
770 Lexington Street
Oshawa, ON L1G 6V3

and

Mitchell Carnie
201 Centre Street North
Whitby, Ontario
L1N 4S9

I am writing this letter to confirm receipt of payment regarding my investment with First Class Crypto Inc. The details of this payment are as follows:

Date I received payment: (MM/DD/YYYY)	______________________________
Amount I received as payment:	______________________________
Currency of the amount I received as payment (Canadian dollars, type of crypto asset, etc.):	______________________________
How the payment was made: (e-transfer, cheque, wire transfer etc.)	______________________________
Name of the person that made the payment:	______________________________
I have attached the following document(s) as proof of the payment I received (examples: e-transfer confirmation, bank statement, cancelled cheque, wire form).	______________________________

I understand this letter and the attached supporting documents may be provided to the Ontario Securities Commission as evidence of repayments made to investors in First Class Crypto Inc.

Signed this ________ day of _________, 20___ in ___________, Ontario.

______________________________	______________________________
Name of First Class Crypto Inc. Investor	Name of Witness
______________________________	______________________________
Signature of First Class Crypto Inc. Investor	Signature of Witness
______________________________	
Contact Information of First Class Crypto Inc. Investor (email address & phone number)	

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 First Class Crypto Inc. et al. – ss. 127, 127.1

Citation: *First Class Crypto Inc (Re)*, 2020 ONSEC 14
Date: 2020-05-28
File No. 2020-9

IN THE MATTER OF
FIRST CLASS CRYPTO INC.,
JOHNATHAN HARRIS,
MITCHELL CARNIE
AND
NEILL KLOSS

REASONS AND DECISION
FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the
***Securities Act*, RSO 1990, c S.5)**

Hearing:	In writing	
Decision:	May 28, 2020	
Panel:	M. Cecilia Williams Craig Hayman Frances Kordyback	Commissioner and Chair of the Panel Commissioner Commissioner
Appearances:	Charlie Pettypiece	For Staff of the Commission
	Christi Hunter	For Neill Kloss
	Mitchell Carnie	For himself and First Class Crypto Inc.
	Johnathan Harris	For himself and First Class Crypto Inc.

REASONS AND DECISION
FOR APPROVAL OF SETTLEMENT

[1] Staff of the Ontario Securities Commission (**Staff**), First Class Crypto Inc. (**FCCI**), Johnathan Harris (Harris), Mitchell Carnie (**Carnie**) and Neill Kloss (**Kloss**) (FCCI, Harris, Carnie and Kloss collectively the **Respondents**) have jointly submitted that it would be in the public interest to approve a settlement between the parties dated May 26, 2020 (the **Settlement Agreement**).[1] We agree.

[2] We have reviewed this settlement in detail and have had the benefit of a confidential settlement conference, held by teleconference, with all parties, and where represented, their counsel. We asked questions of the parties and heard their submissions. Following the confidential settlement conference, the parties responded in writing to further questions of the Panel. The parties also confirmed that they all consented to proceed by way of a written hearing for the public approval of the settlement. These are our reasons for approving the Settlement Agreement.

[3] The facts, which are set out in detail in the Settlement Agreement include:

a. FCCI is an Ontario company that purported to be in the business of crypto asset mining. Harris and Carnie are founding shareholders, directors, officers and directing minds of FCCI. Kloss became a shareholder and *de facto* director or officer of FCCI and represented himself as the Chief Financial Officer and a Vice-President of FCCI.

[1] The Settlement Agreement is marked as Exhibit 1 in this written hearing.

b. From December 2017 to May 2018, the Respondents raised $364,082 from 43 Ontario investors by entering in two forms of investment contracts (**FCCI Investment Contracts**):

   i. the Lending Mining Contract (**LMC**), which promised investors compounded monthly returns without exposure to the volatility of the crypto asset market through the purchase of mining rigs; and

   ii. the Crypto Security Plan (**CSP**), which promised investors annual returns on investor funds held in the crypto asset market.

c. The Respondents promoted FCCI Investment Contracts to the public through a variety of means including, marketing materials, holding investment seminars and by encouraging individuals to become “recruiters” in exchange for promised referral fees. The Respondents held training seminars and created training materials for recruiters.

d. Most investors entered into the LMC investment contract. Investors were promised earnings between 3% and 6% compounded monthly for LMCs and 12% annually for CSPs. Investors either paid in Canadian dollars, which were exchanged for crypto assets or transferred crypto assets directly to FCCI. All crypto assets were held in blockchain wallets controlled by the Respondents.

e. The FCCI Investment Contracts are “investment contracts” and therefore “securities” under the *Securities Act* (the **Act**)[2] because:

   i. investors invested with an intention or expectation of profit;

   ii. the investment was made into a common enterprise where the success of the investment and the ability to deliver the promised returns depended on the significant efforts of the Respondents; and

   iii. the Respondents’ efforts, including sourcing, establishing and maintaining mining rigs for LMC investors and making and managing investments in the crypto asset market for CSP investors, were essential managerial efforts that affected the failure or success of the FCCI enterprise.

f. In person, in marketing materials and in the FCCI Investment Contracts, the Respondents made numerous false or misleading statements that induced investors into signing the FCCI Investment Contracts. Statements made to investors also omitted facts that FCCI investors would consider relevant. The false and misleading statements made included:

   i. the Respondents had mining rig facilities and enough mining rigs to meet obligations to investors;

   ii. LMC investment funds would be used to purchase mining rigs;

   iii. LMC investment funds were guaranteed and not subject to the fluctuation of the crypto asset markets;

   iv. FCCI had insurance that could protect LMC investment funds;

   v. FCCI’s crypto asset holdings and mining rigs were protected by physical and technological security; and

   vi. FCCI would pay compounded monthly returns to investors in LMC and annual returns to investors in CSP.

g. In reality:

   i. FCCI had no established mining facilities;

   ii. from December 2017 to May 2018, the Respondents could not purchase mining rigs to meet FCCI’s obligations under the LMCs;

   iii. during that period while the Respondents attempted to source mining rigs, LMC investment funds were held in volatile crypto assets that were decreasing in value; and

[2] RSO 1990, c S.5

   iv. FCCI had no insurance on mining rigs and no insurance that would purportedly protect principal investments of LMC investors.

h. By the time the Respondents shut down FCCI's business in June 2018 a substantial amount of the investors' funds had been lost. The Respondents asked investors to sign documents purporting to cancel the FCCI Investment Contracts and acknowledge that investors had been paid in full. For some investors, the Respondents also issued promissory notes promising to repay investor losses.

i. Not only did the Respondents fail to repay the principal amounts originally invested in FCCI, the Respondents also failed to pay investors the monthly and annual returns promised.

[4] The Respondents admit that they have breached Ontario securities law and acted contrary to the public interest:

a. by engaging in unregistered trading of FCCI Investment Contracts, contrary to s. 25(1) of the Act;

b. by distributing FCCI Investment Contracts, contrary to s. 53(1) of the Act;

c. where no registration or trading exemptions were available to the Respondents;

d. by making prohibited representations, contrary to s. 44(2) of the Act; and

e. Harris, Carnie and Kloss, as directors, officers or *de facto* directors or officers of FCCI, authorized, permitted or acquiesced in FCCI's breaches of ss. 25(1), 53(1) and 44(2) and are deemed to also have not complied with Ontario securities law pursuant to s. 129.2 of the Act.

[5] The Respondents acknowledge that they acted contrary to the public interest as they failed to operate the business in a manner that protected FCCI investors and investor funds by, among other things: lacking the proficiency, integrity and solvency necessary to protect investors; failing to adequately maintain basic documentation regarding FCCI's operations; and, on the wind down of FCCI, cancelling access to corporate email accounts, liquidating crypto asset balances and deleting records, including all records of blockchain addresses. The Respondents had a responsibility to ensure FCCI kept accurate and complete books and records.

[6] The registration and prospectus requirements are cornerstones of Ontario's securities regulatory regime. It is important that companies and individuals that engage in the business of trading in securities, or that hold themselves out as doing so:

a. be properly registered or be entitled to rely on available exemptions; and

b. do so either under a prospectus or be entitled to rely on available prospectus exemptions.

[7] We have however, taken into account mitigating circumstances. Specifically, the Respondents:

a. sought an early resolution to this matter, in advance of enforcement proceedings commencing;

b. proactively facilitated the partial return of funds to certain investors upon shutting down FCCI in June 2018 and continue to make some additional repayments to certain investors after FCCI's shut down; and

c. provided information to Staff that suggests that $215,453 of the principal amount originally raised from investors has been repaid.

[8] The details of the terms under which the parties have agreed to settle are contained in the Settlement Agreement and need not be repeated here. To summarize:

a. the individual Respondents shall pay administrative penalties of:

   i. $41,125 by Harris;

   ii. $31,125 by Carnie; and

   iii. $17,750 by Kloss;

b. disgorgement shall be made to the Commission of:

i. $120,000 by FCCI, Harris and Carnie on a joint and several basis; and

ii. $28,629 by Kloss;

c. costs shall be paid to the Commission as follows:

i. $20,250 by FCCI, Harris and Carnie, on a joint and several basis; and

ii. $4,750 by Kloss;

d. prior to this settlement approval hearing, Harris paid $5,000, Carnie paid $3,000 and Kloss paid $51,129 to the Commission with respect to the financial sanctions and costs.

e. Harris and Carnie shall each pay installments of $10,000 to the Commission every six months, starting on the date that is six months from the date on which the Settlement Hearing Agreement is approved until the amounts ordered against them are paid in full.

f. FCCI is permanently prohibited from trading securities and derivatives and acquiring securities and accessing exemptions in Ontario securities law;

g. subject to a limited carve out for trading securities and derivatives and acquiring securities in registered accounts of the individual Respondents, each of Harris, Carnie and Kloss is subject to restrictions on trading in any securities or derivatives, acquiring any securities, accessing exemptions contained in Ontario securities law, and becoming or acting as a registrant or promoter for the following periods:

i. Harris – the later of 12 years from the date of the Order and such time as all financial sanctions and costs are paid in full;

ii. Carnie – the later of 7 years from the date of the Order and such time as all financial sanctions and costs are paid in full; and

iii. Kloss – 5 years;

h. subject to a limited carve out for personal companies of Harris and Carnie, each of the individual Respondents:

i. shall resign any positions they may hold as a director or officer of any issuer or registrant; and

ii. is prohibited from becoming or acting as a director or officer of any issuer or registrant for the following periods:

(a) Harris – the later of 12 years from the date of the Order and such time as all financial sanctions and costs are paid in full;

(b) Carnie – the later of 7 years from the date of the Order and such time as all financial sanctions and costs are paid in full; and

(c) Kloss – 5 years;

i. The respondents are prohibited from acting as a registrant or promoter for the following time periods:

i. Permanently for FCCI;

ii. Harris – the later of 12 years from the date of the Order and such time as all financial sanctions and costs are paid in full;

iii. 7 Carnie – the later of 7 years from the date of the Order and such time as all financial sanctions and costs are paid in full; and

iv. Kloss – 5 years; and

j. the Respondents are reprimanded.

[9] The Commission's role at a settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to make the order requested.

[10] We recognize that the Settlement Agreement is the product of negotiations between Staff and the Respondents. When considering settlements for approval, the Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.

[11] Approval of this settlement would resolve a proceeding promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a lengthy, contested merits hearing. The payment of costs helps to reduce the burden on market participants to pay for investigations and enforcement proceedings.

[12] An order of disgorgement is appropriate in this instance. The Respondents admit that the sale of FCCI Investment Contracts to the public was an illegal distribution of securities and it is appropriate that amounts obtained be disgorged. The Respondents have agreed to disgorge the amount that remains unpaid to investors.

[13] Harris and Carnie continue to make repayments to FCCI investors. To the extent that further payments are made to FCCI investors, any Respondent may apply to the Commission pursuant to s. 144 of the Act to vary the terms of the settlement order. The Settlement Agreement provides for a means of establishing that payments have, in fact, been made to investors in support of any such application.

[14] The Commission has, in other instances, agreed to payment plans for financial sanctions. In this circumstance, the payment plan for Harris and Carnie is supported by several factors:

a. Staff confirmed that each of Harris and Carnie has paid a portion of the financial sanctions at the time of the settlement approval written hearing;

b. the financial situation of Harris and Carnie; and

c. the Commission's ability in the event of any breach of the Settlement Agreement, including failure of Harris or Carnie to make any of the periodic payments, to bring any proceedings necessary to recover the full amounts owing.

[15] The parties submit and we agree that the proposed financial sanctions and bans reflect the misconduct of the individual Respondents and their roles and responsibilities at FCCI and they are proportionate in the circumstances.

[16] This misconduct was serious. In particular, the failure to keep accurate and complete books and records is of significant concern to the protection of investor interests. This concern is heightened when operating in the crypto asset sector.

[17] This failure combined with the fact that the crypto assets acquired with investor funds were held in blockchain wallets controlled by the Respondents raises uncertainty about the status of those assets and any future access by the Respondents. The Panel took comfort on these issues from the Respondents' representations in the Settlement Agreement that the crypto assets were liquidated and all records of the addresses for those wallets were deleted.

[18] The Panel took additional comfort from the fact that the Settlement Agreement does not contain a full and final release for future proceedings relating to this matter. As a result, Staff may bring further proceedings against the Respondents, despite the Settlement Agreement, if Staff discovers that materially more funds were raised, materially more investors were involved or materially more investors or funds remain unpaid.

[19] The registration and prospectus requirements, as well as the prohibitions against making false and misleading statements, are core to the investor protection objectives of the Act. In this instance, the misconduct occurred over a short six-month period, involved a limited monetary amount and did not recur.

[20] The Panel also took note of the fact that the Respondents:

a. have never been registered with the Commission;

b. are unsophisticated and inexperienced individuals;

c. have limited involvement in Ontario's capital markets; and

d. have demonstrated some recognition of the seriousness of their misconduct by their admission, through their agreement to be reprimanded and as a result of the steps taken to make repayments to investors and wind down the FCCI business.

[21] In our view, the terms of the settlement fall within a range of reasonable outcomes in the circumstances. The settlement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.

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

[23] The Respondents have agreed to a reprimand. That permits us to reinforce the importance of compliance with Ontario securities law. They are hereby reprimanded.

Dated at Toronto this 28th day of May, 2020.

“M. Cecilia Williams”

“Craig Hayman”

“Frances Kordyback”

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Feronia Inc.	May 6, 2020	May 26, 2020

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
DATA Communications Management Corp.	May 29, 2020	

4.2.2 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
North Bud Farms Inc.	March 31, 2020	
North Bud Farms Inc.	May 12, 2020	
DATA Communications Management Corp.	May 15, 2020	

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Chapter 5

Rules and Policies

5.1.1 CSA Notice of Amendments to National Instrument 44-102 Shelf Distributions and Change to Companion Policy 44-102CP Shelf Distributions relating to At-the-Market Distributions

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Canadian Securities Administrators / Autorités canadiennes en valeurs mobilières

CSA Notice of Amendments to National Instrument 44-102 *Shelf Distributions* and Change to Companion Policy 44-102CP *Shelf Distributions* relating to At-the-Market Distributions

June 4, 2020

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are making amendments (the **Amendments**) to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) and changes (the **Changes**) to Companion Policy 44-102CP *Shelf Distributions* (**44-102CP**).

The Amendments replace relief that has historically been required by issuers conducting at-the-market (**ATM**) distributions of equity securities. The text of the Amendments and the Changes is contained in Annexes C and D of this Notice.

The Amendments and the Changes are expected to be made by each member of the CSA. In certain jurisdictions, Ministerial approvals are required for the Amendments. Provided all necessary Ministerial approvals are obtained, the Amendments and the Changes will become effective on August 31, 2020. Where applicable, Annex E of this Notice provides information about each of the jurisdiction's approval process.

Substance and Purpose

While Part 9 of NI 44-102 currently contemplates the distribution of equity securities by way of an ATM distribution using the shelf procedures, it does not provide an exemption for the prospectus delivery requirement. Because of the nature of ATM distributions, issuers are required to obtain exemptive relief from certain prospectus-related requirements if they wish to conduct ATM distributions in Canada. When the Amendments become effective, issuers will not have to apply for exemptive relief to conduct ATM distributions.

The Amendments reduce the regulatory burden for issuers who wish to conduct ATM distributions, without compromising investor protection or the efficiency of the capital markets.

Background

The CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden.

After receiving and reviewing stakeholder comments, the CSA published Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*. Among other things, commenters observed that the limited number of ATM distributions in Canada may be partly attributable to regulatory burden associated with the requirement to obtain prior exemptive relief and the conditions typically imposed in connection with such relief.

In response, we initiated a CSA policy project relating to ATM distributions resulting in the publication for comment on May 9, 2019 of proposed amendments (the **Proposed Amendments**) to NI 44-102 and proposed changes (the **Proposed Changes**) to 44-102CP.

Summary of Written Comments Received by the CSA

On May 9, 2019, we published a Notice and Request for Comment (the **Publication for Comment Materials**) relating to the Proposed Amendments and the Proposed Changes. The comment period ended on August 7, 2019. We received written submissions from seven commenters. We considered all of the comments received and we thank the commenters for their input. The names of the commenters are contained in Annex B of this Notice along with a summary of the comments and our responses.

The comment letters can be viewed on the website of each of:

- the Alberta Securities Commission at www.albertasecurities.com
- the Ontario Securities Commission at www.osc.gov.on.ca

- the Autorité des marchés financiers at www.lautorite.qc.ca

Summary of Changes

We have revised the Proposed Amendments and the Proposed Changes to reflect certain of the comments received and to improve or clarify drafting. As these changes are not material, we are not republishing the Amendments and the Changes for a further comment period.

A summary of the noteworthy differences between the Proposed Amendments and the Amendments are contained in Annex A.

Annexes

This Notice includes the following annexes:

- Annex A summarizes the noteworthy differences between the Proposed Amendments and the Amendments
- Annex B sets out the name of the commenters, a summary of their comments, and our responses
- Annex C sets out the Amendments
- Annex D sets out the Changes

Where applicable, Annex E provides additional information relevant for local jurisdictions.

Questions

Please refer your questions to any of the following:

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ANNEX A

SUMMARY OF CHANGES

The following is a summary of the noteworthy differences between the Proposed Amendments and the Amendments.

No liquidity requirements

The Publication for Comment Materials proposed two different approaches, labelled as Option 1 and Option 2, to conducting ATM distributions.

Option 1 would have limited ATM distributions of a class of securities on each day to 25% of the trading volume of that class on that day (the **25% Daily Cap**) unless the securities were "highly-liquid securities", as defined in the Proposed Amendments.

Option 2 did not impose the 25% Daily Cap or the "highly-liquid securities" requirement.

After considering the comments received, we decided to adopt Option 2.

We note the comments support the view that issuers are not expected to conduct ATM distributions that will have a material impact on the market price of their securities. We further note that the comments support the view that investment dealers, who must underwrite all ATM distributions, are expected to have the experience and expertise in managing orders to limit any negative impact on market integrity, and are also prohibited from engaging in conduct that may disrupt a fair and orderly market.

Our decision to adopt Option 2 is based on reasonable expectations regarding the conduct of market participants. Accordingly, we acknowledge the importance of remaining alert to potential abuses. We intend to monitor ATM distributions, focusing on distributions that may have had a material impact on the price of the issuer's securities where the distribution was not publicly disclosed prior to it being made.

The Publication for Comment Materials also proposed to permit issuers that met the "highly-liquid securities" requirement to report certain information about an ATM distribution on a quarterly rather than a monthly basis. To be consistent with our decision to adopt Option 2, we have also decided to permit all issuers conducting ATM distributions to report on a quarterly basis.

Removal of references to ATM exchange

The Publication for Comment Materials included a condition in paragraph 9.3(1)(f) of the Proposed Amendments that the issuer must distribute the security through an ATM exchange, which was defined as a short form eligible exchange or a marketplace outside of Canada. This condition was inconsistent with the conditions in the existing exemptive relief orders, which only require the issuer to distribute the security through a marketplace.

The intent of the requirement in paragraph 9.3(1)(f) of the Proposed Amendments was to ensure the equity securities of the same class being distributed under the ATM distribution are listed and trading on a short form eligible exchange. Consistent with the existing exemptive relief orders, our intent was that the securities must be distributed through a marketplace. Accordingly, we have removed the definition of an ATM exchange, changed the reference to "ATM exchange" in paragraph 9.3(1)(e) of the Amendments to "marketplace", and added paragraph 9.3(1)(a) of the Amendments requiring that a security of the same class as being distributed is listed and trading over a short form eligible exchange.

Investment funds

The Publication for Comment Materials asked several questions regarding non-redeemable investment funds and mutual funds that are traded on an exchange that are not in continuous distribution. After considering the comments received, we have determined that all non-redeemable investment funds and exchange-traded mutual funds that are not in continuous distribution are able to rely on the Amendments. Mutual funds that are traded on an exchange that are in continuous distribution, and therefore meet the definition of an "ETF" in National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) are also able to rely on the Amendments and would be required to comply with all requirements applicable to an ETF, including the requirement for dealers acting as agents for a purchaser to deliver ETF facts documents under section 3C.2 of NI 41-101. A mutual fund that is traded on an exchange that frequently makes ATM distributions would be considered to be in continuous distribution so must also comply with all ETF requirements.

In response to a comment, we added a requirement in paragraph 9.3(1)(l) of the Amendments that investment funds conducting ATM distributions must include a statement in the prospectus that any ATM distributions will be conducted in accordance with paragraph 9.3(2)(a) of National Instrument 81-102 *Investment Funds*.

Provisions not applicable to ATM distributions

Paragraph 9.2(2)(a) of the Proposed Amendments stated that section 6.7 or a similar provision under securities legislation does not apply to an investment dealer acting as an underwriter in connection with the distribution of a security under an ATM prospectus. This paragraph has been replaced by subsection 9.2(3) of the Amendments. We made this change to improve drafting and for clarification purposes only.

ANNEX B

PROPOSED AMENDMENTS TO NI 44-102
LIST OF COMMENTERS AND SUMMARY OF COMMENTS AND RESPONSES

No.	Commenter	Date
1.	The Canadian Advocacy Council of CFA Societies Canada	August 2, 2019
2.	RBC Dominion Securities Inc., on behalf of RBC Capital Markets	August 6, 2019
3.	Investment Industry Association of Canada (IIAC)	August 7, 2019
4.	Prospectors & Developers Association of Canada (PDAC)	August 7, 2019
5.	Davies Ward Phillips & Vineberg LLP	August 7, 2019
6.	Blakes, Cassels & Graydon LLP	August 7, 2019
7.	Toronto Stock Exchange	August 13, 2019

No.	Subject	Summarized Comment	Response
GENERAL COMMENTS			
1	General Support	All seven commenters expressed general support for the Proposed Amendments.	We thank the commenters for their support.
SPECIFIC QUESTIONS			
2	Necessity of "highly liquid securities" test or the 25% Daily Cap – Option 1 versus Option 2	**Option 1** One commenter supports Option 1, with modifications. Along with issuers with highly liquid securities, the commenter thinks issuers that are dually listed on a U.S. exchange should also not be subject to the 25% Daily Cap or the 10% Aggregate Cap. For other issuers, specifically smaller (venture) cap issuers, however, it is justified to align the 25% Daily Cap with the percentage of issuance for which a major exchange would require approval as a result of dilution concerns. For these smaller issuers, the commenter thinks a specific percentage cap would be preferable to excluding securities which meet the "highly liquid securities" definition. **Option 2** Six commenters support Option 2 for the following reasons: • Five commenters think that the requirement that an IIROC dealer, subject to their own regulatory requirements, be involved in an ATM distribution is sufficient to ensure the maintenance of fair and orderly markets. • Four commenters think that issuers themselves are incentivized not to conduct ATM distributions that will have a material impact on the market price of their securities. Any issuer making a large trade under an ATM program is required to consider whether the trade is a material fact or material change requiring prior disclosure. • Three commenters note that neither the highly liquid test nor the 25% Daily Cap exist in the United States. They also note that the absence of an equivalent liquidity test in the United States has not resulted in market impact problems there. They think that the adoption of liquidity	We think the comments of the supporters of Option 2 are persuasive, even for smaller issuers. Accordingly, the Amendments impose neither the 25% Daily Cap nor the "highly liquid securities" requirement. Because we have decided to adopt Option 2, drafting changes to Option 1 are unnecessary. We agree with the importance of remaining alert to abuses of the ATM program. We intend to monitor ATM distributions, focusing on distributions that may have had a material impact on the price of the issuer's securities where the distribution was not publicly disclosed prior to it being made.

<table>
<tr><th>No.</th><th>Subject</th><th>Summarized Comment</th><th>Response</th></tr>
<tr><td></td><td></td><td>

requirements in Canada would create inconsistencies with the U.S. requirements and deter the use of the ATM offering process in Canada.
One commenter thinks that a 25% Daily Cap for issuers whose securities are not highly liquid securities adds complexity and is unnecessary.
One commenter thinks that the 25% Daily Cap may have the effect of limiting an issuer's ability to respond to reverse inquiries for larger block purchases.
One commenter thinks, based on market data, that the 25% Daily Cap would render ATM distributions unworkable for larger companies in the mining industry.

Other comments
One commenter suggested drafting changes if the CSA decides to adopt a 25% Daily Cap.
One commenter recommends that, should the CSA select Option 2, it remain alert to abuses of the ATM program where conventional prospectus follow-on would be more appropriate.
</td><td></td></tr>
<tr><td>3</td><td>Debt securities</td><td>
Three commenters think that the Proposed Amendments should not be extended to debt securities.
Commenters express the following reasons supporting their views:

All three commenters think that the use of ATMs for debt securities is inconsistent with how the bond market works or is impractical given the nature of the bond market. They note the over-the-counter or off-exchange structure of fixed-income markets, the manner in which debt instruments are valued, and the resulting lack of liquidity and reliable pricing information.
Two commenters think that there is no meaningful demand for the issuance of debt securities through ATM distributions.
One commenter thinks that the ATM distributions of debt securities by issuers would not be well received by investors.
One commenter thinks the medium term note program available under Part 8 of NI 44-102 is more suitable for sequential debt offerings and works very well for this purpose.

No commenters expressed support for permitting the issuance of debt securities under an ATM distribution.
</td><td>We thank the commenters. The Amendments do not provide any exemptions for debt securities.</td></tr>
<tr><td>4</td><td>Investment Funds</td><td>
Two commenters explicitly support permitting Non-Redeemable Investment Funds (NRIFs) and Exchange-Traded Funds Not in Continuous Distribution (ETFNCDs) to conduct ATM distributions.
Both commenters think, as an NRIF or ETFNCD is only permitted to sell securities in an ATM distribution if the securities are trading at a premium to net asset
</td><td>We agree with the commenters. After considering the comments received, we have determined that all non-redeemable investment funds and exchange-traded mutual funds that are not in continuous distribution are able to rely on the Amendments. Mutual funds that are traded on an exchange</td></tr>
</table>

No.	Subject	Summarized Comment	Response
		value, such sales will always be accretive to the NRIF or ETFNCD and its existing securityholders. One commenter thinks that ATM distributions will provide a means of quickly meeting existing demand in the market for NRIF or ETFNCD securities. The cost of issuance via an ATM distribution is significantly less expensive than a conventional re-opening. Also, permitting ATM distributions for NRIFs and ETFNCDs is consistent with the treatment of these issuers in the United States. While no other commenters expressed a position on this issue, one of the other commenters notes that, if NRIFs and ETFs are permitted to conduct ATM distributions, they should be required to conduct ATM distributions at a premium to their net asset value (**NAV**) to ensure that the NAV is not diluted. This commenter also suggests that these investment funds should be required to certify that the ATM distribution is being conducted at a premium to NAV.	that are in continuous distribution, and therefore meet the definition of an "ETF" in National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) are also able to rely on the Amendments and would be required to comply with all requirements applicable to an ETF, including the requirement for dealers acting as agents for a purchaser to deliver ETF facts documents under section 3C.2 of NI 41-101. A mutual fund that is traded on an exchange that frequently makes ATM distributions would be considered to be in continuous distribution so must also comply with all ETF requirements. We have added a requirement in paragraph 9.3(1)(l) of the Amendments that investment funds conducting ATM distributions must include a statement in the prospectus that any ATM distributions will be conducted in accordance with paragraph 9.3(2)(a) of National Instrument 81-102 *Investment Funds*.
THE PROPOSED AMENDMENTS			
5	Timely disclosure	One commenter thinks issuers should be required to issue a timely news release coinciding closer to the start of any share issuances under an ATM offering. The commenter notes that, in the absence of a timely news release, investors may not fully appreciate or be able to easily track the timing, magnitude and circumstances in which an issuer would typically utilize the offering. The commenter thinks that interim financial statements and other disclosure should continue to clearly note in the share tables any securities that were specifically issued under an ATM distribution.	We acknowledge the commenter's concern. We think the additional burden of requiring issuers to issue a news release closer to the start of any share issuances under an ATM offering provides limited benefit to investors. In our view, investors will have sufficient information about ATM distributions as a result of: (i) the requirement to disclose entry into a distribution agreement; (ii) the requirement to disclose, in advance of a distribution, any ATM distribution that will have a material impact on the market price of the issuer's securities; and (iii) the requirement to provide post-distribution quarterly reporting.
6	Rescission rights	Three commenters suggest that the amendments not allow traditional new issue rights, including rights of rescission or damages, to purchasers in connection with an ATM distribution. All three commenters argue that such investors are purchasing in the secondary market, unaware that they may be buying new issue shares. Accordingly, investors should not expect and should not have these traditional new issue rights. The commenters also note that investors remain protected by the secondary market liability regime. Two commenters are concerned that such traditional new issue rights are not workable in the context of	We acknowledge the commenters' concerns but have determined not to make the suggested change for the following reasons: • Neither issuers nor their underwriters have identified the possible exposure of all secondary market trading to prospectus liability as a problem under the exemptive relief decisions that have been granted. • We are not aware of any cases where a court has imposed prospectus liability on all

No.	Subject	Summarized Comment	Response
		ATM distributions because it is not possible to identify the specific purchaser of securities in an ATM distribution on the secondary market. Providing a right of action where it is impossible to distinguish ATM purchasers from other secondary market purchasers may expose issuers and the dealers for the ATM program to prospectus liability for all trades that occur during the ATM distribution.	secondary market trades in connection with an ATM distribution. • Removing traditional new issue rights, including rights of rescission or damages, to purchasers in connection with an ATM distribution may require legislative amendments. While such amendments could be made, it would significantly delay the adoption of the proposed amendments and the reduction of the burden associated with these changes • We will monitor ATM distributions and consider seeking legislative amendments if warranted.
7	Quarterly reporting	Three commenters suggest that all issuers be permitted to report trades on a quarterly basis for the following reasons: • All three commenters note that issuers are subject to other (exchange) requirements to report, on a monthly basis, changes to the number of outstanding securities. Such information is available to investors on demand. • One commenter notes that relief from this requirement is already regularly provided in recent exemption orders on the basis that issuers provide full disclosure in their quarterly financial statements. • One commenter thinks that monthly reporting does not add incremental value to the investment decision of a secondary market purchaser. • One commenter notes that U.S. ATM rules do not require monthly disclosure. • One commenter notes that, if details in a monthly report do not constitute a material fact, there is no utility to investors from receiving them and if details do constitute a material fact, they would have to be disclosed in any event.	We agree. Subsection 9.4(1) of the Amendments only requires quarterly reporting.
8	Material terms of agreement with agents	One commenter suggests removing the requirement in paragraph 9.3(1)(e) of the Proposed Amendments to disclose the material terms of a distribution agreement. The commenter notes that the equity distribution agreement in question is a modified form of underwriting agreement. The commenter thinks there is no reason in connection with an ATM distribution that the issuer should include more detailed disclosure in a prospectus relating to its agreement with the agents than is required under Item 5 of Form 44-101F1, which applies to ATM prospectuses. The inclusion of the requirement in paragraph 9.3(1)(e) of the Proposed Amendments is redundant and unnecessary.	We agree that Form 44-101F1 requires disclosure of the material terms of the distribution agreement. The Amendments do not include the requirement in paragraph 9.3(1)(e) of the Proposed Amendments.

No.	Subject	Summarized Comment	Response
9	ATM Exchange	Three commenters suggest that ATM distributions should be permitted over all markets, including exchanges and alternative trading systems, for the following reasons: • Two commenters note that the requirement to conduct an offering on an ATM exchange is too narrow. Given that not all Canadian marketplaces are included in the definition, this may result in regulatory contradictions with the requirement to transact on all marketplaces under the Order Protection Rule, and best execution standards. • Two commenters note that the current exemption orders do not limit trades to ATM exchanges and permit the execution of ATM trades on any Canadian exchange or marketplace, including alternative trading systems. • Two commenters note that the CSA has not explained the policy rationale behind the definition of ATM exchange in the Proposed Amendments. • One commenter notes that under U.S. ATM rules, execution can occur on all markets (including exchanges, alternative trading systems and U.S. dark pools).	We acknowledge these comments. The intent of the requirement in paragraph 9.3(1)(f) of the Proposed Amendments was to ensure the equity securities of the same class being distributed under the ATM distribution are listed and trading on a short form eligible exchange. As noted by the commenters, our intent was that the securities must be distributed through a marketplace. Accordingly, we have removed the definition of an ATM exchange, changed the reference to "ATM exchange" in paragraph 9.3(1)(e) of the Amendments to "marketplace", and added paragraph 9.3(1)(a) of the Amendments requiring that a security of the same class as being distributed is listed and trading over a short form eligible exchange.
10	Instalment receipts	One commenter supports the removal of instalment receipts from the Proposed Amendments.	We thank the commenter.
11	Cover page disclosure of intention to qualify ATM distribution	One commenter supports the proposed requirement to disclose on the cover page of a base shelf prospectus where an issuer intends to qualify an ATM distribution. One commenter does not support this proposed cover page disclosure requirement for the following reasons: • If there are concerns regarding an issuer's business, liquidity position etc, those concerns should be addressed during the shelf review process whether or not an ATM distribution is contemplated. • Issuers may be reluctant to preserve the option for ATM distributions by including the cover page disclosure if it could result in additional review. • The prominence of the language relative to the "non-fixed price offering" language may cause reluctance to preserve the option for ATM distributions due to increased market overhang concerns.	We acknowledge the commenter's concerns. A base shelf prospectus is reviewed regardless of whether or not an issuer contemplates an ATM distribution. The cover page disclosure provides important information to investors and other market participants. Review of this information by securities regulatory authorities may result in further consideration of certain factors that would have been considered in any case.
12	Designated news release	Two commenters support the proposed "designated news release" approach.	We thank the commenter.
13	Registered secondary offerings	One commenter supports the fact that the Proposed Amendments contemplate the use of ATM offerings by issuers only. The commenter does not support extending the Proposed Amendments to registered secondary offerings. The commenter believes the resale avenues currently available to selling shareholders are sufficient.	We thank the commenter.
14	Transition	One commenter suggests clarifying whether issuers currently using ATM programs in reliance on discretionary exemptive relief will be required to comply with the conditions of the Proposed Amendments or whether they could elect to comply	We agree with the commenter that the transition to the Proposed Amendments needs to be explained. Issuers with an existing ATM program and a discretionary relief order, may

No.	Subject	Summarized Comment	Response
		with the conditions under the existing exemptive relief orders. The commenter prefers that issuers have the option of being permitted to follow the conditions of its discretionary relief order, if applicable (until it expires) or the new rules. The rules or 44-102CP should clarify that issuers with a shelf on file not being used for ATM distributions when the Amendments are implemented, may use it to implement an ATM under the new rules (a new shelf should not have to be filed to comply with the rules).	chose to comply with the Proposed Amendments without having to file a new base shelf prospectus. The Amendments include a transition provision. Section 5.8 of the Changes clarify transition issues.
15	Drafting	One commenter suggests the following drafting changes: • Consider whether the Proposed Amendments should provide an exemption from, or modification to the language of, item 2 and 3 of section 5.5 of NI 44-102, which each refer to a requirement to deliver a prospectus supplement. • Paragraph 9.3(1)(k) and subsection 9.3(2) of the Proposed Amendments should include a reference to "in connection with the distribution." • Paragraphs 9.4(1)(b) and (2)(b) should refer to "during the [month][annual or interim period, as applicable]" rather than "to date" when referring to reporting of proceeds and commissions under the ATM prospectus. • Consider replacing the words "for the year and period immediately following the distribution" with "for the year or interim period, as applicable" in subsection 9.4(2) of the Proposed Amendments.	We thank the commenter and generally agree with the drafting suggestions. With respect to the first suggested drafting change we note that section 9.2(3) of the Amendments stipulates that the obligation to send or deliver a prospectus does not apply in connection with an ATM distribution. Therefore, there is nothing in paragraphs 2 and 3 of section 5.5 of NI 44-102 precluding an issuer from modifying the language. Section 5.2 (2) of the Changes provides guidance on the language that should be used to modify the statements required by section 5.5 of NI 44-102, if necessary.
OTHER COMMENTS			
16	UMIR Rule 7.7 and OSC Rule 48-501	Three commenters request additional guidance regarding the applicability of the requirements under the Rule 7.7 of the *Universal Market Integrity Rules* (**UMIR**) of the Investment Industry Regulatory Organization of Canada and under OSC Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* of the Ontario Securities Commission (**OSC Rule 48-501**) One commenter thinks that uncertainty about the ability of insiders to trade during the course of an ATM distribution may contribute to an unwillingness among issuers to engage in ATM offerings and does not think there is any rationale for subjecting insiders to a blanket prohibition on trading during an ATM distribution. Another commenter believes that if a purchase is permitted by UMIR Rule 7.7 and Rule 48-501 then it should not be considered a "transaction that is intended to stabilize or maintain the market price" under subsection 9.3(2) of the Proposed Amendments and suggests clarifying this point in 44-102CP. The same commenter also suggests codifying the exemptive relief from section 2.2(a) of OSC Rule 48-501 typically granted to issuers' insiders in connection with purchases of issuer's shares while the issuer's ATM is operating.	We acknowledge these comments. The Ontario Securities Commission is considering a proposal to partially repeal sections of OSC Rule 48-501 that may impede some ATM distributions. Based on discussions with the Investment Industry Regulatory Organization of Canada, we understand UMIR Rule 7.7 applies to ATM distributions. We further understand that compliance with UMIR Rule 7.7 should not have an adverse impact on the ability of an issuer to make, or the ability of a broker dealer to underwrite, ATM distributions. While compliance with UMIR Rule 7.7 may be a factor when considering compliance with applicable securities law, it may not be determinative.

No.	Subject	Summarized Comment	Response
17	Translation	Three commenters suggest that the translation of ATM offering documents into the French language should not be required. All three commenters mentioned the expense of translation, and two mentioned the time required. All three commenters think the translation requirement will incent issuers to pursue US only ATMs. One commenter thinks the translation requirement will be most punitive to smaller issuers and will make the ATM benefits unavailable to most Canadian issuers. One commenter thinks translation is not required for investor protection as there is no prospectus delivery requirement and the purchaser relies on existing disclosure which is often only provided in English.	The Autorité des marchés financiers will analyse the merits of any exemptive relief application from the translation requirements and, if appropriate, grant relief from the obligation to translate the offering documents. This relief may be subject to conditions.
18	Exempt ATM distributions	One commenter suggests that the CSA adopt an exemption from the prospectus requirement for ATM distributions with gross proceeds of up to $3mm. The commenter notes that an ATM based on filing a shelf prospectus is prohibitively expensive for a junior company compared to the funds it could expect to raise. The commenter prefers an ATM prospectus exemption based on allowing issuers to rely on continuous disclosure which in the commenter's view would give purchasers the same protection as those acquiring shares in the secondary market. In the commenter's view, the risk profile for ATM purchasers and secondary market purchasers is the same.	We acknowledge the commenter's concerns but have decided not to make any changes as the mandate of this project is focused on codifying existing exemptive relief. Other CSA projects are considering broader regulatory burden reduction initiatives, and we have brought the commenter's suggestion to their attention.
19	Local distribution reporting exemption	One commenter notes that the securities laws of British Columbia require that a report be filed and fees paid based on the value of proceeds raised in the province in a prospectus offering. Given that purchasers in an ATM offering cannot be identified by the issuer or its agents, the commenter suggests that the inability to comply with this requirement be considered in connection with the Proposed Amendments. The commenter also suggests that the securities laws of BC be amended to clarify that distribution reporting requirements do not apply to ATM distributions.	We thank the commenter for the comment. Any amendments to local fees are not within the scope of this project; however, jurisdictions can consider whether local initiatives to change their fee regimes are necessary and appropriate as the opportunity arises.

ANNEX C

AMENDMENTS TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. National Instrument 44-102 Shelf Distributions is amended by this Instrument.

2. Part 9 is replaced with the following:

PART 9 – AT-THE-MARKET DISTRIBUTIONS OF EQUITY SECURITIES UNDER SHELF

9.1 Definitions - In this Part,

"ATM prospectus" means

(a) a base shelf prospectus for an at-the-market distribution,

(b) a shelf prospectus supplement to a base shelf prospectus referred to in paragraph (a), or

(c) a shelf prospectus supplement establishing an at-the-market distribution;

"investment dealer" has the meaning ascribed to it in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"marketplace" has the meaning ascribed to it in National Instrument 21-101 *Marketplace Operation*.

9.2 Provisions Not Applicable to an At-the-Market Distribution

(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) Item 20 of Form 44-101F1;

(c) item 8 of section 5.5 of this Instrument.

(2) Item 8 of section 5.5 of this Instrument does not apply to an investment dealer acting as an underwriter in connection with a distribution of a security under an ATM prospectus.

(3) The requirement to send or deliver a prospectus under securities legislation does not apply in connection with a distribution of a security under an ATM prospectus.

9.3 Requirements for Issuers and Underwriters Conducting an At-the-Market Distribution

(1) An issuer must not distribute a security under an ATM prospectus as part of an at-the-market distribution unless the following apply:

(a) a security of the same class being distributed is listed and trading on a short form eligible exchange;

(b) the security being distributed is an equity security;

(c) the security being distributed is distributed through an investment dealer acting as an underwriter in connection with the distribution;

(d) with respect to any agreement with an investment dealer referred to in paragraph (c) to distribute the security, the issuer

(i) has issued and filed a news release

(A) announcing that the issuer has entered into the agreement,

(B) indicating that an ATM prospectus has been or will be filed, and

(C) specifying where and how a purchaser of a security under the at-the-market distribution may obtain a copy of the agreement and the ATM prospectus, and

(ii) has filed a copy of the agreement;

(e) the issuer distributes the security through a marketplace;

(f) if applicable, the issuer has disclosed that the completion of the distribution would constitute a material fact or material change;

(g) the cover page of the base shelf prospectus states that it may qualify an at-the-market distribution;

(h) the ATM prospectus states in substantially the following words:

> "Securities legislation in some provinces and territories of Canada provides purchasers of securities with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplement, and any amendment relating to securities purchased by a purchaser are not sent or delivered to the purchaser. However, purchasers of [describe securities] distributed under an at-the-market distribution by [name of issuer] do not have the right to withdraw from an agreement to purchase the [describe securities] and do not have remedies of rescission or, in some jurisdictions, revisions of the price, or damages for non-delivery of the prospectus, prospectus supplement, and any amendment relating to [describe securities] purchased by such purchaser because the prospectus, prospectus supplement, and any amendment relating to the [describe securities] purchased by such purchaser will not be sent or delivered, as permitted under Part 9 of National Instrument 44-102 *Shelf Distributions*.
>
> Securities legislation in some provinces and territories of Canada further provides purchasers with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus, prospectus supplement, and any amendment relating to securities purchased by a purchaser contains a misrepresentation. Those remedies must be exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of [describe securities] distributed under an at-the-market distribution by [name of issuer] may have against [name of issuer] or its agents for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplement, and any amendment relating to securities purchased by a purchaser contain a misrepresentation will remain unaffected by the non-delivery of the prospectus referred to above.
>
> A purchaser should refer to applicable securities legislation for the particulars of these rights and should consult a legal adviser.";

(i) if there has been a statement of a purchaser's rights contained in a previous version of the ATM prospectus, the issuer discloses in the current ATM prospectus a statement to the effect that, solely with regard to the at-the-market distribution, the statement of rights required to be included in the ATM prospectus, under paragraph (h), supersedes the previous statement;

(j) the ATM prospectus states:

> "No underwriter of the at-the-market distribution, and no person or company acting jointly or in concert with an underwriter, may, in connection with the distribution, enter into any transaction that is intended to stabilize or maintain the market price of the securities or securities of the same class as the securities distributed under the ATM prospectus, including selling an aggregate number or principal amount of securities that would result in the underwriter creating an over-allocation position in the securities.";

(k) the ATM prospectus includes the certificates required under Part 5 of NI 41-101, or other securities legislation in the form required under section 9.5 or 9.6 of this Instrument, as applicable;

(l) if the issuer is an investment fund, the ATM prospectus includes a statement that the at-the-market distribution will be conducted in accordance with paragraph 9.3(2)(a) of National Instrument 81-102 *Investment Funds*.

(2) An underwriter of an at-the-market distribution, or a person or company acting jointly or in concert with the underwriter, must not, in connection with the distribution, enter into any transaction that is intended to stabilize or maintain the market price of the same class of securities distributed under the at-the-market distribution, including for greater certainty, trading a security that would result in the underwriter creating an over-allocation position in that class of securities.

9.4 Reporting

(1) Subject to subsection (2), for each annual and interim period of the issuer during which the issuer distributes securities under an ATM prospectus, the issuer must, within 60 days after the end of the interim period or 120 days after the end of the annual period, as applicable, file a report, disclosing

(a) the number and average price of the securities distributed under the ATM prospectus, and

(b) the aggregate gross and aggregate net proceeds raised, and the aggregate commissions paid or payable, under the ATM prospectus during the annual or interim period, as applicable.

(2) Subsection (1) does not apply if, in each of its filed interim financial reports, annual financial statements, and management discussion and analysis, for the interim period or year, as applicable, following the distribution, the issuer discloses

(a) the number and average price of the securities distributed under the ATM prospectus, and

(b) the aggregate gross and aggregate net proceeds raised, and the aggregate commissions paid or payable, under the ATM prospectus during the annual or interim period, as applicable.

9.5 Form of Certificates – Base Shelf Prospectus Establishing an At-the-Market Distribution

(1) If a base shelf prospectus establishes an at-the-market distribution, an issuer certificate form required under paragraph 9.3(1)(k) must state the following:

> "This short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified]."

(2) If a base shelf prospectus establishes an at-the-market distribution, an underwriter certificate form required under paragraph 9.3 (1)(k) must state the following:

> "To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified]."

(3) For an amendment to a base shelf prospectus that includes the form of certificates required under subsections (1) and (2), if the amendment does not restate the base shelf prospectus,

(a) the issuer certificate form must state the following:

> "The short form prospectus dated [insert date] as amended by this amendment, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified].", and

(b) the underwriter certificate form must state the following:

> "To the best of our knowledge, information and belief, the short form prospectus dated [insert date] as amended by this amendment, together with the documents incorporated in

this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified]."

(4) For an amended and restated base shelf prospectus, in respect of a base shelf prospectus that includes the certificates required under subsections (1) and (2),

(a) the issuer certificate form must state the following:

"This amended and restated short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified].", and

(b) the underwriter certificate form must state the following:

"To the best of our knowledge, information and belief, this amended and restated short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified]."

9.6 Form of Certificates – Shelf Prospectus Supplement Establishing an At-the Market Distribution

(1) If the form of certificate required under subsection 9.5(1) was not included in the corresponding base shelf prospectus, the issuer certificate form required under paragraph 9.3(1)(k) must, in a shelf prospectus supplement that establishes an at-the-market distribution, state the following:

"The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified]."

(2) If the form of certificate required under subsection 9.5(2) was not included in the corresponding base shelf prospectus, the underwriter certificate form required under paragraph 9.3(1)(k) must, in a shelf prospectus supplement that establishes an at-the-market distribution, state the following:

"To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified]."

(3) For an amendment to a shelf prospectus supplement that includes the certificates required under subsections (1) and (2), if the amendment does not restate the shelf prospectus supplement,

(a) the issuer certificate form must state the following:

"The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing as it amends the shelf prospectus supplement dated [insert date], will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].", and

(b) the underwriter certificate form must state the following:

"To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing as it amends the shelf prospectus supplement dated [insert date], will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified]."

(4) For an amended and restated shelf prospectus supplement in respect of a shelf prospectus supplement that includes the certificates required under subsections (1) and (2),

(a) the issuer certificate form must state the following:

"The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].", and

(b) the underwriter certificate form must state the following:

"To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].".

3. Paragraph 9.3(1)(g) of National Instrument 44-102 *Shelf Distributions*, as enacted by section 2 of this Instrument, does not apply in respect of a base shelf prospectus if the prospectus was filed

(a) before August 31, 2020, and

(b) for an at-the-market distribution in respect of which the issuer applied for and obtained an exemption from the requirement to send or deliver a prospectus.

4. (1) This Instrument comes into force on August 31, 2020.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after August 31, 2020, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX D

CHANGES TO COMPANION POLICY 44-102CP *SHELF DISTRIBUTIONS*

1. Companion Policy 44-102CP Shelf Distributions is changed by this Document.

2. The following Part is added:

PART 5 AT-THE-MARKET DISTRIBUTIONS OF EQUITY SECURITIES UNDER SHELF

5.1 Purpose - The purpose of Part 9 of NI 44-102 is to provide exemptions from certain regulatory requirements, subject to conditions, so that issuers and underwriters may distribute securities under an ATM prospectus.

5.2 Disclosure of Intention to Qualify At-the-Market Distribution

(1) Paragraph 9.3(1)(g) of Part 9 of NI 44-102 requires that an issuer disclose on the cover page of its base shelf prospectus that the prospectus may qualify an at-the-market distribution. An at-the-market distribution cannot be established by shelf prospectus supplement unless the base shelf prospectus has met this requirement. The securities regulatory authorities are of the view that a base shelf prospectus that is intended to qualify an at-the-market distribution may result in further review of certain factors that are considered during the review of a base shelf prospectus, such as the sufficiency of proceeds, an issuer's business or a recent reverse take-over of former shell companies. In connection with this review, the securities regulatory authorities may consider a number of factors, including

(a) the number of securities that may be qualified by the base shelf prospectus;

(b) the total number of issued and outstanding securities of the same class; and

(c) the trading volume of the securities of the same class.

(2) An issuer should qualify the statements required by paragraphs 2 and 3 of section 5.5 of NI 44-102 in its base shelf prospectus to indicate that delivery is not required where an exemption from the delivery requirements referred to in these provisions is available.

5.3 Material Fact or Material Change

(1) In determining whether a proposed distribution of securities under an ATM prospectus would constitute a material fact or material change under paragraph 9.3(1)(f) of NI 44-102, the issuer should take into account a number of factors including

(a) the parameters of the proposed distribution, including the number of securities proposed to be distributed and any price or timing restrictions that the issuer may impose with respect to the proposed distribution;

(b) the percentage of the outstanding securities of the same class that the number of securities proposed to be distributed represents;

(c) previous, and cumulative, distributions of securities under the ATM prospectus;

(d) whether the investment dealer has advised the issuer that the proposed distribution may have a significant impact on the market price of securities of the same class;

(e) trading volume and volatility of securities of the same class;

(f) recent developments in the business, operations or capital of the issuer; and

(g) prevailing market conditions generally.

(2) The issuer will have an interest in minimizing the market impact of an at-the-market distribution. If a proposed distribution of securities under an ATM prospectus could have a significant impact on the market price of securities of the same class as the securities proposed to be distributed, the proposed distribution may disrupt a fair and orderly market. The investment dealer selected by the

issuer will have experience and expertise in managing orders to limit any negative effect on market integrity. An investment dealer is prohibited from engaging in conduct that may disrupt a fair and orderly market under IIROC rules and standards of conduct.

5.4 **Selling Agent** - It is best practice to include language in an ATM prospectus that a purchaser's rights and remedies under applicable securities legislation against the dealer underwriting or acting as an agent for the issuer in an at-the-market distribution will not be affected by that dealer's decision to effect the distribution directly or through a selling agent.

5.5 **Designated News Releases** - To ensure an ATM prospectus includes full, true and plain disclosure of all material facts related to the securities distributed under the ATM prospectus, the issuer may file a designated news release rather than filing a prospectus supplement or an amended prospectus. If an issuer disseminates a news release disclosing information that, in the issuer's determination, constitutes a "material fact", the issuer should identify the news release as a "designated news release" for the purposes of the ATM prospectus. This designation should be made on the face page of the version of the filed news release. An ATM prospectus should provide that any such designated news release will be deemed to be incorporated by reference into the ATM prospectus.

5.6 **Prospectus Certificates** - The certificates required to be filed under paragraph 9.3(1)(k) of NI 44-102 or other securities legislation in the forms required under sections 9.5 and 9.6 of NI 44-102, as applicable, are forward-looking certificates confirming that the ATM prospectus provides full, true and plain disclosure of all material facts relating to the securities distributed under the ATM prospectus as of the date of each distribution under an ATM prospectus. For promoters of an at-the-market distribution, the certificate of promoter required under Part 5 of NI 41-101 should be in the form required by section 9.5 or 9.6 of NI 44-102, as applicable.

5.7 **Filing Jurisdictions** - Issuers are required to file a prospectus in every jurisdiction where a distribution will occur. However, because purchases in an at-the-market distribution are made directly on a securities exchange, it is difficult to determine where a distribution will occur because issuers and dealers are unable to determine where a purchaser is located at the time of the trade. As a result, it is possible that a purchaser under an at-the-market distribution can be located in any jurisdiction of Canada.

5.8 **Transition Period** - An issuer with an outstanding base shelf prospectus filed prior to August 31, 2020 under which the issuer is qualified to make an at-the-market distribution pursuant to a discretionary relief order, will not be required to re-file the base shelf prospectus to comply with the cover page disclosure in paragraph 9.3(1)(g) of NI 44-102. Any other provisions of Part 9 of NI 44-102 that do not mirror the issuer's discretionary relief order may be addressed in the prospectus supplement.

3. These changes become effective on August 31, 2020.

ANNEX E

LOCAL MATTERS
ONTARIO SECURITIES COMMISSION

On May 12, 2020, the Ontario Securities Commission:

- made the Amendments pursuant to section 143 of the *Securities Act* (Ontario) (the **Act**), and

- adopted the Changes pursuant to section 143.8 of the Act.

The Amendments and other required materials were delivered to the Minister of Finance on June 3, 2020. The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action by August 2, 2020, the Amendments and the Changes will come into force on August 31, 2020.

5.1.2 Ontario Securities Commission Amendments to National Instrument 24-101 Institutional Trade Matching and Settlement

Ontario Securities Commission Amendments to
National Instrument 24-101
Institutional Trade Matching and Settlement

1. National Instrument 24-101 Institutional Trade Matching and Settlement is amended by this Instrument.

2. Part 4 is amended by adding the following section:

4.1.1 Moratorium: In Ontario, despite subsection 2(1) of Ontario Securities Commission Rule 11-501 *Electronic Delivery Of Documents To The Ontario Securities Commission*, section 4.1 does not apply to a registered firm beginning on July 1, 2020 and ending on July 1, 2023.

3. This Instrument comes into force on July 1, 2020.

Chapter 7

Insider Reporting

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

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

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

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Family Single Student Education Savings Plan
Flex First Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 28, 2020
NP 11-202 Receipt dated May 28, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3041314

Issuer Name:
Flex First Plan
Family Single Student Education Savings Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 28, 2020
NP 11-202 Receipt dated May 28, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3041323

Issuer Name:
Heritage Plans (formerly Heritage Scholarship Trust Plans)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 28, 2020
NP 11-202 Receipt dated May 28, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3041310

Issuer Name:
Fidelity Canadian Government Long Bond Index Multi-Asset Base Fund
Fidelity Global Investment Grade Bond ETF Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated May 25, 2020
NP 11-202 Final Receipt dated May 28, 2020
Offering Price and Description:
Series B units
Series O units
Series F units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3042541

Issuer Name:
Horizons Absolute Return Global Currency ETF
Horizons Emerging Markets Equity Index ETF
Horizons Morningstar Hedge Fund Index ETF
Horizons USD Cash Maximizer ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 26, 2020
NP 11-202 Preliminary Receipt dated May 26, 2020
Offering Price and Description:
ETF Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3062907

Issuer Name:
CI First Asset High Interest Savings ETF
CI Global Asset Allocation Private Pool
CI MSCI World ESG Impact Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 27, 2020
NP 11-202 Final Receipt dated May 28, 2020
Offering Price and Description:
ETF C$ Hedged Series, Class A units, Class F units, Class P units, Series A units, Series O units, Series I units, Common Units, Class E units, Series F units, Class O units, Series E units, ETF C$ Series, Series P units and Class I units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3049999

Issuer Name:
Capital Group Canadian Core Plus Fixed Income Fund (Canada)
Capital Group Canadian Focused Equity Fund (Canada)
Capital Group Capital Income Builder (Canada)
Capital Group Emerging Markets Total Opportunities Fund (Canada)
Capital Group Global Balanced Fund (Canada)
Capital Group Global Equity Fund (Canada)
Capital Group International Equity Fund (Canada)
Capital Group Monthly Income Portfolio (Canada)
Capital Group U.S. Equity Fund (Canada)
Capital Group World Bond Fund (Canada)
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 27, 2020
NP 11-202 Final Receipt dated May 28, 2020
Offering Price and Description:
Series A units, Series D units, Series T4 units, Series O units, Series I units, Series FH units, Series F units
Series F4 units, Series AH units and Series IH units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3044933

Issuer Name:
Fidelity Canadian Momentum Index ETF
Fidelity Canadian Value Index ETF
Fidelity Global Investment Grade Bond ETF
Fidelity International Momentum Index ETF
Fidelity International Value Index ETF
Fidelity U.S. Momentum Currency Neutral Index ETF
Fidelity U.S. Momentum Index ETF
Fidelity U.S. Value Currency Neutral Index ETF
Fidelity U.S. Value Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 25, 2020
NP 11-202 Final Receipt dated May 28, 2020
Offering Price and Description:
Series L Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3042499

Issuer Name:
BMO Ascent Balanced Portfolio
BMO Ascent Conservative Portfolio
BMO Ascent Equity Growth Portfolio
BMO Ascent Growth Portfolio
BMO Ascent Income Portfolio
BMO Asian Growth and Income Class
BMO Asian Growth and Income Fund
BMO Asset Allocation Fund
BMO Balanced ETF Portfolio
BMO Balanced ETF Portfolio Class
BMO Bond Fund
BMO Canadian Equity Class
BMO Canadian Equity ETF Fund
BMO Canadian Equity Fund
BMO Canadian Large Cap Equity Fund
BMO Canadian Small Cap Equity Fund
BMO Canadian Stock Selection Fund
BMO Concentrated Global Balanced Fund (formerly, BMO Global Diversified Fund)
BMO Concentrated Global Equity Fund
BMO Concentrated U.S. Equity Fund
BMO Conservative ETF Portfolio
BMO Core Bond Fund
BMO Core Plus Bond Fund
BMO Covered Call Canada High Dividend ETF Fund
BMO Covered Call Canadian Banks ETF Fund
BMO Covered Call Europe High Dividend ETF Fund
BMO Covered Call U.S. High Dividend ETF Fund
BMO Crossover Bond Fund
BMO Diversified Income Portfolio
BMO Dividend Class
BMO Dividend Fund
BMO Emerging Markets Bond Fund
BMO Emerging Markets Fund
BMO Equity Growth ETF Portfolio
BMO Equity Growth ETF Portfolio Class
BMO European Fund
BMO Fixed Income ETF Portfolio
BMO Floating Rate Income Fund
BMO FundSelect Balanced Portfolio
BMO FundSelect Equity Growth Portfolio
BMO FundSelect Growth Portfolio
BMO FundSelect Income Portfolio
BMO Global Balanced Fund
BMO Global Dividend Class
BMO Global Dividend Fund
BMO Global Energy Class
BMO Global Equity Class
BMO Global Equity Fund
BMO Global Growth & Income Fund
BMO Global Infrastructure Fund
BMO Global Low Volatility ETF Class
BMO Global Monthly Income Fund
BMO Global Multi-Sector Bond Fund
BMO Global Small Cap Fund
BMO Global Strategic Bond Fund
BMO Greater China Class
BMO Growth & Income Fund
BMO Growth ETF Portfolio
BMO Growth ETF Portfolio Class
BMO Growth Opportunities Fund
BMO Income ETF Portfolio
BMO Income ETF Portfolio Class
BMO International Equity ETF Fund
BMO International Equity Fund
BMO International Value Class
BMO International Value Fund
BMO Japan Fund
BMO LifeStage Plus 2030 Fund
BMO Low Volatility Canadian Equity ETF Fund
BMO Low Volatility U.S. Equity ETF Fund
BMO Money Market Fund
BMO Monthly Dividend Fund Ltd.
BMO Monthly High Income Fund II
BMO Monthly Income Fund
BMO Mortgage and Short-Term Income Fund
BMO Multi-Factor Equity Fund
BMO North American Dividend Fund
BMO Precious Metals Fund
BMO Preferred Share Fund
BMO Principle Balanced Portfolio
BMO Principle Conservative Portfolio
BMO Principle Growth Portfolio
BMO Principle Income Portfolio
BMO Resource Fund
BMO Retirement Balanced Portfolio
BMO Retirement Conservative Portfolio
BMO Retirement Income Portfolio
BMO Risk Reduction Equity Fund
BMO Risk Reduction Fixed Income Fund
BMO SelectClass Balanced Portfolio
BMO SelectClass Equity Growth Portfolio
BMO SelectClass Growth Portfolio
BMO SelectClass Income Portfolio
BMO SelectTrust Balanced Portfolio
BMO SelectTrust Conservative Portfolio
BMO SelectTrust Equity Growth Portfolio
BMO SelectTrust Fixed Income Portfolio
BMO SelectTrust Growth Portfolio
BMO SelectTrust Income Portfolio
BMO SIA Focused Canadian Equity Fund
BMO SIA Focused North American Equity Fund
BMO Sustainable Opportunities Canadian Equity Fund
BMO Sustainable Opportunities Global Equity Fund (formerly, BMO Fossil Fuel Free Fund)
BMO Tactical Balanced ETF Fund
BMO Tactical Dividend ETF Fund
BMO Tactical Global Asset Allocation ETF Fund
BMO Tactical Global Bond ETF Fund
BMO Tactical Global Equity ETF Fund
BMO Tactical Global Growth ETF Fund
BMO Target Education 2025 Portfolio
BMO Target Education 2030 Portfolio
BMO Target Education 2035 Portfolio
BMO Target Education 2040 Portfolio
BMO Target Education Income Portfolio
BMO U.S. Dividend Fund
BMO U.S. Dollar Balanced Fund
BMO U.S. Dollar Dividend Fund
BMO U.S. Dollar Equity Index Fund
BMO U.S. Dollar Money Market Fund
BMO U.S. Dollar Monthly Income Fund
BMO U.S. Equity Class
BMO U.S. Equity ETF Fund
BMO U.S. Equity Fund

BMO U.S. Equity Plus Fund
BMO U.S. High Yield Bond Fund
BMO U.S. Small Cap Fund
BMO USD Balanced ETF Portfolio
BMO USD Conservative ETF Portfolio
BMO USD Income ETF Portfolio
BMO Women in Leadership Fund
BMO World Bond Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated May 22, 2020
NP 11-202 Final Receipt dated May 27, 2020
Offering Price and Description:
Series G, BMO Private Preferred Share Fund Series O, Advisor Series, Series F2, Series F6, Advisor Series (Hedged), Series L, ETF Series, Series T6, Series A, Series A (Hedged), Series NBA, Advisor series, Series F, BMO Private U.S. Dollar Money Market Fund Series O, Advisor Series, Series F (Hedged), Series F4, Series D, Series NBF, Series T4, BMO Private Sustainable Opportunities Global Equity Fund Series O, Series I, Series T8, Series N, Series S, BMO Private U.S. High Yield Bond Fund Series O, Series T5, Classic Series and Series M
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3042622

Issuer Name:
BetaPro Crude Oil Daily Bull ETF (formerly BetaPro Crude Oil 2x Daily Bull ETF)
BetaPro Crude Oil -1x Daily Bear ETF (formerly BetaPro Crude Oil -2x Daily Bear ETF)
Principal Regulator - Ontario
Type and Date:
Amendment #5 to Final Long Form Prospectus dated May 22, 2020
NP 11-202 Final Receipt dated May 28, 2020
Offering Price and Description:
ETF Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2975186

Issuer Name:
Mackenzie Global Small-Mid Cap Equity Fund (formerly, Mackenzie Global Small Cap Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to Annual Information Form dated May 22, 2020
NP 11-202 Final Receipt dated May 27, 2020
Offering Price and Description:
Series LB securities, Series LF securities, Series LW securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project 2972290

Issuer Name:
Horizons Morningstar Hedge Fund Index ETF
Horizons Absolute Return Global Currency ETF
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated May 22, 2020
NP 11-202 Final Receipt dated Jun 1, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2903933

Issuer Name:
Mackenzie US Small-Mid Cap Growth Class* (formerly Mackenzie US Mid Cap Growth Class)
Principal Regulator - Ontario
Type and Date:
Amendment #5 to Final Simplified Prospectus and Amendment #6 to Annual Information Form dated May 28, 2020
NP 11-202 Final Receipt dated Jun 1, 2020
Offering Price and Description:
H series securities, HW series securities, L series securities, N series securities, QF series securities, QFW series securities and Quadrus series securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2915449

Issuer Name:
Mackenzie US Small-Mid Cap Growth Class* (formerly Mackenzie US Mid Cap Growth Class)
Mackenzie US Small-Mid Cap Growth Currency Neutral Class* (formerly Mackenzie US Mid Cap
Growth Currency Neutral Class)
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus and Amendment #4 to Annual Information Form dated May 28, 2020
NP 11-202 Final Receipt dated May 27, 2020
Offering Price and Description:
Series A securities, Series AR securities, Series D securities, Series F securities, Series F5
securities, Series F8 securities, Series FB securities, Series FB5 securities, Series I securities,
Series O securities, Series PW securities, Series PWFB securities, Series PWFB5 securities,
Series PWR securities, Series PWT5 securities, Series PWT8 securities, Series PWX securities,
Series PWX8 securities, Series T5 securities and Series T8securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2951797

NON-INVESTMENT FUNDS

Issuer Name:
Air Canada
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated May 26, 2020
NP 11-202 Preliminary Receipt dated May 26, 2020
Offering Price and Description:
$500,000,000.00 -*Class A Variable Voting Shares and/or Class B Voting Shares
Price: * per Offered Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
J.P. MORGAN SECURITIES CANADA INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
Promoter(s):
-
Project #3062875

Issuer Name:
Denison Mines Corp.
Principal Regulator - Ontario
Type and Date:
Amendment dated May 26, 2020 to Preliminary Shelf Prospectus dated May 8, 2020
NP 11-202 Preliminary Receipt dated May 26, 2020
Offering Price and Description:
C$175,000,000.00 - Common Shares Subscription Receipts Units Debt Securities Share Purchase Contracts Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3055467

Issuer Name:
Endeavour Mining Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated May 25, 2020
NP 11-202 Preliminary Receipt dated May 26, 2020
Offering Price and Description:
US$2,000,000,000.00
Endeavour Shares
Preferred Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3062442

Issuer Name:
FSD Pharma Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated May 28, 2020 to Preliminary Shelf Prospectus dated February 28, 2020
NP 11-202 Preliminary Receipt dated May 28, 2020
Offering Price and Description:
C$100,000,000.00 - Class B Subordinate Voting Shares Subscription Receipts Warrants Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3023506

Issuer Name:
SilverCrest Metals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated May 25, 2020
NP 11-202 Preliminary Receipt dated May 26, 2020
Offering Price and Description:
$200,000,000 Common Shares Warrants Subscription Receipts Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3062944

Issuer Name:
Spectral Medical Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 27, 2020
NP 11-202 Preliminary Receipt dated May 27, 2020
Offering Price and Description:
Up to $5,000,040.00 Up to 8,333,400 Units
Price: $0.60 per Offered Unit
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC
Promoter(s):
-
Project #3063522

Issuer Name:
StageZero Life Sciences Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 1, 2020
NP 11-202 Preliminary Receipt dated June 1, 2020
Offering Price and Description:
Minimum Offering: $3,500,000.00 - (● Units) Maximum Offering: $8,000,000 (● Units)
$● per Unit
Underwriter(s) or Distributor(s):
ECHELON WEALTH PARTNERS INC.
CLARUS SECURITIES INC.
Promoter(s):
-
Project #3067053

Issuer Name:
The Green Organic Dutchman Holdings Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 26, 2020
NP 11-202 Preliminary Receipt dated May 27, 2020
Offering Price and Description:
$15,000,000.00 - 37,500,000 Units
Price: $0.40 per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #3063271

Issuer Name:
Air Canada
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated May 27, 2020
NP 11-202 Receipt dated May 28, 2020
Offering Price and Description:
$500,500,000.00 - 30,800,000 Class A Variable Voting Shares and/or Class B Voting Shares
Price: $16.25 per Offered Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
J.P. MORGAN SECURITIES CANADA INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
Promoter(s):
-
Project #3062875

Issuer Name:
Bank of Montreal
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus (dated May 28, 2020
NP 11-202 Receipt dated May 29, 2020
Offering Price and Description:
$6,000,000,000.00 - Medium Term Notes (Principal At Risk Notes)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Industrial Alliance Securities Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Wellington-Altus Private Wealth Inc.
Promoter(s):
-
Project #3060223

Issuer Name:
Cardiol Therapeutics Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 26, 2020
NP 11-202 Receipt dated May 27, 2020
Offering Price and Description:
$15,000,000.00 - 6,000,000 Offered Units
Price: $2.50 per Offered Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
ALTACORP CAPITAL INC.
ECHELON WEALTH PARTNERS INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #3059803

Issuer Name:
Clarity Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated May 20, 2020
NP 11-202 Receipt dated June 1, 2020
Offering Price and Description:
Minimum of 4,770,000 Common Shares and Up to a Maximum of 6,000,000 Common Shares Price: $0.175 per Common Share Minimum of $834,750.00 and up to a Maximum of $1,050,000.00
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
James Rogers
Project #3032809

Issuer Name:
CloudMD Software & Services Inc. (formerly Premier Health Group Inc.)
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated May 28, 2020
NP 11-202 Receipt dated May 28, 2020
Offering Price and Description:
$13,000,400.00 - 18,572,000 Units
Price: $0.70 per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
BEACON SECURITIES LIMITED
ECHELON WEALTH PARTNERS INC.
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #3060256

Issuer Name:
Frontenac Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 26, 2020
NP 11-202 Receipt dated May 29, 2020
Offering Price and Description:
Unlimited Number of Common Shares
Price: $30.00 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
W.A. ROBINSON ASSET MANAGEMENT LTD.
Project #3055756

Issuer Name:
Suncor Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated May 29, 2020
NP 11-202 Receipt dated May 29, 2020
Offering Price and Description:
$5,000,000,000.00 - Medium Term Notes (Unsecured)
Underwriter(s) or Distributor(s):
ALTACORP CAPITAL INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
DESJARDINS SECURITIES INC.
J.P. MORGAN SECURITIES CANADA INC.
MERRILL LYNCH CANADA INC.
MIZUHO SECURITIES CANADA INC.
MORGAN STANLEY CANADA LIMITED
MUFG SECURITIES (CANADA), LTD.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
SMBC NIKKO SECURITIES CANADA, LTD.
TD SECURITIES INC.
Promoter(s):
-
Project #3061835

Issuer Name:
Suncor Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated May 29, 2020
NP 11-202 Receipt dated May 29, 2020
Offering Price and Description:
US$5,000,000,000.00 - Debt Securities, Common Shares, Preferred Shares, Subscription Receipts, Warrants, Units, Share Purchase Contracts, Share Purchase Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3061845

Issuer Name:
Tectonic Metals Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated May 29, 2020
NP 11-202 Receipt dated May 29, 2020
Offering Price and Description:
$100,000,000.00 - Common Shares Warrants to Purchase Common Shares or Debt Securities Share Purchase Contracts Subscription Receipts Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3055716

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Roth Canada, ULC	Investment Dealer	May 28, 2020
Name Change	From: Metric Asset Management Limited Partnership / Societe En Commandite Gestion D'actifs Metriques To: Societe En Commandite Gestion D'Actifs Outcome Metriques / Outcome Metric Asset Management LP	Exempt Market Dealer, Portfolio Manager, Investment Fund Manager and Commodity Trading Manager	February 13, 2020
Change in Registration Category	LAZARD ASSET MANAGEMENT (CANADA), INC.	From: Investment Fund Manager, Portfolio Manager, Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager	June 1, 2020
New Registration	LAZARD ASSET MANAGEMENT (CANADA) SECURITIES, ULC	Exempt Market Dealer	June 1, 2020

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 CME Amsterdam B.V. – Application for Exemption from Recognition as an Exchange – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION BY CME AMSTERDAM B.V. FOR EXEMPTION FROM RECOGNITION AS AN EXCHANGE

A. Introduction

This notice requests comment on (i) the application filed by CME Amsterdam B.V. (the **Applicant**) as operator of EBS Multilateral Trading Facility (**EBS MTF**) under section 147 of the Securities Act (Ontario) (**Act**) for an exemption from the requirement to be recognized as an exchange contained in section 21 of the Act (**Recognition Requirement**); and (ii) the draft order exempting the Applicant from the Recognition Requirement.

The Applicant is a limited liability company organized under the laws of the Netherlands. The ultimate parent company of the Applicant is CME Group Inc. (**CME Group**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market. The Applicant is the operator of the EBS MTF, which is principally regulated by the Autoriteit Financiële Marketen of the Netherlands (the **AFM**). EBS MTF is a Request for Quote (**RFQ**) and Request for Stream (**RFS**) trading system that facilitates transactions in foreign exchange (**FX**) derivatives instruments, including forwards, swaps, and non-deliverable forwards (**NDFs**).

The Applicant proposes to offer direct access in Ontario to the EBS Direct and EBS Institutional FX platforms of EBS MTF to prospective participants in Ontario (**Ontario Participants**).

As the Applicant will be carrying on business in Ontario, it is required either to be recognized as an exchange under the Act or to apply for an exemption from the Recognition Requirement. The Applicant has applied for an exemption from the Recognition Requirement on the basis that it is already subject to regulatory oversight by the AFM.

B. Background

On January 3, 2018, the Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council (**MiFID II**) was implemented. Under Article 28(1) of the Markets in Financial Instruments Regulation (Regulation (EU) No. 600/2014) (**MiFIR**), the regulation that accompanies MiFID II, certain European counterparties must trade certain derivatives on a trading venue and not bilaterally. As a result, Canadian banks and other institutions wishing to enter into transactions in these derivatives with EU counterparties must do so on a trading venue, namely a regulated market, an organised trading facility, an MTF or a third-country trading venue that the European Commission has determined has an equivalent system for regulating trading venues.

The Applicant has indicated that Canadian banks and other institutions wish to trade on the EBS Direct and EBS Institutional FX platforms of EBS MTF.

MTFs provide a facility for bringing together orders from multiple buyers and sellers for types of over-the-counter (**OTC**) derivatives and other securities and use established non-discretionary methods under which the orders interact with each other. They meet the definition of “marketplace.”

An MTF has a responsibility to regulate the conduct of its participants with respect to trading on the MTF and to set rules governing trading on the system. Because of these self-regulatory responsibilities, under the Act they would be considered an exchange.

C. Application and Draft Exemption Order

In the application, the Applicant has outlined how it meets the criteria for exemption from the Recognition Requirement. The specific criteria can be found in Appendix 1 of the draft exemption order. Subject to comments received, Staff intend to recommend that the Commission grant an exemption order with terms and conditions based on the draft exemption order. The application can be found on our website at www.osc.gov.on.ca and the draft exemption order is attached to this Notice.

D. Comment Process

The Commission is publishing for public comment the Applicant's application and the draft exemption order for 60 days. We are seeking comment on all aspects of the application and draft exemption order.

Please provide your comments in writing, via e-mail, on or before August 4, 2020, to the attention of:

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: comments@osc.gov.on.ca

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

Alex Petro
Trading Specialist, Market Regulation
email: apetro@osc.gov.on.ca

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

AND

IN THE MATTER OF
CME AMSTERDAM B.V.

ORDER

(Section 147 of the Act)

WHEREAS CME Amsterdam B.V. (**Applicant**) has filed an application dated February 14, 2020 (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order pursuant to section 147 of the Act exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act in order to operate the EBS Direct and EBS Institutional FX platforms of EBS MTF (**Exchange Relief**);

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant (formerly known as NEX Amsterdam B.V.) is a limited liability company organized under the laws of the Netherlands. The ultimate parent company of the Applicant is CME Group Inc. (**CME Group**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market. CME Group acquired NEX Group plc and its group companies, including the Applicant, on November 2, 2018;

2. The Applicant is authorised by the Dutch Minister of Finance as a "market operator" (**Market Operator**) and supervised and regulated by the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) (the **AFM** or **Foreign Regulator**) with permission to operate EBS MTF, a multilateral trading facility (**MTF**);

3. On March 12, 2019, the Dutch Minister of Finance authorised the Applicant to act as the Market Operator of the EBS MTF (the **Facility**) in the Netherlands and the AFM has commenced supervision and regulation of the Applicant on an ongoing, active basis;

4. The Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council (**MiFID**) requires that multilateral trading by European Union (**EU**)/European Economic Area (**EEA**) participants takes place on a trading venue (i.e., a "regulated market", a "multilateral trading facility" or an "organized trading facility", as those terms are defined under MiFID). The United Kingdom (**UK**) officially exited the European Union on January 31, 2020 (**Brexit**). As part of its Brexit contingency planning, CME Group transitioned its on-MTF FX forwards and swaps businesses from BrokerTec Europe Limited in the UK to the Facility on March 18, 2019 to maintain a single pool of liquidity. Without the Exchange Relief, participants of the Facility in Ontario will be precluded from trading with EU/EEA participants on the Facility;

5. The Applicant operates the Facility for, among other things, trading foreign exchange (**FX**) derivatives. The Facility is made up of different trading platforms, but the subjects of this order are the EBS Direct and EBS Institutional FX platforms, which trade FX Forwards/Outrights, Swaps and Non-Deliverable Forwards (the **MTF Instruments**). The Applicant may add other types of financial instruments in the future, subject to obtaining the required regulatory approvals;

6. As a Market Operator, the Applicant must comply with the Netherlands Financial Supervision Act (*Wet op het financieel toezicht*, **Wft**), MiFID, the Markets in Financial Instruments Regulation, other applicable regulation in the EEA (such as Regulation (EU) No 596/2014 – Market Abuse Regulation), the rules pertaining to this legislation and the applicable guidance from the AFM and De Nederlandsche Bank (the **Applicable Rules**), which include, among other things, rules on (i) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (ii) market conduct (including rules applicable to firms operating an MTF), (iii) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest) and (iv) transparency (including rules on transaction reporting to competent authorities and publication of pre- and post-trade information);

7. The AFM requires the Applicant to comply at all times with a set of threshold conditions for authorization and ongoing requirements, including requirements that the Applicant has sound business and controlled business operations and

that it has appropriate resources for the activities it carries on. Breach of a threshold condition could lead to enforcement action or the Applicant's authorisation being revoked by the AFM and the Dutch Minister of Finance;

8. In addition to complying with detailed rules and guidance governing the organization and conduct of the Applicant's business, the Applicant is required to act in accordance with Section 4:90 of the Wft, which requires the Applicant to act honestly, fairly and professionally and refrain from actions that are detrimental to the integrity of the market. Additionally, pursuant to Section 4:14(2)(a) of the Wft, in conjunction with Article 29a(2) of the Decree on Conduct of Business Supervision (*Besluit Gedragstoezicht Financiële ondernemingen Wft*) and Article 15(5) of MiFID, the Applicant must establish adequate risk management policies and procedures and adopt effective arrangements to manage the risks relating to its activities, processes and systems. The Applicant is also required to deal with the AFM in an open and cooperative way, and must disclose to the AFM anything relating to the Applicant of which the AFM would reasonably expect notice;

9. The Applicant is subject to prudential requirements, including minimum regulatory capital and liquidity requirements, and is capitalized in excess of regulatory requirements;

10. The Market Operator of an MTF is required under the Applicable Rules to set rules, conduct compliance reviews, monitor participants' trading activity and take enforcement action against participants when appropriate. Pursuant to Section 2:46 of the Wft, the Applicant is required to report to the AFM (a) significant breaches of the Applicant's rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant will also notify the AFM when a participant's access is terminated, and may notify the AFM when a participant is temporarily suspended or subject to condition(s). The AFM may choose to take further action against a participant in its discretion;

11. The Applicant has instituted procedures and controls to collect information, examine participants' records, supervise trading on the Facility, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform automated real-time market monitoring and market surveillance and establish an automated trade surveillance system to evaluate participants' compliance with the Applicant's rules and applicable law;

12. The Applicant is required by MiFID to ensure that its fee structure is sufficiently granular to allow users to predict the payable fees on the basis of at least the following elements: (i) chargeable services, including the activity which will trigger the fee, (ii) the fee for each service, stating whether the fee is fixed or variable, and (iii) rebates, incentives or disincentives. MiFID also requires the Applicant to publish objective criteria for the establishment of its fees and fee structures, together with execution fees, ancillary fees, rebates, incentives and disincentives in one comprehensive and publicly accessible document on its website;

13. Settlement of transactions executed on the Facility takes place between the counterparties. Although the Applicant's rules require counterparties to settle any deals, the Applicant is not involved in settlement and counterparties make their own bilateral arrangements with respect to settlement;

14. The Applicant requires that its participants be "eligible counterparties" or "professional clients," each as defined in MiFID. Each prospective participant must: (i) enter into a valid and effective customer agreement with the Facility; (ii) satisfy the Applicant's internal client on-boarding requirements including, but not limited to, "know your client" procedures; (iii) agree to adhere, on an on-going basis, to the terms of the Applicant's rules, customer agreements, user guides and any guidance or other requirements of the Applicant; (iv) have the legal and regulatory capacity to undertake trading in derivatives on an MTF; (v) have adequate organisational procedures and controls to limit erroneous trades and the submission of erroneous orders to the Facility, including, but not limited to, the ability to cancel unexecuted orders; (vi) meet the technical specifications and standards required by the Applicant; (vii) be an investment firm or credit institution (each as defined by MiFID and Directive 2013/36/EU of the European Parliament and of the Council, respectively) or other person which (a) is of sufficiently good repute, (b) has a sufficient level of trading ability, competence and experience, and (iii) has sufficient resources for their role as a participant; and (viii) satisfy any additional eligibility criteria set out in the Applicant's rules;

15. Additionally, participants on the Facility are responsible for all the acts, omissions, conduct and activity of their authorised employees and must ensure that their authorised employees have sufficient training, are properly supervised and have adequate experience, knowledge and competence to participate on the Facility in accordance with the Applicant's customer agreements and the Applicant's rules;

16. All participants that are located in Ontario (**Ontario Participants**) are required to be registered under Ontario securities laws, exempt from the registration requirements or not subject to the registration requirements. An Ontario Participant is also required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis;

17. Because the Facility sets requirements for the conduct of its participants and surveils the trading activity of its participants, it is considered by the Commission to be an exchange;

18. Because the Applicant intends to provide Ontario Participants with direct access to trading the MTF Instruments on the Facility, the Commission will consider the Applicant to be carrying on business as an exchange in Ontario and will be required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;

19. The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein; and

20. The Applicant satisfies the exemption criteria as described in Appendix I to Schedule “A”;

AND WHEREAS the products traded on the Facility are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant’s activities on an ongoing basis to determine whether it is appropriate for the Exchange Relief to continue to be granted subject to the terms and conditions set out in Schedule “A” to this order;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Exchange Relief and the terms and conditions imposed by the Commission set out in Schedule “A” to this order may change as a result of the Commission’s monitoring of developments in international and domestic capital markets or the Applicant’s activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the Applicant satisfies the criteria set out in Appendix I to Schedule “A” and that the granting of the Exchange Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act in order to operate the EBS Direct and EBS Institutional FX platforms of EBS MTF,

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule “A”.

DATED ●

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant will continue to meet the criteria for exemption included in Appendix I to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its authorisation as the Market Operator of an MTF with the Dutch Minister of Finance and will continue to be subject to the supervision and regulatory oversight of the AFM.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as a Market Operator authorised by the Dutch Minister of Finance and supervised and regulated by the AFM.

4. The Applicant will promptly notify the Commission if its authorisation as a Market Operator has been revoked, suspended, or amended by the Dutch Minister of Finance, or the basis on which its authorisation as a Market Operator has been granted has significantly changed.

5. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. The Applicant will not provide direct access to a participant in Ontario (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible counterparty" or "professional client", each as defined in MiFID.

7. For each Ontario User provided direct access to its MTF, the Applicant will require, as part of its application documentation or continued access to the MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

8. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Facility.

9. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant if the Ontario User is no longer appropriately registered or exempt from those requirements.

10. The Applicant must make available to Ontario Users appropriate training for each person who has access to trade on the Applicant's facilities.

Trading by Ontario Users

11. The Applicant will not provide access to an Ontario User to trading in products other than FX derivatives without prior Commission approval.

Submission to Jurisdiction and Agent for Service

12. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

13. The Applicant will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation

or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Disclosure

14. The Applicant will provide to its Ontario Users disclosure that:

(a) rights and remedies against the Applicant may only be governed by the laws of England and Wales, rather than the laws of Ontario and may be required to be pursued in the Netherlands rather than in Ontario; and

(b) the rules applicable to trading on the Applicant may be governed by the laws of England and Wales, rather than the laws of Ontario.

Prompt Reporting

15. The Applicant will notify staff of the Commission promptly of:

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

(i) to the regulatory oversight by the Dutch Minister of Finance and the AFM;

(ii) the corporate governance structure of the Applicant;

(iii) the access model, including eligibility criteria, for Ontario Users;

(iv) systems and technology; and

(v) the clearing and settlement arrangements for the Applicant;

(b) any change in the Applicant's regulations or the laws, rules and regulations in the Netherlands relevant to the financial instruments available for trading on the Facility where such change may materially affect its ability to meet the criteria set out in Appendix I to this Schedule;

(c) any condition or change in circumstances whereby the Applicant is unable or anticipates it will not be able to continue to meet any of the relevant rules and regulations of the Netherlands;

(d) any known investigations of, or any disciplinary action against the Applicant by the AFM or any other regulatory authority to which it is subject;

(e) any matter known to the Applicant that may materially and adversely affect its financial or operational viability, including, but not limited to, any declaration of an emergency pursuant to the Applicant's rules;

(f) any default, insolvency, or bankruptcy of a participant of the Applicant known to the Applicant or its representatives that may have a material, adverse impact upon the Applicant; and

(g) any material systems outage, malfunction or delay.

16. The Applicant will promptly provide staff of the Commission with the following information to the extent it is required to provide to or file such information with the Dutch Minister of Finance or the AFM:

(a) details of any material legal proceedings instituted against the Applicant;

(b) notification that the Applicant has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it; and

(c) the appointment of a receiver or the making of any voluntary arrangement with creditors.

Quarterly Reporting

17. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Facility as customers of participants (**Other Ontario Participants**);

(b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;

(c) a list of all Ontario Users whom the Applicant has referred to the AFM, or, to the best of the Applicant's knowledge, whom have been disciplined by the AFM with respect to such Ontario Users' activities on the Facility and the aggregate number of all participants referred to the AFM in the last quarter by the Applicant;

(d) a list of all active investigations during the quarter by the Applicant relating to Ontario Users and the aggregate number of active investigations during the quarter relating to all participants undertaken by the Applicant;

(e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant during the quarter, together with the reasons for each such denial;

(f) a list of all additions, deletions, or changes to the products available for trading since the prior quarter;

(g) for each product,

(i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and

(ii) the proportion of worldwide trading volume and value on the Applicant conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format; and

(h) a list outlining each material incident of a security breach, systems failure, malfunction, or delay (including cyber security breaches, systems failures, malfunctions or delays reported under section 15(g) of this Schedule) that occurred at any time during the quarter for any system relating to trading activity, including trading, routing or data, specifically identifying the date, duration and reason, to the extent known or ascertainable by the Applicant, for the failure, malfunction or delay, and noting any corrective action taken.

Annual Reporting

18. The Applicant will file with the Commission any annual financial report or financial statements (audited or unaudited) of the Applicant provided to or filed with the Dutch Minister of Finance and/or the AFM promptly after filing with the Dutch Minister of Finance and/or the AFM.

Information Sharing

19. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX I

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (**Foreign Regulator**).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

(b) that business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the board of directors (**Board**) and any committees of the Board, including:

- (i) appropriate representation of independent directors, and

- (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(d) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (**Rules**) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with applicable legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

8.2 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

(a) makes reasonable current and future capacity estimates;

(b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

(c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

(d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 FEES

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

APPENDIX II

DEFINITION OF PROFESSIONAL CLIENTS

This Appendix II provides the definition of an "Eligible Counterparty" as defined in Article 30 of Directive 2014/65/EU (**MiFID**) and a "Professional Client," as defined in Annex II of MiFID "Professional Clients for the Purpose of this Directive".

DEFINITION OF ELIGIBLE COUNTERPARTIES

I. Categorises of Clients who are Considered to be Eligible Counterparties

The following are recognised as eligible counterparties for the purposes of this Article.

1. Investment firms;
2. Credit institutions;
3. Insurance companies;
4. Collective investment schemes authorised under the UCITS Directive and their management companies;
5. Pension funds and their management companies;
6. Other financial institutions authorised or regulated under European Union law or under the national law of a European Economic Area Member State;
7. National governments and their corresponding offices including public bodies that deal with public debt at national level;
8. Central banks, and
9. Supranational organisations.

DEFINITION OF PROFESSIONAL CLIENTS

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered to be professional client, the client must comply with the following criteria:

I. Categorises of Clients who are Considered to be Professionals

The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country:

   a. Credit institutions;

   b. Investment firms;

   c. Other authorised or regulated financial institutions;

   d. Insurance companies;

   e. Collective investment schemes and management companies of such schemes;

   f. Pension funds and management companies of such funds;

   g. Commodity and commodity derivatives dealers;

h. Locals;

i. Other institutional investors;

2. Large undertakings meeting two of the following size requirements on a company basis:

   a. balance sheet total: EUR 20 000 000

   b. net turnover: EUR 40 000 000

   c. own funds: EUR 2 000 000

3. National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. The investment firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

<u>II. Clients who may be Treated as Professional on Request</u>

II.1. Identification criteria

Clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

— the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,

— the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,

— the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

Member States may adopt specific criteria for the assessment of the expertise and knowledge of municipalities and local public authorities requesting to be treated as professional clients. Those criteria can be alternative or additional to those listed in the fifth paragraph.

II.2. Procedure

Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

— they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,

— the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,

— they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.

However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with investment firms shall be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the investment firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm shall take appropriate action.

13.2.2 Toronto Stock Exchange – TSX Company Manual – Notice of Housekeeping Rule Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS TO THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "**Protocol**"), Toronto Stock Exchange ("**TSX**") has adopted, and the Ontario Securities Commission has approved, certain housekeeping amendments (the "**Amendments**") to Parts IV and VI of the TSX Company Manual (the "**Manual**"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Summary and Rationale of the Non-Public Interest Amendments

	Section of the Manual	Amendment	Rationale
1.	Part IV – Maintaining a Listing – General Requirements – Sections 461.3 and 461.4 – Contents of Meeting Materials	Add language to clarify that "votes cast" in this section includes both votes "for" and votes "withheld".	Amend language in Section 461.3 to clarify that for the purposes of TSX's majority voting requirements (the "**Majority Voting Requirement**") for director elections, issuers must count both votes "for" and votes "withheld" when counting the total votes cast for the election of a director, and consequential amendment to Section 461.4. *Plurality Voting versus Majority Voting* Under plurality voting for director elections, security holders vote "for" or "withhold" their vote for each director or the slate of directors. The director or slate is elected if one vote is cast "for" the director or the slate, regardless of the number of "withhold" votes. This voting standard is plurality voting since the director or the slate is elected even if the majority of security holders that voted "withheld" their vote rather than voted "for" the election of the director or slate. As a result, virtually every nominee director or slate is elected with plurality voting. When a majority voting policy is adopted pursuant to the Majority Voting Requirement, a plurality voting standard still applies, and security holders generally vote "for" or "withhold" their vote for each individual board nominee. In the case of plurality voting, a vote that is simply not cast, is not counted toward either, the votes "for" or the votes "withheld". However, for the purposes of the Majority Voting Requirement, "withheld" votes are considered "against" votes, and such votes are *counted as part of the total votes cast* with respect to the election of the individual board nominee. A typical majority voting policy that is acceptable to TSX provides that a director who receives a majority of "withheld" votes must tender his or her resignation, that the board will generally accept that resignation absent exceptional circumstances, and that the board will publicly announce its decision by news release. A director who receives a majority of "withheld" votes is elected as a matter of corporate law, but the Majority Voting Requirement is designed to ensure that only those directors who receive more votes cast "for" their election compared to votes cast as "withheld", remain on the board. The *Canada Business Corporations Act* ("**CBCA**") was recently

	Section of the Manual	Amendment	Rationale
			amended to require mandatory majority voting for the election of directors of public corporations other than at contested meetings.[1] Under mandatory majority voting, security holders vote “for” or “against” each individual board nominee, instead of “for” or “withheld”. Once in effect, these amendments to the CBCA will likely satisfy the Majority Voting Requirement, and TSX will likely not require issuers incorporated under the CBCA to have a majority voting policy in place. The Majority Voting Requirement requires that a director who is not elected by a majority of the votes ***cast*** with respect to his or her election must immediately tender his or her resignation to the board of directors. The board is required to determine whether or not to accept the resignation within 90 days after the date of the relevant security holders’ meeting. The board is required to accept the resignation absent ***exceptional circumstances***. *Exceptional Circumstances* TSX does not require majority voting policies to list examples of exceptional circumstances. While many majority voting policies provide guidance regarding which factors the board may determine to constitute exceptional circumstances, such guidance is not required pursuant to the Majority Voting Requirement. While TSX believes that generally the board is in the best position to determine what constitutes exceptional circumstances when determining whether to accept a resignation, TSX will contact the issuer to discuss the exceptional circumstance when a board of directors determines not to accept a director’s resignation. TSX reviews each situation on a case-by-case basis, taking into account the unique factors applicable to each issuer. TSX expects “exceptional circumstances” to meet a high threshold. The board should not use “exceptional circumstances” as a means to circumvent the policy objectives of the Majority Voting Requirement. As TSX has previously stated, TSX will consider avoidance or frustration of the Majority Voting Requirement, through any means, a failure to comply with it. Issuers should review TSX Staff Notice 2017-0001 for TSX’s guidance regarding factors that TSX would likely accept as exceptional circumstances and factors that TSX does not consider exceptional circumstances. Finally, TSX notes that a director who refuses to tender his or her resignation in accordance with the Majority Voting Requirement would be in breach of Section 716 of the Manual. Such refusal may cause TSX to review the director's suitability to be involved in the capacity of a director, officer or other insider of TSX-listed issuers.
2.	Part IV – Maintaining a Listing – General Requirements – Section 428 – Dividends and Other Distributions to Security Holders – Notice to the	Replace references to “Non-Corporate Issuer” with “listed issuer”.	Amend language to clarify that the dividend notification requirement under Section 428 is not applicable for distributions made by all listed issuers (i.e. both Corporate and Non-Corporate Issuer) where there is an immediate consolidation. Currently, Section 428 requires that all listed issuers declaring a dividend on listed shares must provide notice to TSX and a bulletin is then issued by TSX to commence “ex” trading of the shares. This notification requirement is currently not applicable in the case of a

[1] These amendments are not yet in force.

	Section of the Manual	Amendment	Rationale
	Exchange		distribution by a Non-Corporate Issuer that is to be paid entirely in securities which are immediately consolidated following the distribution, resulting in no change to the number of securities held by security holders (and thereby requiring such notification by Corporate Issuers in similar circumstances). In practice, because TSX does not trade "ex" on such distributions (whether for Corporate or Non-Corporate Issuers), TSX is of the view that a TSX bulletin serves no purpose and may confuse the market.
3.	Part VI – Changes in Capital Structure of Listed Issuers - Section 632(4) – General Rules for Control Block Sales on the Exchange; Section 632(7) – Term; and Section 632(8)- First Sale	Delete subsection (4) – Report of Sales. Fix typographical errors in Sections 632(7) and 632(8).	Remove the requirement for a participating organization to report monthly sales regarding control block sales as such report may be redundant due to other reporting requirements for block trades under section 2.8 of National Instrument 45-102 *Resale of Securities*. Fix typographical errors by replacing references to ""Form 45-102 Fl" with "Form 45-102 F1".

Text of the Amendments

The Amendments are set out as blacklined text at **Appendix A**. For ease of reference, a clean version of the Amendments are set out at **Appendix B**.

Effective Date

The Amendments become effective on June 4, 2020.

APPENDIX "A"

**BLACKLINE OF
NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL**

Amendment 1

Contents of Meeting Materials

Sec. 461.3.

Each director of a listed issuer must be elected by a majority (50% +1 vote) of the votes cast[5] with respect to his or her election other than at contested meetings[6]~~[5]~~ ("Majority Voting Requirement").

A listed issuer must adopt a majority voting policy (a "Policy"), unless it otherwise satisfies the Majority Voting Requirement in a manner acceptable to TSX, for example, by applicable statutes, articles, by-laws or other similar instruments. The Policy must, substantially, provide for the following:

(a) any director must immediately tender his or her resignation to the board of directors if he or she is not elected by at least a majority (50% +1 vote) of the votes cast with respect to his or her election;

(b) the board shall determine whether or not to accept the resignation within 90 days after the date of the relevant security holders' meeting. The board shall accept the resignation absent exceptional circumstances;

(c) the resignation will be effective when accepted by the board;

(d) a director who tenders a resignation pursuant to this Policy will not participate in any meeting of the board or any sub-committee of the board at which the resignation is considered; and

(e) the listed issuer shall promptly issue a news release with the board's decision, a copy of which must be provided to TSX. If the board determines not to accept a resignation, the news release must fully state the reasons for that decision.

If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must post a copy of the Policy on its website in accordance with Section 473.

Listed issuers that are majority controlled[7]~~[6]~~ are exempted from the Majority Voting Requirement. Listed issuers with more than one class of listed voting securities may only rely on this exemption with respect to the majority controlled class or classes of securities that vote together for the election of directors. A listed issuer relying on this exemption must disclose, on an annual basis in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected, its reliance on this exemption and its reasons for not adopting majority voting.

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5 For the purposes of this section, when counting the total votes cast in respect of the election of a director, "withheld" votes are considered "against" votes and must be counted in the total.

6 A contested meeting is defined as a meeting at which the number of directors nominated for election is greater than the number of seats available on the board.

7 ~~6~~ Majority controlled is defined as a security holder or company that beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 50 percent or more of the voting rights for the election of directors, as of the record date for the meeting.

[…]

Sec 461.4

Following each meeting of security holders at which there is a vote on the election of directors at an uncontested meeting, each listed issuer must forthwith issue a news release disclosing the detailed voting results for the election of each director,[8]~~[7]~~ and must forthwith provide a copy of the news release to TSX by email to disclosure@tsx.com if one or more director is not elected by at least a majority of the votes cast with respect to his or her election.

8~~7~~ The news release is intended to provide the reader with insight into the level of support received for each director. Accordingly, issuers should disclose one of the following in their news release: (i) the percentages of votes received 'for' and 'withheld' for each director; (ii) the total votes cast by ballot with the number that each director received 'for'; or (iii) the percentages and total number of votes received' for' each director.

[…]

Amendment 2

D. Dividends and Other Distributions to Security Holders

Notice to the Exchange

Sec. 428.

All listed issuers declaring a dividend on listed shares must promptly notify the Exchange's Listed Issuer Services of the particulars, except as provided below. Listed issuers must complete and file a Form 5—Dividend/Distribution Declaration (Appendix H: Company Reporting Forms) with the Exchange. For the purposes of Exchange requirements, "dividends" also includes distributions to holders of listed securities other than shares, such as units.

The Exchange must have sufficient time to inform its Participating Organizations and the financial community of the details of each dividend declared. There must be a clear understanding in the market-place as to who is entitled to receive the dividend declared. Due to practical considerations, such as long holidays and weekends, the Exchange requires prior notice be given to the Exchange in advance of the dividend record date, the record date being the date of closing of the transfer books of the listed issuer. Listed issuers with tentative dividend plans should schedule their board meetings well in advance of the proposed record date.

A minimum five trading days notification period applies to all distributions, including special year end distributions by income trusts and other similar non-taxable entities, whether or not:

(a) the exact amount of the distribution is known; or

(b) the distribution is to be paid in cash, trust units and/or other securities.

Where the exact amount of the distribution is unknown, listed issuers should provide, at the time they file their Form 5, their best estimate of the anticipated amount of the distribution and indicate that such amount is an estimate. Details regarding the payment of the distribution in cash, trust units and/or other securities must be provided.

Upon determination of the exact amount of any estimated distribution, listed issuers must disseminate the final details by press release and provide TSX's dividend administrator with a copy of the press release.

The dividend notification requirement does not apply to a distribution by a listed issuer~~Non-Corporate Issuer~~ that is to be paid entirely in securities which are immediately consolidated following the distribution, resulting in no change to the number of securities held by security holders. In such case, the listed issuer~~Non-Corporate Issuer~~ must disseminate a news release with the estimated distribution amount at least four (4) trading days prior to the record date. Upon determination of the exact amount of any estimated distribution, the listed issuer~~Non-Corporate Issuer~~ must disseminate the final details by way of news release in accordance with the TSX timely disclosure policy.

Amendment 3

Sec. 632. General Rules for Control Block Sales on the Exchange

1. **Filing**—The seller shall file Form 45-102F1 Notice of Intention to Distribute Securities under subsection 2.8 of N1 45-102, *Resale of Securities* with TSX at least seven calendar days prior to the first trade made to carry out the distribution.

2. **Notification of Appointment of Participating Organization**—The seller must notify TSX of the name of the participating organization which will act on behalf of the seller. The seller shall not change the participating organization without prior notice to TSX.

3. **Acknowledgement of Participating Organization**—The participating organization acting as agent for the seller shall give notice to TSX of its intention to act on the sale from control before any sales commence.

4. **Report of Sales**— [Deleted] ~~The participating organization shall report in writing to the TSX on the last day of each month the total number of securities sold by the seller during the month, and, if and when all of the securities have been sold, the participating organization shall so report forthwith in writing to TSX.~~

5. **Issuance of TSX Bulletin**—TSX shall issue a bulletin respecting the proposed sale from control which bulletin will contain the name of the seller, the number of securities of the listed company held by the seller, the number proposed to be sold, and any other information that TSX considers appropriate. TSX may issue further bulletins from time to time regarding the sales made by the seller

6. **Special Conditions**—TSX may, in circumstances it considers appropriate, require that special conditions be met with respect to any sales. Possible conditions include, but are not limited to, the requirement that the seller not make a sale below the price of the last sale of a board lot of the security on TSX which is made by another person or company acting independently.

7. **Term**—The filing of Form 45-102F1~~I~~ is valid for a period of 30 days from the date the form was filed.

8. **First Sale**—The first sale cannot be made until at least seven calendar days after the filing of Form 45-102F1~~I~~.

APPENDIX "B"

CLEAN VERSION OF NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

Amendment 1

Contents of Meeting Materials

Sec. 461.3.

Each director of a listed issuer must be elected by a majority (50% +1 vote) of the votes cast[5] with respect to his or her election other than at contested meetings[6] ("Majority Voting Requirement").

A listed issuer must adopt a majority voting policy (a "Policy"), unless it otherwise satisfies the Majority Voting Requirement in a manner acceptable to TSX, for example, by applicable statutes, articles, by-laws or other similar instruments. The Policy must, substantially, provide for the following:

(a) any director must immediately tender his or her resignation to the board of directors if he or she is not elected by at least a majority (50% +1 vote) of the votes cast with respect to his or her election;

(b) the board shall determine whether or not to accept the resignation within 90 days after the date of the relevant security holders' meeting. The board shall accept the resignation absent exceptional circumstances;

(c) the resignation will be effective when accepted by the board;

(d) a director who tenders a resignation pursuant to this Policy will not participate in any meeting of the board or any sub-committee of the board at which the resignation is considered; and

(e) the listed issuer shall promptly issue a news release with the board's decision, a copy of which must be provided to TSX. If the board determines not to accept a resignation, the news release must fully state the reasons for that decision.

If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must post a copy of the Policy on its website in accordance with Section 473.

Listed issuers that are majority controlled[7] are exempted from the Majority Voting Requirement. Listed issuers with more than one class of listed voting securities may only rely on this exemption with respect to the majority controlled class or classes of securities that vote together for the election of directors. A listed issuer relying on this exemption must disclose, on an annual basis in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected, its reliance on this exemption and its reasons for not adopting majority voting.

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5 For the purposes of this section, when counting the total votes cast in respect of the election of a director, "withheld" votes are considered "against" votes and must be counted in the total.

6 A contested meeting is defined as a meeting at which the number of directors nominated for election is greater than the number of seats available on the board.

7 Majority controlled is defined as a security holder or company that beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 50 percent or more of the voting rights for the election of directors, as of the record date for the meeting.

[…]

Sec 461.4

Following each meeting of security holders at which there is a vote on the election of directors at an uncontested meeting, each listed issuer must forthwith issue a news release disclosing the detailed voting results for the election of each director,[8] and must forthwith provide a copy of the news release to TSX by email to disclosure@tsx.com if one or more director is not elected by at least a majority of the votes cast with respect to his or her election.

[8] The news release is intended to provide the reader with insight into the level of support received for each director. Accordingly, issuers should disclose one of the following in their news release: (i) the percentages of votes received 'for' and 'withheld' for each director; (ii) the total votes cast by ballot with the number that each director received 'for'; or (iii) the percentages and total number of votes received' for' each director.

[…]

Amendment 2

D. Dividends and Other Distributions to Security Holders

Notice to the Exchange

Sec. 428.

All listed issuers declaring a dividend on listed shares must promptly notify the Exchange's Listed Issuer Services of the particulars, except as provided below. Listed issuers must complete and file a Form 5—Dividend/Distribution Declaration (Appendix H: Company Reporting Forms) with the Exchange. For the purposes of Exchange requirements, "dividends" also includes distributions to holders of listed securities other than shares, such as units.

The Exchange must have sufficient time to inform its Participating Organizations and the financial community of the details of each dividend declared. There must be a clear understanding in the market-place as to who is entitled to receive the dividend declared. Due to practical considerations, such as long holidays and weekends, the Exchange requires prior notice be given to the Exchange in advance of the dividend record date, the record date being the date of closing of the transfer books of the listed issuer. Listed issuers with tentative dividend plans should schedule their board meetings well in advance of the proposed record date.

A minimum five trading days notification period applies to all distributions, including special year end distributions by income trusts and other similar non-taxable entities, whether or not:

(a) the exact amount of the distribution is known; or

(b) the distribution is to be paid in cash, trust units and/or other securities.

Where the exact amount of the distribution is unknown, listed issuers should provide, at the time they file their Form 5, their best estimate of the anticipated amount of the distribution and indicate that such amount is an estimate. Details regarding the payment of the distribution in cash, trust units and/or other securities must be provided.

Upon determination of the exact amount of any estimated distribution, listed issuers must disseminate the final details by press release and provide TSX's dividend administrator with a copy of the press release.

The dividend notification requirement does not apply to a distribution by a listed issuer that is to be paid entirely in securities which are immediately consolidated following the distribution, resulting in no change to the number of securities held by security holders. In such case, the listed issuer must disseminate a news release with the estimated distribution amount at least four (4) trading days prior to the record date. Upon determination of the exact amount of any estimated distribution, the listed issuer must disseminate the final details by way of news release in accordance with the TSX timely disclosure policy.

Amendment 3

Sec. 632. General Rules for Control Block Sales on the Exchange

1. **Filing**—The seller shall file Form 45-102F1 Notice of Intention to Distribute Securities under subsection 2.8 of N1 45-102, *Resale of Securities* with TSX at least seven calendar days prior to the first trade made to carry out the distribution.

2. **Notification of Appointment of Participating Organization**—The seller must notify TSX of the name of the participating organization which will act on behalf of the seller. The seller shall not change the participating organization without prior notice to TSX.

3. **Acknowledgement of Participating Organization**—The participating organization acting as agent for the seller shall give notice to TSX of its intention to act on the sale from control before any sales commence.

4. **Report of Sales**— [Deleted]

5. **Issuance of TSX Bulletin**—TSX shall issue a bulletin respecting the proposed sale from control which bulletin will contain the name of the seller, the number of securities of the listed company held by the seller, the number proposed to be sold, and any other information that TSX considers appropriate. TSX may issue further bulletins from time to time regarding the sales made by the seller

6. **Special Conditions**—TSX may, in circumstances it considers appropriate, require that special conditions be met with respect to any sales. Possible conditions include, but are not limited to, the requirement that the seller not make a sale below the price of the last sale of a board lot of the security on TSX which is made by another person or company acting independently.

7. **Term**—The filing of Form 45-102F1 is valid for a period of 30 days from the date the form was filed.

8. **First Sale**—The first sale cannot be made until at least seven calendar days after the filing of Form 45-102F1.

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