The Ontario Securities Commission

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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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Chapter 1

Notices

1.1 Notices

1.1.1 Notice of Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Between the Ontario Securities Commission and the Canadian Public Accountability Board

**NOTICE OF MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
BETWEEN THE ONTARIO SECURITIES COMMISSION AND
THE CANADIAN PUBLIC ACCOUNTABILITY BOARD**

On February 19, 2020, the Ontario Securities Commission and the Canadian Public Accountability Board renewed their Memorandum of Understanding (MOU), which focuses on consultation, cooperation and the sharing of information. The MOU will facilitate the exchange of information that will support collaboration on review and oversight matters.

The MOU is subject to the approval of the Minister of Finance. The MOU was delivered to the Minister of Finance on February 19, 2020. A copy of the MOU is attached as Appendix A.

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MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION BETWEEN THE ONTARIO SECURITIES COMMISSION AND THE CANADIAN PUBLIC ACCOUNTABILITY BOARD

The Parties agree as follows

ARTICLE ONE
UNDERLYING PRINCIPLES

1. The Ontario Securities Commission (the "OSC") is responsible for the regulation of the capital markets in Ontario. It has a dual mandate to provide protection to investors and to foster fair and efficient capital markets and confidence in capital markets. The OSC has developed requirements for timely and accurate public disclosure of information by Reporting Issuers who raise money from Ontario investors. These requirements obligate Reporting Issuers to have their financial statements audited by a Public Accounting Firm that is a member of, and subject to inspection by, the Canadian Public Accountability Board ("CPAB").

2. The mandate of CPAB is to contribute to public confidence in the integrity of financial reporting by public companies by maintaining a register of Public Accounting Firms that audit Reporting Issuers and to oversee the audit of the financial statements of Reporting Issuers. CPAB's authority to carry out its inspection and audit oversight program in Ontario, is set out in the *Canadian Public Accountability Board Act* (Ontario), 2006 (the "CPAB Act").

3. The OSC and CPAB recognize the overlap between their respective mandates and acknowledge the significance of working with each other to promote higher quality auditing and investor confidence in the financial reporting of Reporting Issuers in Ontario.

4. In order to carry out their mandates effectively, the OSC and CPAB require access to highly confidential information from Public Accounting Firms and Reporting Issuers.

5. The OSC and CPAB recognize that it is in the public interest that they have access to such confidential information and, that the confidentiality of that information be maintained.

6. CPAB recognizes that the obligations of the OSC under this Memorandum of Understanding ("MOU") to keep information confidential do not in any way restrict the OSC's ability to use the information in connection with a confidential investigation, including disclosure to a person being examined who is under a confidentiality obligation, and CPAB recognizes further that the OSC's confidentiality obligations are subject to the legal duty of the OSC to make disclosure in connection with a proceeding commenced or proposed to be commenced by the OSC under the Securities Act or an examination of a witness, including a witness summoned as part of an investigation under the Securities Act.

7. The OSC and CPAB have therefore entered into this MOU regarding mutual assistance and the exchange of information on a confidential basis to assist each organization in fulfilling its respective mandate.

ARTICLE TWO
DEFINITIONS

8. For the purpose of this MOU:

"Accounting Principles" has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards;*

"Authority" means:

(a) The Canadian Public Accountability Board (CPAB), a corporation without share capital incorporated under *the Canada Corporations Act* by letters patent dated April 15, 2003, and continued under section 211 of the *Canada Not-for-Profit Corporations Act* on June 6, 2014; or

(b) The Ontario Securities Commission (OSC), a corporation continued under *the Securities Act, R.S.O. 1990;*

(collectively, the Authorities)

"Confidential Information" means information that has been reasonably identified as confidential by the supplying Authority, and

(a) is not information that is, at the time of disclosure, or has become, part of the public domain, or

(b) is not the same information that the receiving Authority obtained from a party other than the supplying Authority,

"CPAB's Rules" means the rules governing CPAB's inspections of Participating Audit Firms as prescribed by CPAB under its by-laws;

"Law" means any law, regulation, order, or regulatory rules or requirement applicable in Canada;

"Non-Confidential Information" means information in the possession of either Authority that is not Confidential Information or has ceased to be Confidential Information;

"Person" or "Persons" means a natural person, legal entity, partnership or unincorporated association;

"Public Accounting Firm" means a sole proprietorship, partnership, corporation, or other legal entity engaged in the business of providing services as public accountants;

"Ontario Securities Law" and "***Reporting Issuer***" each have the same meaning as in the *Securities Act* (Ontario), (the "Securities Act");

"Designated Professional", ***"Generally Accepted Auditing Standards"*** or ***"GAAS"***, ***"Participating Audit Firm"*** and ***"Professional Standards"*** each have the same meaning as in the CPAB Act.

ARTICLE THREE
INTENT OF MOU

9. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the inspection, supervision, investigation and oversight of Public Accounting Firms and Reporting Issuers in a manner consistent with and permitted by the Law that governs the Authorities. This cooperation has been and will continue to be primarily achieved through ongoing informal discussions and consultation, supplemented when necessary, by more in-depth cooperation. The provisions of this MOU are intended to support such informal communication, as well as to facilitate the exchange of information where desirable, subject to applicable Law.

10. The Authorities recognize that it is in the public interest that the OSC and CPAB obtain access to confidential information from the other Authority in a timely manner and that, subject to Section 6, the confidentiality of information provided by the Authorities be maintained.

ARTICLE FOUR
SCOPE OF CONSULTATION, COOPERATION AND EXCHANGE OF INFORMATION

11. The Authorities will, within the framework of this MOU, cooperate to promote compliance with their respective missions and mandates.

12. CPAB will share Non-Confidential Information and, subject to Article Six, Confidential Information, and provide assistance to the OSC in obtaining and interpreting such information, which includes, without limitation:

a. Notice and particulars of a situation where CPAB has identified, or becomes aware of a violation, or a series of violations, of Professional Standards or CPAB's Rules at a Participating Audit Firm, relating to an audit or audits of one or more Reporting Issuers performed by a Participating Audit Firm, which violation, or series of violations, creates a heightened risk to the investing public.

b. Notice and particulars of any restriction or sanction CPAB has imposed on, or removed from, any Participating Audit Firm.

c. Notice and particulars of any requirement CPAB has imposed on, or removed from, any Participating Audit Firm.

d. Notice of situations in which CPAB has required a Reporting Issuer to seek the views of the Commission regarding a matter in question.

e. Information, if it becomes known to CPAB in the course of its inspection or investigation activities, that a Reporting Issuer will be:

i. re-filing annual or interim financial statements,

ii. re-stating or potentially restating financial information for comparative periods in annual or interim financial statements for reasons other than the retrospective application of a change in accounting standard or policy or a new accounting standard.

f. Notice CPAB has terminated the status of any audit firm as a Participating Audit Firm because of the failure of such firm to comply with the provisions of CPAB's Participation Agreement and the particulars of the failure.

g. Any anonymous tip received by CPAB that, in CPAB's judgement, suggests a Reporting Issuer may have materially misstated its financial statements, or otherwise breached Ontario Securities Law.

h. Information CPAB may have about a Participating Audit Firm or Firms, or a Reporting Issuer or Issuers, which CPAB, in its judgment believes should be brought to the attention of the OSC.

13. CPAB will share Non-Confidential Information and, subject to Article Six, Confidential Information, and provide assistance to the OSC in obtaining and interpreting such information, regarding CPAB's general strategic plans for inspections, the general results of inspecting Participating Audit Firms or Reporting Issuer audit files, and related issues that may be relevant to assessing compliance with Ontario Securities Law. Such information includes, without limitation, notice of any targeted reviews of Participating Audit Firms or Reporting Issuer audit files resulting from CPAB's risk analysis; a targeted review being a review which is not part of CPAB's annual review process.

14. The Authorities will consult regularly at the staff level regarding the following areas of common interest relating to risk issues and day to day regulatory matters, subject to Article Six:

a. Risk assessment processes;

b. Analyzing areas of high risk relating to particular industries, or Reporting Issuers, with significant operations in foreign jurisdictions;

c. Analyzing and sharing information on the OSC's continuous disclosure review focus areas relating to the application of Generally Accepted Auditing Standards or the application of International Financial Reporting Standards (IFRS) in the financial statements of Reporting Issuers;

d. Analyzing and sharing information relating to the OSC's results of the continuous disclosure review focus areas described in (c);

e. International developments in accounting and auditing standards; and

f. Any other areas of mutual interest.

15. To supplement informal consultations, the OSC will share Non-Confidential and, subject to Article Six, Confidential Information, and provide assistance to CPAB in interpreting such information, relevant to CPAB's mandate. Such information includes without limitation:

a. Notice and particulars of a situation where the OSC has identified, or becomes aware of a potential violation of Professional Standards or CPAB's Rules at a Participating Audit Firm, relating to an audit of a Reporting Issuer performed by a Participating Audit Firm, which potential violation creates a heightened risk to the investing public;

b. Particulars of any restatement of the annual financial statements of a Reporting Issuer as a result of a continuous disclosure, or issue-oriented, review by the OSC;

c. Advance notice of issue oriented continuous disclosure reviews that may result in the request of information from Participating Audit Firms; and

d. Any anonymous tip received by the OSC that suggests a Designated Professional or Participating Audit Firm has not performed sufficient procedures to support an opinion in an auditor's report that accompanies a Reporting Issuer's financial statements filed in accordance with Ontario Securities Law.

e. Information the OSC may have about a Participating Audit Firm or Firms, or a Reporting Issuer or Issuers, which the OSC, in its judgment believes should be brought to the attention of CPAB.

16. If the OSC provides CPAB with information under Section 15 of the MOU, CPAB will inform the OSC whether any review or examination of a Designated Professional or Participating Audit Firm is being or will be performed by CPAB in light of the information provided. If a review or examination is performed, CPAB will advise the OSC, if it identifies any potential breach of Ontario Securities Law.

ARTICLE FIVE
PERMISSIBLE USES OF INFORMATION

17. Either Authority may use Confidential Information or Non-Confidential Information obtained under this MOU for the purpose of carrying out their respective mandates.

ARTICLE SIX
CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

18. Except for disclosures in accordance with this MOU, including disclosures in the course of permissible uses of information under Article Five, and except as provided in Section 6, each Authority will maintain the confidentiality of Confidential Information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.

19. To the fullest extent permitted by Law, one Authority will notify the other Authority of any legally enforceable demand for Confidential Information furnished under this MOU and prior to compliance with the demand, the Authority from which the information was demanded will assert all appropriate legal exemptions or privileges with respect to such information as may be available.

20. Except as otherwise provided under this Article and subject to Section 6, Confidential Information may not be disclosed by either Authority to third parties unless each Authority has provided the other with its written consent to such disclosure. Third parties shall include foreign securities or financial regulatory authorities. If consent is not obtained from the Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Authority might be allowed.

21. Subject to section 22, when either Authority intends to share Confidential Information under this MOU, the other Authority will confirm that it will treat this information as highly confidential and that it will protect it to the fullest extent permitted by Law.

22. The OSC has made a determination under section 153 of the Securities Act that information received by the OSC from CPAB under paragraph 12(a) of this agreement shall be maintained in confidence. This determination shall not apply to information received under paragraph 12(a) after the date that is three years following the date the MOU becomes effective, unless the OSC makes another determination with respect to such information.

23. Where the OSC intends to share Confidential Information with another securities or financial regulatory authority in Canada, the OSC shall provide that authority with CPAB's general description of the nature of the Confidential Information and particulars of the prejudice that could arise from its release. The OSC will not share the information unless, prior to receiving the Confidential Information from the OSC, the receiving authority shall provide the OSC and CPAB with its written assurance that:

    a. it has taken appropriate steps to protect the Confidential Information from disclosure under that jurisdiction's access to information legislation;

    b. without restricting the receiving authority's ability to use or constraining its ability to disclose the information as described in Section 6 (if the section were read by substituting the OSC with the name of the receiving authority), the receiving authority will maintain the confidentiality of the Confidential Information and will not disclose the Confidential Information to third parties unless CPAB has provided the receiving authority with its written consent to such disclosure; and

    c. it will notify the OSC and CPAB of any legally enforceable demand for Confidential Information prior to compliance with the demand, and shall assert all appropriate legal exemptions or privileges with respect to such information as may be available.

ARTICLE SEVEN
COSTS

24. The Authorities will consult with one another in matters relating to specific requests made under this MOU that may involve substantial cost. If it appears that responding to a request for assistance will involve substantial costs being incurred by the requested Authority, the Authorities will consider the establishment of a cost-sharing arrangement before responding to the request.

ARTICLE EIGHT

25. The Authorities will review after 3 years following the date of execution of the MOU, and may at any other time agree to review, the functioning and effectiveness of this MOU with a view, among other things, to modifying it as appropriate

should that be considered necessary or helpful to the fulfillment of each Authority's respective mandate. This MOU may not be amended without the written consent of each of the Authorities.

ARTICLE NINE
TERMINATION

26. Unless otherwise agreed to by the Authorities in advance of termination, this MOU will terminate on the earlier of (a) the expiration of 30 days after the date either Authority gives written notice to the other Authority of its intention to terminate same, and (b) 3 years following the date of execution of the MOU. Cooperation will continue with respect to all matters on which assistance was sought under the MOU, until the date of termination, unless the Authority seeking assistance terminates the matter for which assistance was requested. Article Six will survive the termination of the MOU.

This MOU was executed by the Authorities and will become effective on the date determined in accordance with section 143.10 of the Securities Act.

Canadian Public Accountability Board

"Carol Paradine"

Chief Executive Officer
Canadian Public Accountability Board
150 York Street, Suite 900, Box 90
Toronto, Ontario M5H 3S5

Date: February 18, 2020

Ontario Securities Commission

"Tim Moseley"

Vice-Chair
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Date: February 19, 2020

APPENDIX A

CONTACTS

The Authorities may send any communication, request or give notice under this MOU by fax, email or courier to the other Authority at the following address:

ONTARIO SECURITIES COMMISSION (OSC)
20 Queen Street West, 22nd Floor
Toronto, Ontario
M5H 3S8

Attention: Cameron McInnis or the Chief Accountant
Office of the Chief Accountant
Telephone: (416) 593-3675
Fax: (416) 593-8177
Email: cmcinnis@osc.gov.on.ca

CANADIAN PUBLIC ACCOUNTABILITY BOARD (CPAB)
Canadian Public Accountability Board
150 York Street, Suite 900, Box 90
Toronto, Ontario
M5H 3S5

Attention: Malcolm Gilmour, Vice President, Inspections
Telephone: (416) 913-8260 ext. 4168
Fax: (416) 850-9235
Email: malcolm.gilmour@cpab-ccrc.ca

1.1.2 Brent (BC) Participation S.À R.L. – Notice of Correction

Brent (BC) Participation S.À R.L., dated August 16, 2019, was published on February 20, 2020 at (2020), 43 OSCB 1597. The applicable legislative provision was omitted from the introductory headnote and is National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2 and s. 6.1.

1.1.3 DTR LLC – Notice of Correction

DTR LLC, dated August 16, 2019, was published on February 20, 2020 at (2020), 43 OSCB 1600. The applicable legislative provision was omitted from the introductory headnote and is National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2 and s. 6.1.

1.4 Notices from the Office of the Secretary

1.4.1 The Catalyst Capital Group Inc. et al.

FOR IMMEDIATE RELEASE
February 20, 2020

THE CATALYST CAPITAL GROUP INC. and
HUDSON'S BAY COMPANY,
RICHARD A. BAKER, LISA BAKER,
LISA AND RICHARD BAKER ENTERPRISES, LLC,
RED TRUST, YELLOW TRUST, BLUE TRUST,
ROBERT BAKER, CHRISTINA BAKER,
A TRUST FOR BETTINA JANE RICHMAN,
A TRUST FOR EMMA RICHMAN,
A TRUST FOR FRANCESCA RICHMAN,
ASHLEY S. BAKER 3/15/84 TRUST, LION TRUST,
MR. AND MRS. ROBERT BAKER FAMILY FOUNDATION,
CHRISTINA BAKER TRUST FOR GRANDCHILDREN,
ROBERT C. BAKER TRUST FOR GRANDCHILDREN,
WILLIAM MACK,
THE WILLIAM AND PHYLLIS MACK FAMILY FOUNDATION, INC.,
MACK 2010 FAMILY TRUST I,
RICHARD MACK WRS ADVISORS III, LLC,
WRS ADVISORS IV, LLC, LEE NEIBART,
LEE S. NEIBART 2010 GRAT,
HANOVER INVESTMENTS (LUXEMBOURG) S.A.,
ABRAMS CAPITAL PARTNERS I, L.P.,
ABRAMS CAPITAL PARTNERS II, L.P.,
WHITECREST PARTNERS, LP,
FABRIC LUXEMBOURG HOLDINGS S.À.R.L.,
L&T B (CAYMAN) INC. and
RUPERT ACQUISITION LLC,
File No. 2019-41

TORONTO – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated February 19, 2020 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.2 Paul Se Hui Oei and Canadian Manu Immigration & Financial Services Inc.

FOR IMMEDIATE RELEASE
February 21, 2020

PAUL SE HUI OEI AND
CANADIAN MANU IMMIGRATION & FINANCIAL SERVICES INC.,
File No. 2020-1

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

A copy of the Order dated February 21, 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

1.4.3 Joseph Debus

FOR IMMEDIATE RELEASE
February 24, 2020

JOSEPH DEBUS,
File No. 2019-16

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

A copy of the Order dated February 24, 2020 is available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Bruce Power L. P.

Headnote

Application for a decision to exempt from the dealer registration requirement and the prospectus requirement certain trades in over-the-counter (OTC) derivatives that are made by the applicant with a "permitted counterparty" or by a permitted counterparty with the applicant.

Decision providing for the exemption defines "permitted counterparties" to consist exclusively of persons or companies that are "permitted clients" as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Exemption was sought in Ontario as an interim response to current regulatory uncertainty associated with the regulation in Ontario of OTC derivatives, pending the development by the CSA of a uniform framework for the regulation of OTC derivatives in all provinces and territories of Canada – Decision includes terms and conditions, including a "sunset date" that is date that is the earlier of: (i) the date that is four years after the date of the Decision; and (ii) the coming into force in the jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC derivative transactions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1) and 74.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 ("permitted client").

February 7, 2020

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

AND

IN THE MATTER OF
BRUCE POWER L.P.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the dealer registration requirement and the prospectus requirement in the Legislation that may otherwise be applicable to a trade in or distribution of an OTC Derivative transaction (as defined below) made by either

(a) the Filer to a "Permitted Counterparty" (as defined below), or

(b) by a Permitted Counterparty to the Filer,

shall not apply to the Filer or the Permitted Counterparty, as the case may be (the **Requested Relief**), subject to certain terms and conditions.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meanings if used in this decision, unless otherwise defined.

The terms "OTC Derivative" and "Underlying Interest" are defined in the Appendix (the **Appendix**) to this decision.

The term "Permitted Counterparty" means a person or company that is a "permitted client", as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

Representations

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

The Filer

1. The Filer is a limited partnership that was formed under the *Limited Partnerships Act* (Ontario) in 2001. The general partner of Bruce Power L.P. is Bruce Power Inc., a corporation incorporated and existing under the *Business Corporations Act* (Ontario). The Filer's head office is located in Tiverton, Ontario.

2. The Filer is not currently registered in any capacity in Canada. The Filer is not currently relying on any exemption from registration under securities laws in Canada.

3. The Filer currently relies on exemptive relief from the dealer registration requirement set out in section 22 of the *Commodity Futures Act* (Ontario) (the **CFA**) and trading restrictions set out in section 33 of the CFA (the **CFA Exemption**). The CFA Exemption allows the Filer to trade in electricity and natural gas contracts for its own account, subject to certain terms and conditions.

4. Subject to the matter to which this decision relates, the Filer is not in default of securities, commodity futures or derivatives legislation in any jurisdiction in Canada.

5. Bruce Power L.P. is a private sector nuclear generator that operates a nuclear energy facility that is also located in Tiverton, Ontario. The nuclear energy facility produces up to 6,400 MW of Ontario's electricity which Bruce Power L.P. sells into the Ontario Independent Electricity System Operator administered spot market.

Proposed conduct of OTC Derivative transactions

6. The Filer proposes to enter into bilateral OTC Derivative transactions with counterparties located in Ontario that consist exclusively of persons or companies that are Permitted Counterparties. The Filer understands that the Permitted Counterparties would be entering into the OTC Derivative transactions for hedging or investment purposes. The underlying interest of the OTC Derivatives that are entered into between the Filer and a Permitted Counterparty will consist of a commodity; an interest rate; a currency; a foreign exchange rate; a security; an economic indicator, an index; a basket; a benchmark; another variable; another OTC Derivative; or some relationship between, or combination of, one or more of the foregoing.

7. The Filer will not offer or provide credit or margin to any of their Permitted Counterparties for purposes of an OTC Derivative transaction.

8. The Filer seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada. The Filer acknowledges that registration and prospectus requirements may be triggered for the Filer in connection with the derivative contracts under any such uniform framework to be developed for the regulation of OTC Derivative transactions.

Regulatory uncertainty and fragmentation associated with the regulation of OTC Derivative transactions in Canada

9. There has generally been a considerable amount of uncertainty respecting the regulation of OTC Derivative transactions as "securities" in the provinces and territories of Canada other than Quebec.

10. In each of Alberta, British Columbia, Prince Edward Island, the Northwest Territories, Nunavut and Yukon, OTC Derivative transactions are regulated as securities on the basis that the definition of the term "security" in the securities legislation of each of these jurisdictions includes an express reference to a "futures contract" or a "derivative".

11. In Manitoba, Ontario, New Brunswick, Nova Scotia and Saskatchewan, OTC Derivative transactions are regulated as derivatives; however, certain OTC Derivative transactions also meet the definition of "security."

12. In Newfoundland and Labrador, it is not certain whether, or in what circumstances, OTC Derivative transactions are "securities" because the definition of the term "security" in the securities legislation of this jurisdiction makes no express reference to a "futures contract" or a "derivative" and the definition of "security" does not include any category that would specifically cover OTC Derivative transactions.

13. In October 2009, staff of the OSC published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* (**OSC Notice 91-702**). OSC Notice 91-702 states that OSC staff take the view that contracts for differences, foreign exchange contracts and similar OTC Derivative products, when offered to investors in Ontario, engage the purposes of the *Securities Act* (Ontario) (the **OSA**) and constitute "investment contracts" and "securities" for the purposes of Ontario securities law. However, OSC Notice 91-702 also states that it is not intended to address direct or intermediated trading between institutions. OSC Notice 91-702 does not provide any additional guidance on the extent to which OTC Derivative transactions between the Filer and a Permitted Counterparty may be subject to Ontario securities law.

14. In Quebec, OTC Derivative transactions are subject to the *Derivatives Act* (Quebec), which sets out a comprehensive scheme for the regulation of derivative transactions that is distinct from Quebec's securities regulatory requirements.

15. In each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan (the **Blanket Order Jurisdictions**) and Quebec (collectively, the **OTC Exemption Jurisdictions**), OTC Derivative transactions are generally not subject to securities or derivative regulatory requirements, pursuant to applicable exemptions (the **OTC Derivative Exemptions**), when they are negotiated, bi-lateral contracts that are entered into between sophisticated non-retail parties, referred to as "Qualified Parties" in the Blanket Order Jurisdictions and "accredited counterparties" in Quebec.

16. The corresponding OTC Derivative Exemptions are as follows:

Alberta	ASC Blanket Order 91-507 Over-the-Counter Trades in Derivatives
British Columbia	Blanket Order 91-501 Over-the-Counter Derivatives
Manitoba	Blanket Order 91-501 Over-the-Counter Trades in Derivatives
New Brunswick	Local Rule 91-501 Derivatives
Nova Scotia	Blanket Order 91-501 Over the Counter Trades in Derivatives
Saskatchewan	General Order 91-908 Over-the-Counter Derivatives
Quebec	Section 7 of the Derivatives Act (Quebec)

The evolving regulation of OTC Derivative transactions as derivatives

17. Each of the OTC Exemption Jurisdictions has sought to address the regulatory uncertainty associated with the regulation of OTC Derivative transactions as securities by regulating them as derivatives rather than securities, whether directly through the adoption of a distinct regulatory framework for derivatives in Quebec, or indirectly through amendments to the definition of the term "security" in the securities legislation of the other OTC Exemption Jurisdictions and the granting of the OTC Derivative Exemptions.

18. Between 1994 and 2000, the OSC sought to achieve a similar objective by introducing proposed OSC Rule 91-504 *Over-the-Counter Derivatives* (the **Proposed OSC Rule**) for the purpose of establishing a uniform, clearly defined regulatory framework for the conduct of OTC Derivative transactions in Ontario, but the Proposed OSC Rule was returned to the OSC for further consideration by Ontario's Minister of Finance in November, 2000.

19. The Final Report of the Ontario Commodity Futures Act Advisory Committee, published in January, 2007, concluded that OTC Derivative contracts are not suited to being regulated in accordance with traditional securities regulatory requirements and should therefore be excluded from the scope of securities legislation, because they are used for commercial-risk management purposes and not for investment or capital-raising purposes.

20. Ontario has now established a framework for regulating the trading of derivatives in Ontario (the **Ontario Derivatives Framework**) through amendments to the OSA that were made by the *Helping Ontario Families and Managing Responsibility Act, 2010* (Ontario).

21. The amendments to the OSA establishing the Ontario Derivatives Framework will not become effective until the date on which they are proclaimed in force. These amendments are not expected to be proclaimed in force until an ongoing public consultation on the regulation of OTC Derivatives has been completed. On April 19, 2018, the Canadian Securities Administrators (the **CSA**) published a Notice and Request for Comment on the Proposed National Instrument 93-102 *Derivatives: Registration*, and on June 14, 2018, the CSA published a Notice and Second Request for Comment on the Proposed National Instrument 93-101 *Derivatives: Business Conduct*, which, together, are intended to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading or advising on derivatives.

Rationale for Requested Relief

22. The Requested Relief would substantially address, for the Filer and its Permitted Counterparties, the regulatory uncertainty and fragmentation that is currently associated with the regulation of OTC Derivative transactions in Canada, by permitting the Filer and its Permitted Counterparties to enter into OTC Derivative transactions in reliance upon exemptions from the dealer registration and prospectus requirements of the securities legislation of Ontario that are comparable to the OTC Derivative Exemptions.

Books and Records

23. The Filer will become a "market participant" for the purposes of the OSA if the Requested Relief is granted. For the purposes of the OSA, and as a market participant, the Filer is required by subsection 19(1) of the OSA to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.

24. For the purposes of its compliance with subsection 19(1) of the OSA, the books and records that the Filer will keep will include books and records that:

    (a) demonstrate the extent of the Filer's compliance with applicable requirements of securities legislation;

    (b) demonstrate compliance with the policies and procedures of the Filer for establishing a system of controls and supervision sufficient to provide reasonable assurance that the Filer, and each individual acting on its behalf, complies with securities legislation;

    (c) identify all OTC Derivative transactions entered into by the Filer, including the name and address of all parties to the transaction and its terms; and

    (d) set out for each OTC Derivative transaction entered into by the Filer, information corresponding to that which would be required to be included in an exempt distribution report for the transaction, if the transaction were entered into by the parties in reliance upon the "accredited investor" prospectus exemption in section 2.3 of National Instrument 45-106 *Prospectus Exemptions*.

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 is that the Requested Relief is granted, provided that:

(a) the counterparty to any OTC Derivative transaction entered into by the Filer is a Permitted Counterparty;

(b) in the case of any trade entered into by the Filer with a Permitted Counterparty, the Filer does not offer or provide any credit or margin to the Permitted Counterparty, although the Filer and a Permitted Counterparty may exchange collateral under an OTC Derivative transaction; and

(c) the Requested Relief shall terminate on the date that is the earlier of:

    (i) the date that is four years after the date of this decision; and

    (ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

"Lawrence Haber"
Commissioner
Ontario Securities Commission

"Craig Hayman"
Commissioner
Ontario Securities Commission

Appendix

Definitions

"**Clearing Corporation**" means an association or organization through which Options or futures contracts are cleared and settled.

"**Contract for Differences**" means an agreement, other than an Option, a Forward Contract, a spot currency contract or a conventional floating rate debt security, that provides for:

(a) an exchange of principal amounts; or

(b) the obligation or right to make or receive a cash payment based upon the value, level or price, or on relative changes or movements of the value, level or price of, an Underlying Interest.

"**Forward Contract**" means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a Clearing Corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

(a) make or take delivery of the Underlying Interest of the agreement; or

(b) settle in cash instead of delivery.

"**Option**" means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

(a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.

(b) purchase a specified quantity of the Underlying Interest of the Option.

(c) sell a specified quantity of the Underlying Interest of the Option.

"**OTC Derivative**" means one or more of, or any combination of, an Option, a Forward Contract, a Contract for Differences or any instrument of a type commonly considered to be a derivative, in which:

(a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, Contract for Differences or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and

(c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

"**Underlying Interest**" means, for a derivative, the commodity, interest rate, currency, foreign exchange rate, security, economic indicator, index, basket, benchmark or other variable, or another derivative, and, if applicable, any relationship between, or combination of, any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

2.1.2 Middlefield Global Real Asset Fund

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Closed-end investment trust exempt from the prospectus requirement in connection with the sale of units redeemed or purchased from existing security holders pursuant to purchase or redemption programs, subject to conditions.

Applicable Legislative Provisions

Securities Act, RSA 2000, c. S-4, ss. 110 and 144.

Citation: *Re Middlefield Global Real Asset Fund*, 2020 ABASC 22

February 14, 2020

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

AND

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

AND

**IN THE MATTER OF
MIDDLEFIELD GLOBAL REAL ASSET FUND
(the Filer)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement to file a prospectus (the **Prospectus Requirement**) in connection with the distribution of units of the Filer (the **Units**) that have been repurchased by the Filer pursuant to the Purchase Programs (as defined below) or redeemed by the Filer pursuant to the Redemption Programs (as defined below) in the period prior to a Conversion (as defined below) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

2. The Filer is an unincorporated closed-end investment trust established under the laws of Alberta.

3. The Filer is not considered to be a "mutual fund" as defined in the Legislation because the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer.

4. The Filer is a reporting issuer in each of the provinces of Canada and is not in default of securities legislation in any jurisdiction of Canada.

5. The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**). As of November 26, 2019, the Filer had 11,000,354 Units issued and outstanding.

6. Middlefield Limited (the **Manager**), which is incorporated under the *Business Corporations Act* (Alberta), is the manager and the trustee of the Filer.

7. Subject to applicable law, which may require approval from the holders of the Units (the **Unitholders**) or regulatory approval, the Manager may (a) merge or otherwise combine or consolidate the Filer with any one or more other funds managed by the Manager or an affiliate thereof or (b) where it determines that to do so would be in the best interest of Unitholders, merge or convert the Filer into a listed exchange-traded mutual fund, an open-end mutual fund, a split trust fund, an alternative mutual fund, or another type of non-redeemable investment fund (each a **Conversion**).

Mandatory Purchase Program

8. The constating document of the Filer provides that the Filer, subject to certain exceptions and compliance with any applicable regulatory requirements, is obligated to purchase (the **Mandatory Purchase Program**) any Units offered on the TSX or such other exchange or market on which the Units are then listed and primarily traded (the **Exchange**) if, at any time after the closing of the Filer's initial public offering, the price at which Units are then offered for sale on the Exchange is less than 95% of the net asset value of the Filer per Unit, provided that the maximum number of Units that the Filer is required to purchase pursuant to the Mandatory Purchase Program in any calendar quarter is 1.25% of the number of Units outstanding at the beginning of each such period.

Discretionary Purchase Program

9. The constating document of the Filer also provides that the Filer, subject to applicable regulatory requirements and limitations, has the right, but not the obligation, exercisable in its sole discretion at any time, to purchase outstanding Units in the market at prevailing market prices (the **Discretionary Purchase Program** and together with the Mandatory Purchase Program, the **Purchase Programs**).

Monthly Redemptions

10. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Monthly Redemption Program**) on the second last business day of each month in order to be redeemed at a redemption price per Unit equal to the Monthly Redemption Price per Unit (as defined in the Filer's long form prospectus dated October 11, 2019 (the **Prospectus**)).

Annual Redemption

11. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Annual Redemption Program**) on the second last business day of November in each year commencing in 2021 at a redemption price per Unit equal to the Redemption Price per Unit (as defined in the Prospectus).

Additional Redemptions

12. At the sole discretion of the Manager and subject to the receipt of any necessary regulatory approvals, the Manager may from time to time allow additional redemptions of Units (**Additional Redemptions** and collectively with the Monthly Redemption Program and the Annual Redemption Program, the **Redemption Programs**), provided that the holder thereof shall be required to use the full amount received on such redemption to purchase treasury securities of a new or existing fund promoted by the Manager or an affiliate thereof then being offered to the public by prospectus.

Resale of Repurchased Units or Redeemed Units

13. Purchases of Units made by the Filer under the Purchase Programs or Redemption Programs will be made pursuant to exemptions from the issuer bid requirements of applicable securities legislation.

14. The Filer wishes to resell, in its sole discretion and at its option, through one or more securities dealers and through the facilities of the Exchange, the Units repurchased by the Filer pursuant to the Purchase Programs (**Repurchased Units**), or redeemed pursuant to the Redemption Programs (**Redeemed Units**).

15. All Repurchased Units and Redeemed Units will be held by the Filer for a period of four months after the repurchase or redemption thereof by the Filer (the **Holding Period**), prior to any resale.

16. The resale of Repurchased Units and Redeemed Units will be effected in such a manner as not to have a significant impact on the market price of the Units.

17. Repurchased Units and Redeemed Units that the Filer does not resell within 12 months after the Holding Period (that is, within 16 months after the date of repurchase or redemption, as applicable) will be cancelled by the Filer.

18. During any calendar year, the Filer will not resell an aggregate number of Repurchased Units and Redeemed Units that is greater than 5% of the number of Units outstanding at the beginning of such calendar year.

19. Prospective purchasers of Repurchased Units or Redeemed Units will have access to the Filer's continuous disclosure, which will be filed on SEDAR.

20. The Legislation provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution and, as such, is subject to the Prospectus Requirement. In the absence of the Exemption Sought, any sale by the Filer of Repurchased Units or Redeemed Units would be a distribution that is subject to the Prospectus Requirement.

Decision

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

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

(a) the Repurchased Units and Redeemed Units are otherwise sold by the Filer in compliance with applicable securities legislation, and through the facilities of and in accordance with the regulations and policies of the Exchange;

(b) the Filer complies with paragraphs 1 through 5 of section 2.8(2) of National Instrument 45-102 *Resale of Securities* as if it were a selling security holder thereunder; and

(c) the Filer complies with the representations made in paragraphs 15, 16 and 17 above.

For the Commission:

"Tom Cotter"
Vice-Chair

"Kari Horn"
Vice-Chair

2.1.3 Guardian Capital LP

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ Awards and Lipper Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), and 19.1.

February 14, 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)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of existing and future mutual funds of which the Filer or an affiliate of the Filer is, or in the future will be, the investment fund manager and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 19.1 of NI 81-102 from the requirements set out in paragraphs 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

1. the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and

2. the rating or ranking is to the same calendar month end that is:

(a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

(b) not more than three months before the date of first publication of any other sales communication in which it is included;

(together, the **Exemption Sought**), to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leaders Ratings to be referenced in sales communications relating to the Funds.

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 **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-102 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:

The Filer and the Funds

1. The Filer is a limited partnership formed under the laws of Ontario with its head office located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in each of the Provinces of Ontario, Québec and Newfoundland and Labrador, as a portfolio manager and an exempt market dealer in each of the Provinces of Canada, and as a commodity trading manager and a commodity trading counsel in the Province of Ontario.

3. The Filer is, or will be, the manager of each of the Funds.

4. Each of the Funds is, or will be, an open-ended mutual fund trust established under the laws of Ontario or a class of shares of a mutual fund corporation established under the laws of Ontario. The securities of each of the Funds are, or will be, qualified for distribution pursuant to one or more prospectuses or simplified prospectuses, as the same may be amended or renewed from time to time. Each of the Funds is, or will be, a reporting issuer in each of the Jurisdictions.

5. Each of the Funds is, or will be, subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

6. Neither the Filer nor any of the existing Funds is in default of securities legislation in any of the Jurisdictions.

FundGrade Ratings and FundGrade A+ Awards

7. The Filer wishes to include in sales communications of the Funds references to the FundGrade Ratings and references to the FundGrade A+ Awards, where such Funds have been awarded a FundGrade A+ Award.

8. Fundata Canada Inc. (**Fundata**) is a “mutual fund rating entity” as that term is defined in NI 81-102. Fundata is a supplier of mutual fund information, analytical tools, and commentary. Fundata’s fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

9. One of Fundata’s programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

10. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk adjusted performance, measured by three well-known and widely-used metrics: the Sharpe Ratio, the Information Ratio, and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.

11. The FundGrade Ratings are letter grades for each fund and are determined for each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of

funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a fund must show consistently high scores for all ratios across all time periods.

12. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.

13. At the end of each calendar year, Fundata calculates a fund grade point average or "GPA" for each fund based on the full year's performance. The fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each fund is divided by 12 to arrive at the fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

14. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

Lipper Leaders Ratings and Lipper Awards

15. The Filer also wishes to include in sales communications of the Funds references to the Lipper Leaders Ratings (which are performance ratings or rankings for funds issued by Lipper and include the Lipper Ratings for Consistent Return, Lipper Ratings for Total Return, Lipper Ratings for Preservation and the Lipper Ratings for Expense, which are described below) and references to the Lipper Awards (as described below), where such Funds have been awarded a Lipper Award.

16. Lipper, Inc. (**Lipper**) is a "mutual fund rating entity" as that term is defined in NI 81-102, and is not a member of the organization of the Funds. Lipper is part of the Refinitiv group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

17. One of Lipper's programs is the Lipper Fund Awards from Refinitiv program (the **Lipper Awards**). This program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently, the Lipper Awards take place in 23 award universes.

18. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which were awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper designates award-winning funds in a number of individual fund classifications for the three and five year periods, and it is expected that awards for the ten year period will be given in the future.

19. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by CIFSC (or a successor to CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years or five years of performance history) will claim a Lipper ETF Award.

20. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leaders Rating System. The Lipper Leaders Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

21. In Canada, the Lipper Leaders Rating System includes Lipper Ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), Lipper Ratings for Total Return (reflecting funds' historical total return performance relative to funds in the same classification), Lipper Ratings for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification), Lipper Ratings for Tax Efficiency (reflecting funds' historical success in postponing taxable distributions relative to funds in the same classification), and Lipper Ratings for Expense (reflecting funds' expense minimization relative to funds with similar load structures). In each case, the categories for fund classification used by Lipper for the Lipper Leaders Ratings are those maintained by CIFSC (or a successor to CIFSC). Lipper Leaders Ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an unweighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% receive a score of 3, the next 20%

receive a score of 2 and the lowest 20% receive a score of 1.

22. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 and 60 month periods only) wins a Lipper Award.

Sales Communication Disclosure

23. The FundGrade Ratings fall within the definition of "performance data" under NI 81-102 as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund", given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be "overall ratings or rankings" given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

24. Paragraph 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or "match", each period for which standard performance data is required to be given for a fund, except for the period since the inception of the fund (i.e. for one, three, five and ten year periods, as applicable).

25. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.

26. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from subsection 15.3(4)(c) of NI 81-102 is, therefore, required in order for Funds to reference the FundGrade A+ Awards in sales communications.

27. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

28. Because the evaluation of funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a fund receives FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.

29. The Lipper Leaders Ratings are performance ratings or rankings under NI 81-102 and Lipper Awards may be considered to be performance ratings or rankings under NI 81-102 given that the awards are based on the Lipper Leaders Ratings as described above. Therefore, references to Lipper Leaders Ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

30. In Canada and elsewhere, Lipper Leaders Ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year

period. This means that a sales communication referencing a Lipper Leaders Rating cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leaders Ratings in sales communications.

31. In addition, a sales communication referencing the overall Lipper Leaders Ratings and the Lipper Awards, which are based on the Lipper Leaders Ratings, must disclose the corresponding Lipper Leaders Rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leaders Ratings, sales communications referencing the overall Lipper Leaders Ratings or Lipper Awards also cannot comply with the matching requirement contained in paragraph 15.3(4)(c) of NI 81-102.

32. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leaders Ratings or Lipper Awards in sales communications for the Funds because subsection 15.3(4.1) of NI 81-102 is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the overall Lipper Leaders Ratings or Lipper Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying Lipper Leaders Ratings are not available for the one year period, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for the Funds to reference overall Lipper Leaders Ratings and the Lipper Awards in sales communications.

33. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. The paragraph provides that in order for a rating or ranking such as a Lipper Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

34. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a fund receives an award in November, paragraph 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

35. The Exemption Sought is required in order for the FundGrade Ratings, FundGrade A+ Awards, Lipper Leaders Ratings, and Lipper Awards to be referenced in sales communications relating to the Funds.

36. The Filer submits that the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leaders Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. These awards and ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of FundGrade or Lipper, as applicable, in fund analysis that alleviates any concern that references to them may be misleading and, therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leaders Ratings to be referenced in sales communications relating to a Fund provided that:

37. the sales communication that refers to the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards or Lipper Leaders Ratings complies with Part 15 of NI 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:

    (a) the name of the category for which the Fund has received the award or rating;

    (b) the number of mutual funds in the category for the applicable period;

    (c) the name of the ranking entity, i.e., Fundata or Lipper;

    (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Award, FundGrade Rating, Lipper Award or Lipper Leaders Rating is based;

    (e) a statement that FundGrade Ratings or Lipper Leaders Ratings are subject to change every month;

    (f) in the case of a FundGrade A+ Award or Lipper Award, a brief overview of the FundGrade A+ Award or Lipper Award, as applicable;

    (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in

connection with a FundGrade A+ Award) or a Lipper Leaders Rating (other than Lipper Leaders Ratings referenced in connection with a Lipper Award), a brief overview of the FundGrade Rating or Lipper Leaders Rating, as applicable;

(h) where Lipper Awards are referenced, the corresponding Lipper Leaders Rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

(i) where a Lipper Leaders Rating is referenced, the Lipper Leaders Ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

(j) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category) or Lipper Leaders Ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category), as applicable; and

(k) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings or reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leaders Ratings, which includes the rating methodology prepared by Fundata or Lipper, as applicable;

38. the FundGrade A+ Awards and Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

39. the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leaders Ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by CIFSC (or a successor to CIFSC).

"Neeti Varma"
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.4 Horizons ETFs Management (Canada) Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of exchange traded mutual fund reorganization pursuant to section 5.5(1)(b) of NI 81-102 required because the reorganization does not meet criteria for pre-approval – reorganization from mutual fund trust structure to multi-class mutual fund corporation structure – certain of the existing funds will not be wound up upon completion of the reorganization – ETF facts, financial statements of the continuing funds will not be available as the continuing funds are newly established funds – continuing funds to have same investment objectives, investment strategies, management fees as the existing Funds – reorganization to otherwise comply with pre-approval criteria, including securityholder vote, IRC approval – securityholders provided with timely and adequate disclosure regarding the reorganization.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 5.7(1)(b) and 19.1(2).

October 24, 2019

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

AND

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

AND

IN THE MATTER OF
HORIZONS ETFS MANAGEMENT (CANADA) INC.
(the Filer)

AND

HORIZONS S&P/TSX 60™ INDEX ETF
HORIZONS S&P 500® INDEX ETF
HORIZONS S&P 500 CAD HEDGED INDEX ETF
HORIZONS S&P/TSX CAPPED ENERGY INDEX ETF
HORIZONS S&P/TSX CAPPED FINANCIALS INDEX ETF
HORIZONS CDN SELECT UNIVERSE BOND ETF
HORIZONS NASDAQ-100® INDEX ETF
HORIZONS EURO STOXX 50® INDEX ETF
HORIZONS CDN HIGH DIVIDEND INDEX ETF
HORIZONS US 7-10 YEAR TREASURY BOND ETF
HORIZONS US 7-10 YEAR TREASURY BOND CAD HEDGED ETF
HORIZONS LADDERED CANADIAN PREFERRED SHARE INDEX ETF
HORIZONS INTL DEVELOPED MARKETS EQUITY INDEX ETF

HORIZONS EQUAL WEIGHT CANADA REIT INDEX ETF
HORIZONS EQUAL WEIGHT CANADA BANKS INDEX ETF
HORIZONS GOLD ETF
HORIZONS SILVER ETF
HORIZONS CRUDE OIL ETF
HORIZONS NATURAL GAS ETF
BETAPRO GOLD BULLION 2X DAILY BULL ETF
BETAPRO GOLD BULLION -2X DAILY BEAR ETF
BETAPRO CRUDE OIL 2X DAILY BULL ETF
BETAPRO CRUDE OIL -2X DAILY BEAR ETF
BETAPRO NATURAL GAS 2X DAILY BULL ETF
BETAPRO NATURAL GAS -2X DAILY BEAR ETF
BETAPRO SILVER 2X DAILY BULL ETF
BETAPRO SILVER -2X DAILY BEAR ETF
BETAPRO S&P/TSX 60™ 2X DAILY BULL ETF
BETAPRO S&P/TSX 60™ -2X DAILY BEAR ETF
BETAPRO S&P/TSX CAPPED FINANCIALS™ 2X DAILY BULL ETF
BETAPRO S&P/TSX CAPPED FINANCIALS ™ -2X DAILY BEAR ETF
BETAPRO S&P/TSX CAPPED ENERGY™ 2X DAILY BULL ETF
BETAPRO S&P/TSX CAPPED ENERGY ™ -2X DAILY BEAR ETF
BETAPRO NASDAQ-100® 2X DAILY BULL ETF
BETAPRO NASDAQ-100® -2X DAILY BEAR ETF
BETAPRO S&P 500® 2X DAILY BULL ETF
BETAPRO S&P 500® -2X DAILY BEAR ETF
BETAPRO CANADIAN GOLD MINERS 2X DAILY BULL ETF
BETAPRO CANADIAN GOLD MINERS -2X DAILY BEAR ETF
BETAPRO MARIJUANA COMPANIES 2X DAILY BULL ETF
BETAPRO MARIJUANA COMPANIES INVERSE ETF
BETAPRO S&P/TSX 60™ DAILY INVERSE ETF
BETAPRO S&P 500® DAILY INVERSE ETF
BETAPRO S&P 500 VIX SHORT-TERM FUTURES™ ETF
(**the Horizons ETFs**)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Horizons ETFs, for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for approval under clause 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of the proposed reorganization (the **Proposed Reorganization**) of each of the Horizons ETFs (the **Existing Funds**) into a corresponding class of shares (the **Continuing Funds**) of a new mutual fund corporation (the **Approval 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 (**Principal Regulator**); and

(b) the Filer has provided notice that section 4.7(1)(c) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada other than the Jurisdiction (together with the Jurisdiction, the **Canadian Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* (**NI 14-101**), MI 11-102 and NI 81-102 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:

The Filer and the Horizons ETFs

1. The Filer is a corporation existing under the laws of Canada, with its head office located in Toronto, Ontario. The Filer is a wholly-owned subsidiary of Mirae Asset Global Investments Co., Ltd.

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

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

4. The Filer is the manager and trustee of the Horizons ETFs.

5. The Filer's primary business is to act as manager and investment manager for the Horizons ETFs and other exchange traded funds in Canada.

6. Each of the Horizons ETFs is an exchange traded mutual fund or alternative mutual fund established under the laws of the Province of Ontario.

7. Securities of the Horizons ETFs are distributed in each of the Canadian Jurisdictions under long form prospectuses and ETF facts documents prepared in accordance with the requirements of NI 41-101 and NI 81-102, as applicable.

8. Each Horizons ETF is a reporting issuer under the applicable securities legislation of each of the Canadian Jurisdictions.

9. The Horizons ETFs are subject to, among other laws and regulations, NI 81-102, National Instrument 81-106 *Investment Fund Continuous*

Disclosure and National Instrument 81-107 *Independent Review Committee for Investment Funds*.

10. Neither the Filer nor the Horizons ETFs are in default of applicable securities legislation in any of the Canadian Jurisdictions.

Reason for Approval Sought

11. The Filer and the Existing Funds require regulatory approval of the Proposed Reorganization because they cannot rely on section 5.6(1) of NI 81-102 for the following reasons:

    (a) contrary to section 5.6(1)(c), certain of the Existing Funds will not be wound-up after the Proposed Reorganization because the Filer believes that leaving the Existing Funds and their assets in place may be necessary to defer the unnecessary realization of taxable income or gains that might otherwise occur on a wind-up of an Existing Fund, and it may otherwise be beneficial to such Existing Funds' unitholders not to wind them up. The Existing Funds that are not wound up following the effective date of the Proposed Reorganization will retain their current unit trust structure but will not be offered to the public and their continued existence will confer no direct benefit on the Filer; and

    (b) contrary to sections 5.6(1)(f)(ii) and 5.6(1)(f)(iii)(A)(IV) and (V), the most recently filed ETF facts document, the most recently filed annual financial statements and interim financial reports and the most recently filed annual and interim management reports of fund performance for the Continuing Funds will not be sent to unitholders of the Existing Funds, since that information will not be available for the Continuing Funds as each Continuing Fund is newly created. Instead, the Filer will make available to each unitholder of an Existing Fund the Circular containing information and documents necessary for investors of the Existing Funds to consider the Proposed Reorganization, including a full description of the Proposed Reorganization, the income tax considerations of the Proposed Reorganization to unitholders, the investment objectives and investment strategies of the Existing Funds and the Continuing Funds, as well as a summary of the decision of the Independent Review Committee (the **IRC**) with respect to the Proposed Reorganization.

12. Except for sections 5.6(1)(c), 5.6(1)(f)(ii) and 5.6(1)(f)(iii)(A)(IV) and (V), the Proposed Reorganization would satisfy the other criteria in section 5.6(1) for pre-approved reorganizations and transfers.

The Proposed Reorganization

13. In a press release issued on August 23, 2019 and a material change report filed on August 30, 2019, the Filer announced the Proposed Reorganization and that special meetings of unitholders of the Horizons ETFs (the **Meetings**) would be held to approve the Proposed Reorganization.

14. Each Continuing Fund will be structured as a separate class of shares of a new mutual fund corporation, to be incorporated under the laws of a jurisdiction of Canada, for purposes of implementing the Proposed Reorganization. As a result:

    (a) the unitholders of the Existing Funds will have rights as shareholders of the Continuing Funds that are substantially similar in all material respects to the rights they had as unitholders of the Existing Funds;

    (b) the unitholders of the Existing Funds will become holders of a corresponding class of shares of the relevant Continuing Fund, with the same aggregate net asset value immediately after the Proposed Reorganization as they held immediately before the Proposed Reorganization as unitholders of the relevant Existing Fund;

    (c) the Proposed Reorganization is not expected to be a taxable event for Canadian income tax purposes for unitholders of the Existing Funds provided that, in the case of Canadian resident unitholders who hold units of the Existing Funds in taxable accounts (**Section 85 Eligible Holders**), such unitholders make a joint election with the new mutual fund corporation under section 85 of the *Income Tax Act* (Canada) (the **Tax Act**) to defer recognition of any gain that may otherwise arise for Canadian income tax purposes on the exchange of their units of an Existing Fund for shares of a class of the Continuing Fund;

    (d) the Continuing Funds will have fundamental investment objectives, as well as investment strategies, that are substantially similar in all material respects to the fundamental investment objectives and investment strategies of the corresponding Existing Funds;

(e) the Continuing Funds will have fee structures and valuation procedures that are substantially similar to the fee structures and valuation procedures of the corresponding Existing Funds; and

(f) The Filer will continue to be the investment fund manager of the Continuing Funds,

all as will be further described in an information circular that will be made available to unitholders of the Existing Funds (the **Circular**).

15. The Continuing Funds will be managed in a manner which is substantially similar to the manner in which the Existing Funds have been managed, and will be managed, to the effective date of the Proposed Reorganization.

16. It is anticipated that substantially all of the assets of each Existing Fund will be transferred to the corresponding Continuing Fund in connection with the implementation of the Proposed Reorganization and/or may be left in the Existing Fund for the exclusive benefit of the corresponding Continuing Fund.

17. The Proposed Reorganization is expected to be completed before the end of 2019, subject to receiving all necessary unitholder, regulatory and other third party approvals.

18. As a result of the Proposed Reorganization, all material agreements regarding the administration of the Horizons ETFs will either be amended to include the Continuing Funds, or the Continuing Funds will enter into new agreements with the relevant service provider, as required.

19. The securityholders of each Existing Fund immediately before the Proposed Reorganization will be the securityholders of the corresponding Continuing Fund immediately after the Proposed Reorganization.

20. The Filer filed preliminary prospectuses and preliminary ETF facts documents with respect to the Continuing Funds on October 15, 2019.

21. The Continuing Funds will be reporting issuers under the applicable securities legislation of each province and territory of Canada.

22. The Existing Funds have operated, and the Continuing Funds will operate, in accordance with NI 81-102, except for any exemptive relief that has been previously obtained.

23. It is expected that the sole unitholder of each Existing Fund following the Proposed Reorganization will be the mutual fund corporation, on behalf of the applicable corresponding Continuing Fund and its shareholders (which shall be the same holders of units of such Existing Fund immediately prior to the Proposed Reorganization).

24. The Horizons ETFs' IRC has reviewed the conflicts of interests matters associated with the Proposed Reorganization, including the process to be followed in connection with such Proposed Reorganization and the preservation of some or all of the Existing Funds for the benefit of the holders of the Continuing Funds, and after reasonable inquiry has advised the Filer that, in its determination, if implemented, the Proposed Reorganization achieves a fair and reasonable result for each of the Existing Funds.

25. In addition to the press release mentioned above and the corresponding material change report, which were issued and filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**), investors in the Horizons ETFs have been made aware of the Proposed Reorganization through amendments to the final prospectuses of the Horizons ETFs, which were filed on SEDAR.

26. Pursuant to NI 81-102, the Meetings will be held on or about November 12, 2019. At the Meetings, unitholders of the Existing Funds will be asked to approve the Proposed Reorganization.

27. The Notice-and-Access Document and voting instruction forms or forms of proxy, as applicable, in respect of the Meetings (the **Meeting Materials**) describing the Proposed Reorganization was sent to unitholders of the Existing Funds on or about October 11, 2019 and copies thereof will be filed on SEDAR following the mailing in accordance with applicable securities legislation and exemptive relief obtained by the Filer on November 4, 2016 permitting the Horizons ETFs to use Notice-and-Access to send proxy-related materials to beneficial unitholders.

28. The Meeting Materials contain a detailed description of the Proposed Reorganization, information about the Existing Funds and the Continuing Funds, income tax considerations for unitholders of the Horizons ETFs applicable to the Proposed Reorganization and the material differences between being a unitholder of a trust and a shareholder of a corporation.

29. The Meeting Materials contain sufficient information regarding the business, management and operations of the Horizons ETFs and all information necessary to allow unitholders to make an informed decision about the Proposed Reorganization. All other required information and documents necessary to comply with applicable proxy solicitation requirements of securities legislation for the Meetings will be mailed to applicable unitholders of the Horizons ETFs.

30. At each Meeting, the affirmative vote of not less than a majority of the votes cast by unitholders of

the applicable Existing Fund present in person or represented by proxy at that Meeting is required for approval of the Proposed Reorganization. It is expected that the Proposed Reorganization will be implemented if approved by the unitholders of the applicable Existing Fund, regardless of whether the Proposed Reorganization is approved by unitholders of the other applicable Existing Funds.

31. Subject to receipt of unitholder and regulatory approvals, the Proposed Reorganization will occur as soon as reasonably practicable following receipt of all required unitholder and regulatory approvals, subject to the discretion of the Filer to not proceed with the Proposed Reorganization for one or more Existing Funds if considered in the best interests of the Existing Funds. It is currently anticipated that the Proposed Reorganization will occur before the end of 2019.

32. The reasons for the Proposed Reorganization are as follows:

    (a) The Proposed Reorganization follows a lengthy and extensive review by the Filer of the activities and current tax positions of the Existing Funds, upon which the Filer has determined that it would be in the best interests of the unitholders of the Existing Funds, currently structured as trusts, to merge into a single multi-class mutual fund corporation, which would permit the Continuing Funds to improve operational efficiency and aggregate all future gains and losses of the Continuing Funds be they on income or capital account.

    (b) The Existing Funds currently incur significant annual expenses to maintain their status as separate mutual fund trusts, each of which is treated as a flow-through entity for tax purposes, but each of which is also required to separately comply with the tax rules applicable thereto. The Filer has determined that significant operational efficiencies can be achieved by combining the Existing Funds into a single mutual fund corporation rather than incurring the foregoing duplicative annual expenses.

    (c) Upon completion of the Proposed Reorganization, the Continuing Funds are expected to be on a level playing field with the tax and operational efficiencies currently enjoyed by other mutual fund corporations.

    (d) Following completion of the Proposed Reorganization, the Continuing Funds are expected to preserve all of the benefits offered by the Existing Funds, which primarily use derivative arrangements in order to achieve their investment objectives, under their synthetic investment strategies.

33. No commission or other fee will be charged to unitholders of an Existing Fund on the issue or exchange of securities of the applicable Continuing Fund.

34. The steps for implementing the Proposed Reorganization are substantially as follows:

    (a) The declaration of trust governing each Existing Fund will be amended to, among other matters: (i) require that every unitholder of each Existing Fund transfer each of his or her units of such Existing Fund to a new mutual fund corporation (**Horizons MFC**), to be incorporated under the laws of a jurisdiction of Canada, in return for an equivalent number of shares of an equivalent series of the corresponding Continuing Fund, (ii) otherwise facilitate the Proposed Reorganization and the implementation of the steps and transactions involved as described in the Circular, and (iii) authorize the Filer, as manager and trustee of each Existing Fund, to execute all such instruments as may be necessary or desirable to give effect to the Proposed Reorganization.

    (b) Horizons MFC will be incorporated under the laws of a jurisdiction of Canada and is expected to qualify as a "mutual fund corporation" within the meaning of the Tax Act from inception.

    (c) Each Existing Fund will settle all or part of its outstanding swaps, forwards or other derivatives.

    (d) Each unitholder of an Existing Fund will transfer each of his or her units of that Existing Fund to Horizons MFC in exchange for an equivalent number of shares of an equivalent series of the corresponding Continuing Fund.

    (e) Subsequent to the transfer of all the units of a particular Existing Fund to Horizons MFC per paragraph (d) above, such Existing Fund will transfer to Horizons MFC (for the benefit of the applicable Continuing Fund), as a return of capital or otherwise, all or part of its assets, and Horizons MFC will assume the Existing Fund's remaining liabilities, if any.

    (f) Once an Existing Fund has transferred all of its assets to Horizons MFC, per paragraph (e) above, that Existing Fund will be wound up. Assets retained within

an Existing Fund following the Proposed Reorganization, if any, will be held for the exclusive benefit of the corresponding Continuing Fund and its shareholders.

35. The Filer, as manager of the Existing Funds, has determined that the Proposed Reorganization, including the steps necessary to effect the Proposed Reorganization, is in the best interests of the unitholders of the Existing Funds.

36. The Existing Funds are being reorganized with, or their assets are being transferred to, the Continuing Funds to which NI 81-102 shall apply, that are managed by the Filer, that will have substantially similar fundamental investment objectives, valuation procedures and fee structure as the Existing Funds, that will not be in default of any requirement of securities legislation and will become reporting issuers upon receipt of a final prospectus for the Continuing Funds prior to effecting the Proposed Reorganization.

37. The Proposed Reorganization is expected not to be subject to Canadian income tax for non-Section 85 Eligible Holders, and in the case of Section 85 Eligible Holders will be a tax-deferred transaction under section 85 of the Tax Act, provided that such unitholders make a joint election with Horizons MFC under section 85 of the Tax Act to have the exchange of their existing trust units for shares of a Continuing Fund take place at the unitholder's tax cost plus any reasonable costs of distribution. The Filer is establishing a process to provide assistance to unitholders in taking the necessary steps to file the joint election, which will be free of charge.

38. The portfolio assets of the Existing Funds to be acquired by the Continuing Funds may be acquired in compliance with NI 81-102 and are acceptable to the Filer, in its capacity as investment manager, of the Continuing Funds and are consistent with the investment objectives of the applicable Continuing Fund.

39. The Proposed Reorganization will only be implemented in respect of a particular Existing Fund if it is approved by unitholders at the special meeting of that Existing Fund.

40. The Circular that is or will be made available to unitholders of the Existing Funds provides sufficient information about the Proposed Reorganization to permit securityholders to make an informed decision about the Proposed Reorganization, including a full description of the Proposed Reorganization, the income tax considerations of the Proposed Reorganization, information about the investment objectives and investment strategies of the Existing Funds and the Continuing Funds, as well as a summary of the IRC's decision with respect to the Proposed Reorganization.

41. None of the costs and expenses associated with the Proposed Reorganization will be borne by the Existing Funds. All such costs will be borne by the Filer. There are no charges payable by unitholders of the Existing Funds who acquire securities of the corresponding Continuing Funds as a result of the Proposed Reorganization.

42. Unitholders of the Existing Funds will vote on the Proposed Reorganization after receiving detailed information about the Proposed Reorganization in the Meeting Materials and may redeem their units in accordance with the declaration of trust of the Existing Funds or sell their units on the Toronto Stock Exchange prior to the effective date of the Proposed Reorganization should they wish to do so.

43. The value per share of the corresponding class of shares of the Continuing Funds to be received by unitholders of the corresponding Existing Funds will have a value that is equal to the net asset value per unit of the corresponding Existing Funds calculated on the date of the Proposed Reorganization.

44. The Proposed Reorganization is not expected to have any material adverse impact on the business, operations or affairs of the Existing Funds or the unitholders of the Existing Funds.

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 Approval Sought is granted, provided that before implementing the Proposed Reorganization in respect of a particular Horizons ETF, the Filer obtains the prior approval of the securityholders of that Horizons ETF at a special meeting held for that purpose.

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

2.1.5 Harvest Health & Recreation Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from certain restricted security requirements under National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions, and National Instrument 51-102 Continuous Disclosure Obligations – Relief granted subject to conditions.

OSC Rule 56-501 Restricted Shares – Issuer granted relief from certain restricted share requirements under OSC Rule 56-501 – Relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 12.2(3), 12.2(4), 12.3, and 19.1.
Form 41-101F1 Information Required in a Prospectus, s. 1.13(1).
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
Form 44-101F1 Short Form Prospectus, s. 1.12(1).
National Instrument 51-102 Continuous Disclosure Obligations, ss. 10.1(1)(a), 10.1(2), 10.1(4), 10.1(6), and 13.1.
OSC Rule 56-501 Restricted Shares, ss. 2.3(1)(1.), 2.3(1)(3.), 2.3(2), 3.2 and 4.2.

February 7, 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
HARVEST HEALTH & RECREATION INC.
(the "Filer")**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of 1204599 B.C. Ltd. ("**Newco**") and 1204899 B.C. Ltd. ("**Parentco**") which will amalgamate to form the resulting issuer, assuming the name Harvest Health & Recreation Inc. (the "**Resulting Issuer**"), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that the requirements under:

(a) subsections 12.2(3) and 12.2(4) of National Instrument 41-101 - *General Prospectus Requirements* ("**NI 41-101**"), relating to the use of restricted security terms, and subsection 1.13(1) of Form 41-101F1 - *Information Required in a Prospectus* and subsection 1.12(1) of Form 44-101F1 - *Short Form Prospectus*, relating to restricted security disclosure, shall not apply to the multiple voting shares of the Resulting Issuer (the "**Resulting Issuer Multiple Voting Share**s") in connection with any prospectus that may be filed by the Resulting Issuer under NI 41-101, National Instrument 44-101 - Short Form Prospectus Distributions, National Instrument 44-102 - Shelf Distributions or National Instrument 44-103 - Post-Receipt Pricing (the "**Prospectus Disclosure Exemption**");

(b) section 12.3 of NI 41-101 relating to prospectus filing eligibility for distributions of restricted securities shall not apply to distributions by the Resulting Issuer of Resulting Issuer Multiple Voting Shares, Resulting Issuer Subordinate Voting Shares (as defined below), Resulting Issuer Super Voting Shares (as defined below), Replacement Options (as defined below), Replacement Compensation Options (as defined below), Replacement RSUs (as defined below), and any other securities of the Resulting Issuer, on a go-forward basis, that are directly or indirectly convertible into, or exercisable or exchangeable for, Resulting Issuer Subordinate Voting Shares or Resulting Issuer Multiple Voting Shares (the "**Prospectus Eligibility Exemption**");

(c) subsections 10.1(1)(a), 10.1(2), 10.1(4) and 10.1(6) of National Instrument 51-102 Continuous Disclosure Obligations relating to the use of restricted security terms and restricted security disclosure shall not apply to the Multiple Voting Shares in connection with continuous disclosure documents that may be prepared by the Resulting Issuer under NI 51-102 (the "**CD Disclosure Exemption**");

(d) subsections 2.3(1)(1.), 2.3(1)(3.) and 2.3(2) of Ontario Securities Commission Rule 56-501 - *Restricted Shares* ("**Rule 56-501**") relating to the use of restricted share terms and restricted share disclosure shall not apply to the Multiple Voting Shares in connection with dealer and adviser documentation, rights offering circulars and offering memoranda of the Resulting Issuer (the "**Rule 56-501 Disclosure Exemption**"); and

(e) subsection 3.2 of OSC Rule 56-501 relating to the withdrawal of prospectus exemptions for distributions of restricted shares shall not apply to distributions by the Resulting Issuer of Resulting Issuer Multiple Voting Shares, Resulting Issuer Subordinate Voting Shares (as defined below), Resulting Issuer Super Voting Shares (as defined below), Replacement Options (as defined below), Replacement Compensation Options (as defined below), Replacement RSUs (as defined below), and any other securities of the Resulting Issuer, on a go-forward basis, that are directly or indirectly convertible into, or exercisable or exchangeable for, Resulting Issuer Subordinate Voting Shares or Resulting Issuer Multiple Voting Shares (the "**Rule 56-501 Withdrawal Exemption**" and, together with the Prospectus Disclosure Exemption, the Prospectus Eligibility Exemption, the CD Disclosure Exemption and the OSC Rule 56-501 Disclosure Exemption, 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 provinces and territories of Canada (other than with respect to the Rule 56-501 Disclosure Exemption and the Rule 56-501 Withdrawal Exemption), which, pursuant to subsection 8.2(2) of National Policy 11-202 - *Process for Prospectus Reviews in Multiple Jurisdictions* and subsection 5.2(6) of National Policy 11-203 - *Process for Exemptive Relief Applications in Multiple Jurisdictions*, also satisfies the notice requirement of subsection 4.7(1)(c) of MI 11-102.

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. Harvest (formerly RockBridge Resources Inc.) is a corporation incorporated under the laws of British Columbia on November 20, 2007. Harvest is a reporting issuer in the provinces of Ontario, Alberta, British Columbia, and Saskatchewan. Harvest has three classes of shares issued and outstanding: subordinate voting shares (the "**Harvest Subordinate Voting Shares**"), multiple voting shares (the "**Harvest Multiple Voting Shares**"), and super voting shares (the "**Harvest Super Voting Shares**", and together with the Harvest Subordinate Voting Shares and the Harvest Multiple Voting Shares, the "**Harvest Shares**"). The Harvest Subordinate Voting Shares are listed for trading on the Canadian Securities Exchange ("**CSE**") under the symbol "HARV".

2. Newco is a corporation incorporated under the laws of the province of British Columbia on April 9, 2019.

3. Parentco is a corporation incorporated under the laws of the province of British Columbia on April 11, 2019.

4. Verano Holdings, LLC ("**Verano**") is a limited liability company formed under the laws of Delaware on September 12, 2017.

5. On April 22, 2019, the Filer, Verano and its subsidiaries, Newco and Parentco, entered into a business combination agreement (the "**Business Combination Agreement**") in connection with the proposed business combination transaction (the "**Transaction**") involving such parties pursuant to which, among other steps described herein, Parentco and Newco will amalgamate to form the Resulting Issuer, assuming the name "Harvest Health & Recreation Inc.". A summary of the Transaction and the business combination agreement dated April 22, 2019 (the "**Business Combination Agreement**") in respect of the Transaction can be found in the management information circular of the Filer dated May 24, 2019 (the "**Harvest Circular**") on the Filer's SEDAR profile at www.sedar.com.

6. It is a condition of closing the Transaction pursuant to the Business Combination Agreement that the subordinate voting shares of the Resulting Issuer ("**Resulting Issuer Subordinate Voting Shares**") be listed for trading on the CSE.

7. The Filer, Verano, Parentco and Newco entered into the Business Combination Agreement as of April 22, 2019 pursuant to which the businesses of the Filer and Verano will be combined through a plan of arrangement (the "**Plan of Arrangement**").

8. In advance of the effective time of the Plan of Arrangement (the "**Effective Time**"), Parentco, Verano and other related companies will conduct a pre-closing reorganization through a series of transactions (the "**Pre-Arrangement Transactions**") pursuant to which, among other things, Parentco will indirectly acquire the outstanding units of Verano, all as described further in the Harvest Circular.

9. Immediately prior to the Effective Time, the articles and notice of articles of Parentco will have been amended such that Parentco will have three classes of shares: subordinate voting shares ("**Parentco Subordinate Voting Shares**"), multiple voting shares ("**Parentco Multiple Voting Shares**") and super voting shares ("**Parentco Super Voting Shares**"), each of which will have the same terms and conditions as the proposed shares of the Resulting Issuer as described in more detail below.

10. Pursuant to the Plan of Arrangement, Parentco will amalgamate with Newco (the "**Amalgamation**") to form Harvest Health & Recreation Inc., the Resulting Issuer (prior to the Effective Time, the Filer shall change its name to "Harvest Health (Holdings), Inc." (or to such other name as is determined by the Filer and approved by the Registrar)).

11. The Resulting Issuer will have three classes of shares: Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares, and super voting shares (the "**Resulting Issuer Super Voting Shares**"), the terms of which are described below. Upon completion of the Transaction, the Resulting Issuer will have 3,475,197 Resulting Issuer Multiple Voting Shares issued and outstanding, 2,000,000 Resulting Issuer Super Voting Shares issued and outstanding and 63,358,934 Resulting Issuer Subordinate Voting Shares issued and outstanding (in each case, assuming no convertible securities are exercised or other securities issued from the date of this decision to the time of completion of the Transaction and that 1,295,506 Resulting Issuer Multiple Voting Shares and no Resulting Issuer Subordinate Voting Shares are issued pursuant to the Transaction).

12. Each of the Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares will be "equity shares" (per Rule 56-501) and "equity securities" (per NI 41-101 and NI 51-102).

13. The Resulting Issuer Subordinate Voting Shares may be "restricted securities" as defined in NI 41-101 and NI 51-102, and "restricted shares", as defined in Rule 56-501, as the Resulting Issuer Multiple Voting Shares and the Resulting Issuer Super Voting Shares will carry a greater number of votes per security relative to the Subordinate Voting Shares.

14. The Resulting Issuer Multiple Voting Shares may be "restricted securities" as defined in NI 41-101 and NI 51-102, and "restricted shares", as defined in Rule 56-501, as the Resulting Issuer Super Voting Shares will carry a greater number of votes per security relative to the Resulting Issuer Multiple Voting Shares.

15. Upon the Amalgamation, the Resulting Issuer will issue to each holder of shares of Parentco the same number and class of securities as held by such holder in Parentco immediately prior to the Effective Time of the Plan of Arrangement. No other securities of Parentco will be outstanding immediately prior to the Effective Time of the Plan of Arrangement.

16. Under the Plan of Arrangement, the holders of securities of the Filer will also exchange their securities for securities of the Resulting Issuer, substantially as follows:

    (a) each Harvest Subordinate Voting Share, Harvest Multiple Voting Share, and Harvest Super Voting Share outstanding immediately prior to the Effective Time, will be exchanged for Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares, and Resulting Issuer Super Voting Shares on a one for one basis, respectively (the "**Harvest Share Exchange**"), in accordance with the Plan of Arrangement;

    (b) each option issued by the Filer to purchase Harvest Subordinate Shares (each a "**Harvest Option**") outstanding immediately prior to the Effective Time will be exchanged for a substantially similar option of the Resulting Issuer (each, a "**Replacement Option**") in accordance with the Plan of Arrangement;

    (c) each compensation option issued by the Filer (each a "**Harvest Compensation Option**") outstanding immediately prior to the Effective Time, will be exchanged for a substantially similar compensation option of the Resulting Issuer (each, a "**Replacement Compensation Option**") in accordance with the Plan of Arrangement; and

(d) each RSU issued by the Filer (each a "**Harvest RSU**") outstanding immediately prior to the Effective Time will be exchanged for a substantially similar RSU of the Resulting Issuer (each a "**Replacement RSU**") in accordance with the Plan of Arrangement.

17. The Transaction will be effected by the Plan of Arrangement under the *Business Corporations Act* (British Columbia). The Transaction received final approval of the Supreme Court of British Columbia on July 2, 2019.

18. The Transaction has been approved by the holders of Harvest Subordinate Voting Shares, Harvest Multiple Voting Shares, and Harvest Super Voting Shares. A meeting of shareholders of the Filer took place on June 26, 2019 (the "**Harvest Meeting**"). The Harvest Circular was mailed to shareholders of the Filer on May 28, 2019.

19. The Harvest Circular contemplated that among other approvals, the following approvals would be sought at the Harvest Meeting (the "**Required Harvest Shareholder Approval**"): (A)(i) 66⅔% of the votes cast on the resolution to approve the Plan of Arrangement (the "**Harvest Arrangement Resolution")** by holders of Harvest Subordinate Voting Shares present in person or by proxy at the Harvest Meeting, and (ii) a majority of the votes cast by holder of Harvest Subordinate Voting Shares present in person or represented by proxy and entitled to vote at the Harvest Meeting, voting separately as a class, other than the votes attaching to Harvest Subordinate Voting Shares held directly or indirectly by "affiliates" or "control persons" of the Filer, as such terms are defined in Rule 56-501; (B)(i) 66⅔% of the votes cast on the Harvest Arrangement Resolution by holders of Harvest Multiple Voting Shares present in person or by proxy and entitled to vote at the Harvest Meeting, voting separately as a class, and (ii) a majority of the votes cast by holders of Harvest Multiple Voting Shares present in person or represented by proxy and entitled to vote at the Harvest Meeting, voting separately as class, other than the votes attaching to Harvest Multiple Voting Shares held directly or indirectly by "affiliates" or "control persons" of the Filer, as such terms are defined in Rule 56-501; (C)(i) 66⅔% of the votes cast on the Harvest Arrangement Resolution by holders of Harvest Super Voting Shares present in person or by proxy and entitled to vote at the Harvest Meeting, voting separately as a class, and (ii) a majority of the votes cast by holders of Harvest Super Voting Shares present in person or represented by proxy and entitled to vote at the Harvest Meeting, voting separately as class, other than the votes attaching to Harvest Super Voting Shares held directly or indirectly by "affiliates" or "control persons" of the Filer, as such terms are defined in Rule 56-501; (D) 66⅔% of the votes case on the Harvest Arrangement Resolution by holders of Harvest Super Voting Shares, Harvest Multiple Voting Shares and Harvest Subordinate Voting Shares present in person or represented by proxy and entitled to vote at the Harvest Meeting, voting together as a single class; and, (E) a majority of the votes cast by Harvest shareholders present in person or represented by proxy and entitled to vote at the Harvest Meeting other than the votes attaching to Harvest Shares held directly or indirectly by "affiliates" or "control persons" of the Filer, as such terms are defined in Rule 56-501.

20. The Required Harvest Shareholder Approval was obtained at the Harvest Meeting.

21. Multilateral Instrument 61-101 – *Protection of Minority Securityholders in Special Transactions* ("**MI 61-101**") does not, under the circumstances of the Arrangement, apply to require minority shareholder approval at the Harvest Meeting. No "related party" will, or may be entitled to, receive a "collateral benefit" within the meaning of MI 61-101. Additionally, no related party will acquire the business of Harvest, and there are no “connected transactions”. Accordingly, the Transaction is not a "business combination" within the meaning of MI 61-101.

22. The Harvest Circular complied with the disclosure requirements with respect to an information circular related to restricted shares set out in Section 3.2(1)(e) of Rule 56-501 and Section 12.3(2) of NI 41-101 (collectively, the "**Restricted Share Disclosure Requirements**").

23. Harvest Options, Harvest Compensation Options, and Harvest RSUs do not confer voting rights, and for purposes of the Harvest Arrangement Resolution remained non-voting.

24. As disclosed in the Harvest Circular, to the best of the knowledge of management of the Filer and the Filer's board of directors, there are no affiliates of the Filer that beneficially own any securities of the Filer. Jason Vedadi and Steven White, who hold approximately 35.4% and 32.6% of the votes attaching to all outstanding voting securities of the Filer, are considered "control persons" as defined and contemplated in Rule 56-501 and Part 12 of NI 41-101 (the "**Restricted Share Rules**") and, accordingly, the Harvest Shares held by each of Vedadi and White were not counted for the purpose of approval of the Harvest Arrangement Resolution for the purposes of the Restricted Share Rules.

25. In addition, the Transaction was approved by holders of shares of Parentco (the "**Parentco Shares**") along with those persons entitled to acquire shares of Parentco pursuant to the Pre-Arrangement Transactions (collectively, the "**Parentco Shareholders**"). The Parentco circular (the "**Parentco Circular**") was mailed to Parentco Shareholders on May 31, 2019. The Parentco meeting (the "**Parentco Meeting**") took place on June 26, 2019.

26. The Parentco Circular complied with the Restricted Share Disclosure Requirements.

27. For the Plan of Arrangement to be implemented, as disclosed in the Parentco Circular, the Parentco arrangement resolution (the "**Parentco Arrangement Resolution**") was required to be passed, with or without variation, at the Parentco Meeting by at least: (A) 66⅔% of the votes cast by Parentco Shareholders, present in person or represented by proxy at the Parentco meeting, voting together as a single class; and (B) a majority of the votes cast by Parentco Shareholders, excluding votes of "affiliates" of Parentco and "control persons" of Parentco, as contemplated by Rule 56-501 and NI 41-101 (the "**Required Parentco Shareholder Approval**").

28. As disclosed in the Parentco Circular, to the best of the knowledge of management of Parentco and Parentco's board of directors, there were no affiliates of Parentco that beneficially owned any securities of Parentco other than George Archos who was the sole shareholder of Parentco as of May 31, 2019. George Archos, who held 100% of the votes attaching to the Parentco Shares, was considered a "control person" as defined and contemplated in the Restricted Share Rules and, accordingly, the Parentco Shares held by George Archos was not counted for the purpose of approval of the Parentco Arrangement Resolution for the purposes of the Restricted Share Rules.

29. The Required Parentco Shareholder Approval was obtained at the Parentco Meeting.

30. The following is a summary of the terms attaching to the Resulting Issuer's shares (the "**Share Terms**").

    (a) *Resulting Issuer Subordinate Voting Shares*

    (i) Right to Vote: Holders of Resulting Issuer Subordinate Voting Shares will be entitled to notice of and to attend at any meeting of the shareholders of the Resulting Issuer, except a meeting of which only holders of another particular class or series of shares of Resulting Issuer will have the right to vote. At each such meeting, holders of Resulting Issuer Subordinate Voting Shares will be entitled to one vote in respect of each Resulting Issuer Subordinate Voting Share held.

    (ii) Class Rights: As long as any Resulting Issuer Subordinate Voting Shares remain outstanding, the Resulting Issuer will not, without the consent of the holders of the Resulting Issuer Subordinate Voting Shares by separate special resolution, prejudice or interfere with any rights attached to the Resulting Issuer Subordinate Voting Shares. Holders of Subordinate Voting Shares will not be entitled to a right of first refusal to subscribe for, purchase or receive any part of any issue of Resulting Issuer Subordinate Voting Shares, or bonds, debentures or other securities of the Resulting Issuer.

    (iii) Dividends: Holders of Resulting Issuer Subordinate Voting Shares will be entitled to receive as and when declared by the directors of the Resulting Issuer, dividends in cash or property of the Resulting Issuer. No dividend will be declared or paid on the Resulting Issuer Subordinate Voting Shares unless the Resulting Issuer simultaneously declares or pays, as applicable, equivalent dividends (on an as-converted to Resulting Issuer Subordinate Voting Share basis) on the Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares.

    (iv) Participation: In the event of the liquidation, dissolution or winding-up of the Resulting Issuer, whether voluntary or involuntary, or in the event of any other distribution of assets of the Resulting Issuer among its shareholders for the purpose of winding up its affairs, the holders of Resulting Issuer Subordinate Voting Shares will, subject to the prior rights of the holders of any shares of the Resulting Issuer ranking in priority to the Resulting Issuer Subordinate Voting Shares, be entitled to participate rateably along with all other holders of Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares (on an as-converted to Resulting Issuer Subordinate Voting Share basis) and Resulting Issuer Super Voting Shares (on an as-converted to Resulting Issuer Subordinate Voting Share basis).

    (v) Changes: No subdivision or consolidation of the Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares or Resulting Issuer Super Voting Shares shall occur unless, simultaneously, the Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares are subdivided or consolidated in the same manner, so as to maintain and preserve the relative rights of the holders of the shares of each of the said classes.

    (vi) Conversion: In the event that an offer is made to purchase Resulting Issuer Multiple Voting Shares and the offer is one which is required, pursuant to applicable securities legislation or the rules of a stock exchange on which the Resulting Issuer Multiple Voting Shares are then listed, to be made to all or substantially all the holders of Resulting Issuer Multiple Voting Shares in a given province or territory of Canada to which these requirements apply, each Resulting Issuer Subordinate Voting Share shall become convertible at the option of the holder into Resulting Issuer Multiple Voting Shares at the inverse of the Resulting Issuer MVS Conversion Ratio (as defined below) then in effect

at any time while the offer is in effect until one day after the time prescribed by applicable securities legislation for the offeror to take up and pay for such shares as are to be acquired pursuant to the offer. The conversion right may only be exercised in respect of Resulting Issuer Subordinate Voting Shares for the purpose of depositing the resulting Resulting Issuer Multiple Voting Shares pursuant to the offer, and for no other reason. In such event, the Resulting Issuer's transfer agent shall deposit the resulting Resulting Issuer Multiple Voting Shares on behalf of the holder. Should the Resulting Issuer Multiple Voting Shares issued upon conversion and tendered in response to the offer be withdrawn by shareholders or not taken up by the offeror, or should the offer be abandoned or withdrawn, the Resulting Issuer Multiple Voting Shares resulting from the conversion shall be automatically reconverted, without further intervention on the part of the Resulting Issuer or on the part of the holder, into Resulting Issuer Subordinate Voting Shares at the Resulting Issuer MVS Conversion Ratio then in effect.

(vii) Redemption Right: The Resulting Issuer will be entitled to redeem the Resulting Issuer Subordinate Voting Shares of an "Unsuitable Person" in certain circumstances. The purpose of the redemption right is to provide the Resulting Issuer with a means of protecting itself from having a Resulting Issuer Unsuitable Person with an ownership interest of, whether of record or beneficially (or having the power to exercise control or direction over), five percent (5%) or more of the issued and outstanding Resulting Issuer Shares (calculated on as-converted to Resulting Issuer Subordinate Voting Shares basis), who a governmental entity granting licenses to the Resulting Issuer (including to any subsidiary) has determined to be unsuitable to own shares, or whose ownership of Resulting Issuer Subordinate Voting Shares and/or Resulting Issuer Multiple Voting Shares may result in the loss, suspension or revocation (or similar action with respect to any licenses relating to the conduct of the Resulting Issuer's business relating to the cultivation, processing and dispensing of cannabis and cannabis-derived products in the United States or in the Resulting Issuer being unable to obtain any new licenses in the normal course, including, but not limited to, as a result of such person's failure to apply for a suitability review from or to otherwise fail to comply with the requirements of a governmental entity, as determined by the Resulting Issuer board in its sole discretion after consultation with legal counsel and, if a license application has been filed, after consultation with the applicable governmental entity.

(b) *Resulting Issuer Multiple Voting Shares*

(i) Right to Vote: Holders of Resulting Issuer Multiple Voting Shares will be entitled to notice of and to attend at any meeting of the shareholders of the Resulting Issuer, except a meeting of which only holders of another particular class or series of shares of the Resulting Issuer will have the right to vote. At each such meeting, holders of Resulting Issuer Multiple Voting Shares will be entitled to one vote in respect of each the Resulting Issuer Subordinate Voting Share into which such Multiple Voting Share could then be converted (initially 100 votes per Resulting Issuer Multiple Voting Share held).

(ii) Class Rights: As long as any Resulting Issuer Multiple Voting Shares remain outstanding, the Resulting Issuer will not, without the consent of the holders of the Resulting Issuer Multiple Voting Shares by separate special resolution, prejudice or interfere with any right attached to the Resulting Issuer Multiple Voting Shares. Additionally, consent of the holders of a majority of the outstanding Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares will be required for any action that authorizes or creates shares of any class having preferences superior to or on a parity with the Resulting Issuer Multiple Voting Shares. Holders of Resulting Issuer Multiple Voting Shares will not be entitled to a right of first refusal to subscribe for, purchase or receive any part of any issue of Resulting Issuer Multiple Voting Shares, or bonds, debentures or other securities of the Resulting Issuer. In the event of the liquidation, dissolution or winding-up of the Resulting Issuer, whether voluntary or involuntary, or in the event of any other distribution of assets of the Resulting Issuer among its shareholders for the purpose of winding up its affairs, the holders of Resulting Issuer Multiple Voting Shares will, subject to the prior rights of the holders of any shares of the Resulting Issuer ranking in priority to the Resulting Issuer Multiple Voting Shares, be entitled to participate rateably along with all other holders of Multiple Voting Shares (on a Resulting Issuer MVS Conversion Ratio basis), Resulting Issuer Subordinate Voting Shares and Resulting Issuer Super Voting Shares (on an as-converted to Subordinate Voting Share basis).

(iii) Dividends: The holders of Resulting Issuer Multiple Voting Shares are entitled to receive such dividends as may be declared and paid to holders of the Resulting Issuer Subordinate Voting Shares in any financial year as the Board of the Resulting Issuer may by resolution determine, on an as-converted to Resulting Issuer Subordinate Voting Shares basis. No dividend will be declared or paid on the Resulting Issuer Multiple Voting Shares unless the Resulting Issuer simultaneously declares

or pays, as applicable, equivalent dividends (on an as-converted to Resulting Issuer Subordinate Voting Shares basis) on the Resulting Issuer Subordinate Voting Shares and Resulting Issuer Super Voting Shares.

(iv) Participation: In the event of the liquidation, dissolution or winding-up of the Resulting Issuer, whether voluntary or involuntary, or in the event of any other distribution of assets of the Resulting Issuer among its shareholders for the purpose of winding up its affairs, the holders of Resulting Issuer Multiple Voting Shares will, subject to the prior rights of the holders of any shares of the Resulting Issuer ranking in priority to the Resulting Issuer Multiple Voting Shares, be entitled to participate rateably along with all other holders of Resulting Issuer Multiple Voting Shares (on an as-converted to Resulting Issuer Subordinate Voting Share basis), Resulting Issuer Subordinate Voting Shares and Resulting Issuer Super Voting Shares (on an as-converted to Resulting Issuer Subordinate Voting Share basis).

(v) Changes: No subdivision or consolidation of the Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares or Resulting Issuer Super Voting Shares shall occur unless, simultaneously, the Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares are subdivided or consolidated in the same manner, so as to maintain and preserve the relative rights of the holders of the shares of each of the said classes.

(vi) Conversion: The Resulting Issuer Multiple Voting Shares each have a restricted right to convert into one hundred (100) Resulting Issuer Subordinate Voting Shares (the "**Resulting Issuer MVS Conversion Ratio**"), subject to adjustments for certain customary corporate changes. The ability to convert the Resulting Issuer Multiple Voting Shares is subject to a restriction that the aggregate number of Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares held of record, directly or indirectly, by residents of the United States (as determined in accordance with Rules 3b-4 and 12g3-2(a) under the United States *Securities Act of 1933* (the "**U.S. Securities Act**")) may not exceed forty percent (40%) of the aggregate number of Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares issued and outstanding after giving effect to such conversions and to a restriction on beneficial ownership of Resulting Issuer Subordinate Voting Shares exceeding certain levels. In addition, the Resulting Issuer Multiple Voting Shares will be automatically converted into Resulting Issuer Subordinate Voting Shares in certain circumstances, including upon the registration of the Resulting Issuer Subordinate Voting Shares under the U.S. Securities Act. In the event that an offer is made to purchase Resulting Issuer Subordinate Voting Shares and the offer is one which is required, pursuant to applicable securities legislation or the rules of a stock exchange on which the Resulting Issuer Subordinate Voting Shares are then listed, to be made to all or substantially all the holders of Subordinate Voting Shares in a given province or territory of Canada to which these requirements apply, each Resulting Issuer Multiple Voting Share shall become convertible at the option of the holder into Resulting Issuer Subordinate Voting Shares at the Resulting Issuer MVS Conversion Ratio at any time while the offer is in effect until one day after the time prescribed by applicable securities legislation for the offeror to take up and pay for such shares as are to be acquired pursuant to the offer. The conversion right may be exercised in respect of Resulting Issuer Multiple Voting Shares for the purpose of depositing the resulting Resulting Issuer Subordinate Voting Shares pursuant to the offer. Should the Resulting Issuer Subordinate Voting Shares issued upon conversion and tendered in response to the offer be withdrawn by shareholders or not taken up by the offeror, or should the offer be abandoned or withdrawn, the Resulting Issuer Subordinate Voting Shares resulting from the conversion shall be automatically reconverted, without further intervention on the part of the Resulting Issuer or on the part of the holder, into Resulting Issuer Multiple Voting Shares at the inverse of the Resulting Issuer MVS Conversion Ratio then in effect.

(vii) Resulting Issuer Redemption Right: The Resulting Issuer will be entitled to redeem the Resulting Issuer Multiple Voting Shares of an "Unsuitable Person" in certain circumstances. The purpose of the redemption right is to provide the Resulting Issuer with a means of protecting itself from having a Resulting Issuer Unsuitable Person with an ownership interest of, whether of record or beneficially (or having the power to exercise control or direction over), five percent (5%) or more of the issued and outstanding Resulting Issuer Shares (calculated on as-converted to Resulting Issuer Subordinate Voting Shares basis), who a governmental entity granting licenses to the Resulting Issuer (including to any subsidiary) has determined to be unsuitable to own shares, or whose ownership of Resulting Issuer Subordinate Voting Shares and/or Resulting Issuer Multiple Voting Shares may result in the loss, suspension or revocation (or similar action with respect to any licenses relating to the conduct of the Resulting Issuer's business relating to the cultivation, processing and dispensing of cannabis and

cannabis-derived products in the United States or in the Resulting Issuer being unable to obtain any new licenses in the normal course, including, but not limited to, as a result of such person's failure to apply for a suitability review from or to otherwise fail to comply with the requirements of a governmental entity, as determined by the Resulting Issuer board in its sole discretion after consultation with legal counsel and, if a license application has been filed, after consultation with the applicable governmental entity.

(c) *Resulting Issuer Super Voting Shares*

(i) Issuance: The Resulting Issuer Super Voting Shares are only issuable in connection with the closing of the Business Combination.

(ii) Right to Vote: Holders of Resulting Issuer Super Voting Shares will be entitled to notice of and to attend at any meeting of the shareholders of the Resulting Issuer, except a meeting of which only holders of another particular class or series of shares of the Resulting Issuer will have the right to vote. At each such meeting, holders of Resulting Issuer Super Voting Shares will be entitled to two hundred (200) votes in respect of each Resulting Issuer Subordinate Voting Share into which such the Resulting Issuer Super Voting Share could ultimately then be converted (initially one (1) Resulting Issuer Subordinate Voting Share per Resulting Issuer Super Voting Share held).

(iii) Class Rights: As long as any Resulting Issuer Super Voting Shares remain outstanding, the Resulting Issuer will not, without the consent of the holders of the Resulting Issuer Super Voting Shares by separate special resolution, prejudice or interfere with any right or special right attached to the Resulting Issuer Super Voting Shares. Additionally, consent of the holders of a majority of the outstanding Resulting Issuer Super Voting Shares will be required for any action that authorizes or creates shares of any class having preferences superior to or on a parity with the Resulting Issuer Super Voting Shares. In connection with the exercise of the voting rights in respect of any such approvals, each holder of Resulting Issuer Super Voting Shares will have one vote in respect of each Resulting Issuer Super Voting Share held. The holders of Resulting Issuer Super Voting Shares will not be entitled to a right of first refusal to subscribe for, purchase or receive any part of any issue of Resulting Issuer Super Voting Shares, or bonds, debentures or other securities of the Resulting Issuer.

(iv) Dividends: The holders of Resulting Issuer Super Voting Shares are entitled to receive such dividends as may be declared and paid to holders of Resulting Issuer Subordinate Voting Shares in any financial year as the Board of the Resulting Issuer may by resolution determine, on an as-converted to Resulting Issuer Subordinate Voting Shares basis. No dividend will be declared or paid on the Resulting Issuer Super Voting Shares unless the Resulting Issuer simultaneously declares or pays, as applicable, equivalent dividends (on an as-converted to Resulting Issuer Subordinate Voting Shares basis) on the Resulting Issuer Multiple Voting Shares and Resulting Issuer Subordinate Voting Shares.

(v) Participation: In the event of the liquidation, dissolution or winding-up of the Resulting Issuer, whether voluntary or involuntary, or in the event of any other distribution of assets of the Resulting Issuer among its shareholders for the purpose of winding up its affairs, the holders of Resulting Issuer Super Voting Shares will, subject to the prior rights of the holders of any shares of the Resulting Issuer ranking in priority to the Resulting Issuer Super Voting Shares, be entitled to participate rateably along with all other holders of Resulting Issuer Super Voting Shares (on an as-converted to Resulting Issuer Subordinate Voting Shares basis), Resulting Issuer Subordinate Voting Shares and Multiple Voting Shares (on an as-converted to Resulting Issuer Subordinate Voting Shares basis).

(vi) Changes: No subdivision or consolidation of the Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares or Resulting Issuer Super Voting Shares shall occur unless, simultaneously, the Resulting Issuer Subordinate Voting Shares, Resulting Issuer Multiple Voting Shares and Resulting Issuer Super Voting Shares are subdivided or consolidated in the same manner, so as to maintain and preserve the relative rights of the holders of the shares of each of the said classes.

(vii) Conversion: Each Resulting Issuer Super Voting Share will be convertible at the option of the holder into one Resulting Issuer Subordinate Voting Share, subject to customary adjustments for certain corporate changes.

(viii) Automatic Conversion by Resulting Issuer: Some or all of the Resulting Issuer Super Voting Shares will automatically be converted into an equal number of Resulting Issuer Subordinate Voting Shares (subject to customary adjustments for certain corporate changes) in the following circumstances:

(A) upon the transfer by the holder thereof to anyone other than (i) an immediate family member of the Resulting Issuer Initial Holders or a transfer for purposes of estate or tax planning to a company or person that is wholly beneficially owned by Jason Vedadi or Steve White (each, a "**Resulting Issuer Initial Holder**") or immediate family members of a Resulting Issuer Initial Holder or which a Resulting Issuer Initial Holder or immediate family members of a Resulting Issuer Initial Holder are the sole beneficiaries thereof; or (ii) a party approved by the Resulting Issuer, in which case the Resulting Issuer Super Voting Shares that are the subject to such a transfer shall automatically be converted into Resulting Issuer Subordinate Voting Shares; or

(B) if at any time the aggregate number of issued and outstanding Resulting Issuer Super Voting Shares beneficially owned, directly or indirectly, at such time by a Resulting Issuer Initial Holder and the Resulting Issuer Initial Holder's permitted transferees and permitted successors, divided by the number of Resulting Issuer Super Voting Shares beneficially owned, directly or indirectly, by the Resulting Issuer at the date of completion of the Business Combination, is less than 50%, in which case all of the Resulting Issuer Super Voting Shares held by such Resulting Issuer Initial Holder will automatically be converted into Resulting Issuer Subordinate Voting Shares. Each Resulting Issuer Initial Holders will, from time to time upon the request of the Resulting Issuer, provide to the Resulting Issuer evidence as to such Resulting Issuer Initial Holder's direct and indirect beneficial ownership (and that of its permitted transferees and permitted successors) of Resulting Issuer Super Voting Shares to enable the Resulting Issuer to determine if the right to convert Resulting Issuer Super Voting Shares has occurred. For purposes of these calculations, a holder of Resulting Issuer Super Voting Shares will be deemed to beneficially own Resulting Issuer Super Voting Shares held by an intermediate company or fund in proportion to their equity ownership of such company or fund, unless such company or fund holds such shares for the benefit of such holder, in which case they will be deemed to own 100% of such shares held for their benefit.

(C) The Resulting Issuer is not required to convert Resulting Issuer Super Voting Shares on a pro-rata basis among the holders of Resulting Issuer Super Voting Shares.

(d) On completion of the Transaction, the Resulting Issuer Initial Holders, as the owners of all the outstanding Resulting Issuer Super Voting Shares, will enter into a customary coattail agreement with the Resulting Issuer and a trustee for the benefit of the holders of the Resulting Issuer Subordinate Voting Shares and the Resulting Issuer Multiple Voting Shares (the "**Coattail Agreement**"). The Coattail Agreement will restrict the sale of Resulting Issuer Super Voting Shares if such sale would constitute an offer to purchase Resulting Issuer Super Voting Shares that is required to be made to all or substantially all of the holders of Resulting Issuer Super Voting Shares, unless such offer is extended by the offeror that: (i) offers a price per Resulting Issuer Subordinate Voting Share or Resulting Issuer Multiple Voting Share (on an as converted to Resulting Issuer Subordinate Voting Share basis) at least as high as the highest price per share paid pursuant to the take-over bid for the Resulting Issuer Super Voting Shares (on an as converted to Resulting Issuer Subordinate Voting Share basis); (ii) provides that the percentage of outstanding Resulting Issuer Subordinate Voting Shares or Resulting Issuer Multiple Voting Shares to be taken up (exclusive of shares owned immediately prior to the offer by the offeror or persons acting jointly or in concert with the offeror) is at least as high as the percentage of Resulting Issuer Super Voting Shares to be sold (exclusive of Resulting Issuer Super Voting Shares owned immediately prior to the offer by the offeror and persons acting jointly or in concert with the offeror); (iii) has no condition attached other than the right not to take up and pay for Resulting Issuer Subordinate Voting Shares or Resulting Issuer Multiple Voting Shares tendered if no shares are purchased pursuant to the offer for Resulting Issuer Super Voting Shares; and (iv) is in all other material respects identical to the offer for Resulting Issuer Super Voting Shares.

Decision

The Ontario Securities Commission (the "**Decision Maker**") is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Requested Relief is granted provided that:

(a) in respect of the Prospectus Disclosure Exemption, the CD Disclosure Exemption and the Rule 56-501 Disclosure Exemption: (i) the Resulting Issuer Multiple Voting Shares continue to be "restricted securities" as such term is defined in NI 41-101 and NI 51-102, and "restricted shares" as such term is defined in Rule 56-501; and (ii) the Resulting Issuer Multiple Voting Shares are referred to as "subordinate multiple voting shares"

(except as may be permitted pursuant to subsection 12.2(3) of NI 41-101, subsection 10.1(6) of NI 51-102 or subsection 2.3(2) of Rule 56-501);

(b) in respect of the Prospectus Eligibility Exemption, a subsequent restricted security reorganization, if any, carried out by the Resulting Issuer related to the Resulting Issuer Subordinate Voting Shares or the Resulting Issuer Multiple Voting Shares, other than a restricted security reorganization that results only in the creation of a security that is not itself a subject security or a restricted security but that is, directly or indirectly, convertible into or exercisable or exchangeable for Resulting Issuer Subordinate Voting Shares or Resulting Issuer Multiple Voting Shares, complies with the requirements of section 12.3 of NI 41-101; and

(c) in respect of Rule 56-501 Withdrawal Exemption, a subsequent restricted share reorganization, if any, carried out by the Resulting Issuer related to the Resulting Issuer Subordinate Voting Shares or the Resulting Issuer Multiple Voting Shares, other than a restricted security reorganization that results only in the creation of a security that is not itself a subject security or a restricted security but that is, directly or indirectly, convertible into or exercisable or exchangeable for Resulting Issuer Subordinate Voting Shares or Resulting Issuer Multiple Voting Shares, complies with the requirements of section 3.2 of Rule 56-501.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.1.6 Lightspeed POS Inc.

Multilateral Instrument 11-102 Passport System and National Instrument 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – BAR – Exemption from the requirement to file a BAR under Part 8 of National Instrument 51-102 Continuous Disclosure Obligations – The acquisition is non-significant applying the asset and profit or loss tests; applying the investment test produces an anomalous result because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and all other business, commercial and financial factors; the Filer has provided additional measures that demonstrate the non-significance of the acquisition to the Filer and that are generally consistent with the results when applying the asset and profit or loss tests.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.2(1) and 8.3, and Part 13.

TRANSLATION

February 19, 2020

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

AND

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

AND

IN THE MATTER OF
LIGHTSPEED POS INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting relief pursuant to Part 13 of *Regulation 51-102 respecting Continuous Disclosure Obligations,* CQLR, c. V-1.1, r. 24 (**Regulation 51-102**) from the requirement in Part 8 of Regulation 51-102 to file a business acquisition report (**BAR**) in connection with the Filer's acquisition of Gastrofix GmbH (the **Acquired Business**) on January 7, 2020 (the **Exemption Sought**).

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

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

b) the Filer has provided notice that Subsection 4.7(1) of *Regulation 11-102 respecting Passport System*, CQLR, c. V-1.1, r. 1 (**Regulation 11-102**) is intended to be relied upon in all jurisdictions of Canada other than Ontario; and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions,* CQLR, c. V-1.1, r. 3, Regulation 11-102 and Regulation 51-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The head office of the Filer is located in the province of Québec.

2. The Filer is a reporting issuer in all jurisdictions of Canada and the Filer is not in default of securities legislation in any of those jurisdictions.

3. The Filer's subordinate voting shares are listed for trading on the Toronto Stock Exchange under the ticker symbol “LSPD”. The Filer also has outstanding multiple voting shares, the entirety of which are held by DHIDasilva Holdings Inc., an entity controlled by the Filer's Chief Executive Officer.

4. On January 7, 2020, the Corporation announced that it had completed the acquisition of the Acquired Business (the *Acquisition*) for an aggregate purchase price of $100.6 million, consisting of a cash payment of approximately US$56 million (which amount is net of a US$4.423 million liability assumed through the acquisition) and the issuance of 1,437,930 subordinate voting shares valued at US$30.99 per share (based on the spot price of such shares at the time of closing), all subject to customary post-closing purchase price adjustments. When including the value of all contingent consideration which could become payable to the sellers of the Acquired Business in the event that the Acquired Business over-achieves on certain performance objectives through January 2022 (payable in a combination of cash payments and additional issuances of subordinate voting shares), the aggregate value of the purchase price for Acquisition could reach up to approximately US$123 million.

5. Under Part 8 of Regulation 51-102, the Filer is required to file a BAR for any “significant acquisition” that it completes and such BAR must contain certain financial statements of the acquired business.

6. The Acquisition is not a “significant acquisition” under the “Asset Test” as the consolidated assets of the Acquired Business as of December 31, 2019 represented approximately 1.99% of the consolidated assets of the Filer as of March 31, 2019.

7. The Acquisition is not a “significant acquisition” under the “Profit or Loss Test” as the “specified profit or loss” of the Acquired Business as of December 31, 2019 represented approximately 1.58% of the “specified profit or loss” of the Filer as of March 31, 2019.

8. The Acquisition is a “significant acquisition” under the “Investment Test”, as the total consideration proposed to be paid for the Acquired Business represents approximately 48.10% of the consolidated assets of the Filer as of March 31, 2019. As such, as a “significant acquisition”, the Acquisition would require the filing of a BAR under the “Investment Test” of Subsection 8.3(2)(b) of Regulation 51-102.

9. The Acquisition would also represent a “significant acquisition” under the optional “Investment Test” or the alternative applications available under subsections 8.3(3) and 8.3(4) of Regulation 51-102.

10. For the purposes of completing its quantitative analysis of the “Asset Test”, “Investment Test” and “Profit or Loss Test”, the Filer utilized the Acquired Business' financial statements and the Filer's financial statements. The Filer's financial statements were prepared in accordance with International Financial Reporting Standards (IFRS), while the Acquired Business' financial statements were prepared in accordance with German GAAP and subsequently converted to IFRS following the Acquisition.

11. The Filer does not believe (nor did it believe at the time it entered into an agreement with respect to the Acquisition) that the Acquisition is significant to it from a commercial, business, practical or financial perspective.

12. The Filer has provided the principal regulator with additional financial and operational measures, all of which are generally important metrics for the Filer and the industry in which it operates, which further demonstrate the insignificance of the Acquisition to the Filer. These additional financial and operational measures include, notably, revenues and the results of such measures is consistent with the results of the “Asset Test” and the “Profit or Loss Test”.

13. The application of the “Investment Test” to the Acquisition produces an anomalous result because the significance of the Acquisition is exaggerated and out of proportion to its significance to the Filer on an objective basis in comparison to the results of the “Asset Test” and the “Profit or Loss Test”.

14. The Filer is of the view that the “Asset Test”, the “Profit or Loss Test” and these additional financial and operational measures supplied by the Filer more accurately reflect the significance of the Acquisition to the Filer from a commercial, business, practical and financial perspective.

Decision

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

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

“Lucie J. Roy”
Senior Director, Corporate Finance
Autorité des marchés financiers

2.1.7 Manulife Investment Management Limited

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ Awards and Lipper Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), and 19.1.

February 24, 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
MANULIFE INVESTMENT MANAGEMENT LIMITED
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of existing and future mutual funds of which the Filer or an affiliate of the Filer is, or in the future will be, the investment fund manager and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption under section 19.1 of NI 81-102 from the requirements set out in paragraphs 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

1. the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and

2. the rating or ranking is to the same calendar month end that is:

   (a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included; and

   (b) not more than three months before the date of first publication of any other sales communication in which it is included;

(together, the **Exemption Sought**), to permit the FundGrade A+ Awards and FundGrade Ratings to be referenced in sales communications relating to the Funds.

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 **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-102 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:

The Filer and the Funds

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

2. The Filer is registered in the following categories: (i) portfolio manager in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon; (ii) investment fund manager in Newfoundland and Labrador, Ontario and Québec; (iii) commodity trading manager in Ontario; and (iv) derivatives portfolio manager in Québec.

3. The Filer, or an affiliate of the Filer, is, or will be, the manager of each of the Funds.

4. Each Fund is, or will be, established under the laws of Ontario or Canada as an investment fund that is a mutual fund trust, a class of shares of a mutual fund corporation or a limited partnership.

5. The securities of each Fund are, or will be, qualified for distribution in one or more of the Jurisdictions under, as applicable, a prospectus, simplified prospectus, as the same may be amended or renewed from time to time. Each of the Funds is, or will be, a reporting issuer in each of the Jurisdictions.

6. Each of the Funds is, or will be, subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

7. Neither the Filer, nor any of the existing Funds, is in default of securities legislation in any of the Jurisdictions.

FundGrade Ratings and FundGrade A+ Awards

8. The Filer wishes to include in sales communications of the Funds references to the FundGrade Ratings and references to the FundGrade A+ Awards where such Funds have been awarded a FundGrade A+ Award.

9. Fundata Canada Inc. (**Fundata**) is a "mutual fund rating entity" as that term is defined in NI 81-102, and is not a member of the organization of the Funds. Fundata is a leading supplier of mutual fund information, analytical tools, and commentary. Fundata's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

10. One of Fundata's programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

11. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk adjusted performance, measured by three well-known and widely-used metrics: the Sharpe Ratio, the Information Ratio, and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.

12. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a fund must show consistently high scores for all ratios across all time periods.

13. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.

14. At the end of each calendar year, Fundata calculates a fund grade point average or "GPA" for each fund based on the full year's performance. The fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each fund is divided by 12 to arrive at the fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

15. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

Sales Communication Disclosure

16. The FundGrade Ratings fall within the definition of "performance data" under NI 81-102 as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund", given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be "overall ratings or rankings" given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

17. Paragraph 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or

"match", each period for which standard performance data is required to be given for a fund, except for the period since the inception of the fund (*i.e.* for one, three, five and ten year periods, as applicable).

18. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for the Funds to use FundGrade Ratings in sales communications.

19. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for Funds to reference the FundGrade A+ Awards and the FundGrade Ratings in sales communications.

20. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award or the FundGrade Ratings to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

21. Because the evaluation of funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.

22. The Exemption Sought is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

23. The Filer submits that the FundGrade A+ Awards and FundGrade Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. These awards and ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of FundGrade in fund analysis that alleviates any concern that references to them may be misleading and, therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the FundGrade A+ Awards and FundGrade Ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the FundGrade A+ Awards and FundGrade Ratings complies with Part 15 of NI 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:

   (a) the name of the category for which the Fund has received the award or rating;

   (b) the number of mutual funds in the category for the applicable period;

   (c) the name of the ranking entity, *i.e.*, Fundata;

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Award or FundGrade Rating is based;

   (e) a statement that FundGrade Ratings are subject to change every month;

   (f) in the case of a FundGrade A+ Award, a brief overview of the FundGrade A+ Award;

   (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award), a brief overview of the FundGrade Rating;

(h) disclosure of the meaning of the FundGrade Ratings from A to E (*e.g.*, rating of A indicates a fund is in the top 10% of its category); and

(i) reference to Fundata's website for greater detail on the FundGrade A+ Awards and the FundGrade Ratings, which includes the rating methodology prepared by Fundata;

2. the FundGrade A+ Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the FundGrade A+ Awards and FundGrade Ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by CIFSC (or a successor to CIFSC).

"Neeti Varma"
Manager,
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.8 American Hotel Income Properties REIT LP

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief applications in Multiple Jurisdictions – Exemption from the requirement to file a business acquisition report under Part 8 of National Instrument 51-102 Continuous Disclosure Obligations – The acquisition is non-significant applying the asset and investment tests but applying the profit or loss test produces an anomalous result because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and all other business, commercial and financial factor – The filer provided additional measures that demonstrate the non-significance of the acquisition to the filer and that are generally consistent with the results when applying the asset and investment tests.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, Part 8 and s. 13.1.

February 14, 2020

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(THE JURISDICTIONS)**

AND

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

AND

**IN THE MATTER OF
AMERICAN HOTEL INCOME PROPERTIES REIT LP
(THE FILER)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting relief from the requirement in Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to file a business acquisition report (BAR) in connection with the Filer's acquisition of a portfolio of 12 hotels, with six hotels located in Texas, two hotels in Minnesota, two hotels in Pennsylvania, one hotel in Michigan and one hotel in North Dakota (the Texas/Central Portfolio) on December 3, 2019 (the Exemption Sought).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 51-102 have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

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

The Filer

1. the Filer is a limited partnership established under the laws of the Province of Ontario pursuant to a declaration of limited partnership and its head office is located in Vancouver, British Columbia;

2. the Filer is a reporting issuer under the securities legislation of each of the provinces and territories of Canada;

3. the limited partnership units of the Filer are listed and posted for trading on the Toronto Stock Exchange under the trading symbol “HOT.UN” and “HOT.U”;

4. the 5.0% unsecured convertible debentures of the Filer are listed and posted for trading on the Toronto Stock Exchange under the trading symbol HOT.DB.U;

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

6. the Filer is in the business of indirectly acquiring hotel properties across the U.S.;

7. following its February 20, 2013 initial public offering, the Filer embarked on a strategy to acquire and build a portfolio of premium branded, select-service hotels in secondary U.S. markets that benefit from diverse and stable demand;

8. the filer’s current portfolio consists of 79 premium branded hotels (including the Texas/Central Portfolio);

The Acquisition

9. on December 3, 2019, the Filer acquired the Texas/Central Portfolio for a total gross purchase price of approximately US$191.0 million, before customary closing and post-closing acquisition adjustments;

10. the acquisition of the Texas/Central Portfolio constitutes a “significant acquisition” of the Filer for the purposes of Part 8 of NI 51-102, requiring the Filer to file a BAR within 75 days of the acquisition pursuant to section 8.2(1) of NI 51-102;

Significance Tests for the BAR

11. under Part 8 of NI 51-102, the Filer is required to file a BAR for any completed acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in section 8.3(2) of NI 51-102;

12. the acquisition of the Texas/Central Portfolio is not a significant acquisition under the asset test in section 8.3(2)(a) of NI 51-102 as the value of the Texas/Central Portfolio represented only approximately 15.1% of the consolidated assets of the Filer as of December 31, 2018;

13. the acquisition of the Texas/Central Portfolio is not a significant acquisition under the investment test in section 8.3(2)(b) of NI 51-102 as the Filer’s acquisition costs represented only approximately 15.1% of the consolidated assets of the Filer as of December 31, 2018;

14. the acquisition of the Texas/Central Portfolio would, however, be a significant acquisition under the profit or loss test in section 8.3(2)(c) of NI 51-102; in particular, the Filer’s proportionate share of the consolidated specified profit or loss of the Texas/Central Portfolio exceeds 20% of the consolidated specified profit or loss of the Filer calculated using audited annual financial statements of the Filer and unaudited annual financial information for the Texas/Central Portfolio, in each case, for the year ended December 31, 2018;

15. the application of the profit or loss test produces an anomalous result for the Filer because it exaggerates the significance of the acquisition out of proportion to its significance on an objective basis in comparison to the results of the asset test and investment test;

De Minimis Acquisition

16. the Filer does not believe (nor did it at the time that it made the acquisition) that the acquisition of the Texas/Central Portfolio is significant to it from

a commercial, business, practical or financial perspective; and

17. the Filer has provided the principal regulator with additional operational measures that demonstrate the non-significance of the acquisition of the Texas/Central Portfolio to the Filer – these additional operational measures compared other operational information, being net operating income, revenue and number of guestrooms for the Texas/Central Portfolio, to that of the Filer, and the results of those measures are generally consistent with the results of the asset test and the investment test.

Decision

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

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

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

2.2 Orders

2.2.1 RBC Global Asset Management Inc. and RBC Global Asset Management (UK) Limited – ss. 78(1), 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) (the CFA) – Relief from the adviser registration requirement of paragraph 22(1)(b) of the CFA granted to a sub-adviser headquartered in a foreign jurisdiction in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 8.26.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations made under the Securities Act (Ontario) – Relief is subject to a sunset clause.

Subsection 78(1) of the Commodity Futures Act (Ontario) – Order also revokes prior order of the Commission dated February 13, 2015, In the Matter of RBC Global Asset Management Inc. and RBC Global Asset Management (UK) Limited that would otherwise have expired on February 13, 2020.

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 1(1), 22(1)(b), 78(1) and 80.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 25(3).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.26.1.
Ontario Securities Commission Rule 35-502 Non-Resident Advisers, s. 7.11.

Applicable Orders

In the Matter of RBC Global Asset Management Inc. and RBC Global Asset Management (UK) Limited, (2015), 38 OSCB 1880

February 10, 2020

**IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the CFA)**

AND

**IN THE MATTER OF
RBC GLOBAL ASSET MANAGEMENT INC.**

AND

RBC GLOBAL ASSET MANAGEMENT (UK) LIMITED

**ORDER
(Subsection 78(1) and Section 80 of the CFA)**

UPON the application (the **Application**) of RBC Global Asset Management Inc. (the **Principal Adviser**) and RBC Global Asset Management (UK) Limited (the **Sub-Adviser**) to the Ontario Securities Commission (the **Commission**) for an order (the **Order**) (a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Principal Adviser and the Sub-Adviser on February 13, 2015 (the **Previous Order**) and (b) pursuant to section 80 of the CFA that the Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services (as defined below) (the **Representatives**) be exempt for a specified period of time, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as a sub-adviser for the Principal Adviser in respect of the Clients (as defined below) regarding commodity futures contracts and commodity futures options (collectively, the **Contracts**) traded on commodity futures exchanges and cleared through clearing corporations (the **Relief Sought**);

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Sub-Adviser and the Principal Adviser having represented to the Commission that:

1. The Principal Adviser is a corporation organized under the federal laws of Canada, with its head office in Toronto, Ontario.

2. The Principal Adviser is registered (i) as an adviser in the category of portfolio manager and exempt market dealer under the securities legislation in all provinces and territories of Canada; (ii) as an investment fund manager under the

Securities Act (Ontario) and the securities legislation of Quebec, British Columbia and Newfoundland and Labrador; and (iii) as an adviser in the category of commodity trading manager under the CFA.

3. The Sub-Adviser is a corporation incorporated under the laws of England and Wales with its head office located in London, United Kingdom.

4. The Sub-Adviser is authorised and regulated in the United Kingdom by the Financial Conduct Authority, and in the United States by the U.S. Securities and Exchange Commission, where it is registered as an investment adviser. In the United Kingdom, the Sub-Advisor is authorized and permitted to conduct the Sub-Advisory Services (as defined below), including the following activities: (i) advising on investments (except on pensions transfers and pension opt outs); (ii) agreeing to carry on a regulated activity; (iii) arranging deals in investments; (iv) dealing in investments as an agent; (v) making arrangements with a view to transactions in investments; and (vi) managing investments.

5. The Sub-Adviser and the Principal Adviser are affiliates, and are indirect subsidiaries of Royal Bank of Canada.

6. The Sub-Adviser is registered or licensed or is entitled to rely on appropriate exemptions from such registrations or licenses to provide advice to the Principal Adviser pursuant to the applicable legislation of its principal jurisdiction.

7. The Sub-Adviser is not resident in any province or territory of Canada.

8. The Sub-Adviser engages in the business of an adviser in respect of Contracts in the United Kingdom.

9. The Sub-Adviser is not registered in any capacity under the CFA or the OSA.

10. The Principal Adviser and the Sub-Adviser are not in default of securities legislation, commodity futures legislation or derivatives legislation in any jurisdiction of Canada. The Sub-Adviser is in compliance in all material respects with the securities laws, commodity futures laws and derivatives laws in the United Kingdom and the United States.

11. The Principal Adviser is the investment manager of and/or provides discretionary portfolio management services in Ontario to (i) investment funds, the securities of which are qualified by prospectus for distribution to the public in Ontario and the other provinces and territories of Canada (the **Investment Funds**); (ii) pooled funds, the securities of which are sold on a private placement basis in Ontario and certain other provinces and territories of Canada pursuant to prospectus exemptions contained in National Instrument 45-106 *Prospectus Exemptions* (the **Pooled Funds**); (iii) clients with managed accounts who have entered into investment management agreements with the Principal Adviser (the **Managed Accounts**); and (iv) other Investment Funds, Pooled Funds and Managed Accounts that may be established in the future in respect of which the Principal Adviser engages the Sub-Adviser to provide portfolio advisory services (the **Future Clients**) (each of the Investment Funds, Pooled Funds, Managed Accounts and Future Clients being referred to individually as a **Client** and collectively as the **Clients**).

12. Certain of the Clients may, as part of their investment program, invest in Contracts. The Principal Adviser acts as a commodity trading manager in respect of such Clients.

13. In connection with the Principal Adviser acting as an adviser to Clients in respect of the purchase or sale of Contracts, the Principal Adviser, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, has retained the Sub-Adviser to act as a sub-adviser to the Principal Adviser in respect of, inter alia, Contracts in which the Sub-Adviser has experience and expertise by exercising discretionary authority on behalf of the Principal Adviser, in respect of all or a portion of the assets of the investment portfolio of the respective Client, including discretionary authority to buy or sell Contracts for the Client (the **Sub-Advisory Services**), provided that such investments are consistent with the investment objectives and strategies of the applicable Client.

14. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as a partner or an officer of a registered adviser and is acting on behalf of such registered adviser.

15. By providing the Sub-Advisory Services to the Principal Adviser in respect of the Clients, the Sub-Adviser and its Representatives will be engaging in, or holding himself, herself or itself out as engaging in, the business of advising others in respect of Contracts and, in the absence of being granted the requested relief, would be required to register as an adviser, or a representative of an adviser, as the case may be, under the CFA.

16. There is presently no rule or regulation under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures contracts and commodity futures options that is similar to the exemption from the adviser registration requirement in subsection 25(3) of the OSA that is provided under section 8.26.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

17. The relationship among the Principal Adviser, the Sub-Adviser and any Clients will be consistent with the requirements of section 8.26.1 of NI 31-103.

18. The Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Adviser is, and remains, registered under the CFA as an adviser in the category of commodity trading manager.

19. As would be required under section 8.26.1 of NI 31-103:

    (a) the obligations and duties of the Sub-Adviser are set out in a written agreement with the Principal Adviser; and

    (b) the Principal Adviser has entered into a written agreement with each Client agreeing to be responsible for any loss that arises out of the failure of the Sub-Adviser:

        (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Principal Adviser and each Client; or

        (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**).

20. The written agreement between the Principal Adviser and the Sub-Adviser sets out the obligations and duties of each party in connection with the Sub-Advisory Services and permits the Principal Adviser to exercise the degree of supervision and control it is required to exercise over the Sub-Adviser in respect of the Sub-Advisory Services.

21. The Principal Adviser will deliver to the Clients all required reports and statements under applicable securities, commodity futures and derivatives legislation.

22. The prospectus or other offering document (the **Offering Document**), if any, for each Client that is an Investment Fund or a Pooled Fund and for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services includes, or will include, as the case may be, the following disclosure (the **Required Disclosure**):

    (a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

    (b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any of its Representatives) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

23. The Required Disclosure is provided in writing prior to the purchasing of any Contracts for each client that is a Managed Account for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services.

24. The Principal Adviser and the Sub-Adviser obtained substantially similar relief in the Previous Order, pursuant to which the Sub-Adviser currently provides Sub-Advisory Services to the Principal Adviser for the benefit of the Clients.

25. The Principal Adviser and Sub-Adviser have complied with, and are currently in compliance with, all of the terms and conditions of the Previous Order.

26. The anticipated expiry of the five-year period set out in the sunset clause of the Previous Order has triggered the Relief Sought.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the relief requested;

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked;

AND IT IS ORDERED, pursuant to section 80 of the CFA, that the Sub-Adviser and its Representatives are exempt from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services, provided that at the time that such activities are engaged in:

(a) the Principal Adviser is registered under the CFA as an adviser in the category of commodity trading manager;

(b) the Sub-Adviser's head office or principal place of business is in a jurisdiction outside of Canada;

(c) the Sub-Adviser is registered in a category of registration, or operates under an exemption from registration, under the commodity futures or other applicable legislation of the jurisdiction outside of Canada in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser under the CFA would permit it to carry on in Ontario;

(d) the Sub-Adviser engages in the business of an adviser in respect of Contracts in the jurisdiction outside of Canada in which its head office or principal place of business is located;

(e) the obligations and duties of the Sub-Adviser are set out in a written agreement with the Principal Adviser;

(f) the Principal Adviser has entered into a written agreement with each Client agreeing to be responsible for any loss that arises out of any failure of the Sub-Adviser to meet the Assumed Obligations;

(g) the Offering Document of each Client that is an Investment Fund or Pooled Fund for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services will include the Required Disclosure; and

(h) the Required Disclosure was provided in writing prior to the purchasing of any Contracts for each Client that is a Managed Account for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services;

IT IS FURTHER ORDERED that this Order will terminate on the earliest of:

(a) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(b) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the ability of the Sub-Adviser to act as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services; and

(c) five years after the date of this Order.

Decision

The decision of the principal regulator is that the Relief Sought Approval is granted.

"Lawrence Haber"
Commissioner
Ontario Securities Commission

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

2.2.2 CannaRoyalty Corp. DBA Origin House – s. 1(6) of the OBCA

Headnote

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

Statutes Cited

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

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

AND

IN THE MATTER OF CANNAROYALTY CORP. DBA ORIGIN HOUSE (the Applicant)

ORDER (Subsection 1(6) of the OBCA)

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

AND UPON the Applicant representing to the Commission that:

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

2. The Applicant has an authorized capital consisting of an unlimited number of common shares (**Common Shares**), an unlimited number of class A compressed shares (**Class A Shares**), an unlimited number of subordinate voting shares (**Subordinate Shares**) and 2,000,000 special redeemable, voting, nonparticipating preference shares. As of the date of this application, 94,558,120 Common Shares are issued and outstanding.

3. The head office and registered office of the Applicant is located at 333 Preston Street, Preston Square Tower 1, Suite 610, Ottawa, Ontario, K1S 5N4.

4. On April 1, 2019, the Applicant entered into an arrangement agreement with Cresco Labs Inc. (**Cresco**), as amended on May 12, 2019, June 5, 2019, September 16, 2019 and November 12, 2019, pursuant to which, among other things, Cresco agreed to acquire all of the issued and outstanding securities of the Applicant by way of a court-approved plan of arrangement under the provisions of Section 182 of the OBCA (as amended, the **Arrangement**).

5. The Arrangement was approved by the shareholders of the Applicant at a special meeting of shareholders of the Applicant held on December 31, 2019.

6. The Arrangement was approved by a final order of the Ontario Superior Court of Justice (Commercial List) on January 6, 2020.

7. The Arrangement was completed on January 8, 2020. As a result of the Arrangement, each holder of the Common Shares became entitled to receive, in exchange for each Common Share held prior to the effective time of the Arrangement, 0.7031 subordinate voting shares of Cresco (**Cresco Shares**) for each Common Share held and each holder of the Class A Shares became entitled to receive, in exchange for each Class A Share held prior to the effective time of the Arrangement, 70.31 Cresco Shares for each Class A Share held.

8. In accordance with the terms of the Arrangement, following completion of the Arrangement and as of the date hereof, all of the issued and outstanding Common Shares of the Applicant are beneficially owned, directly or indirectly, by Cresco and no other shares of the Applicant are outstanding.

9. The Common Shares had been listed and posted for trading on the Canadian Securities Exchange (the **CSE**) under the symbol "OH" and on the OTCQX under the symbol “ORHOF”. The warrants of the Applicant (the **Warrants**) had been listed and posted for trading on the CSE under the symbol "OH.WT". The Common Shares and the Warrants were delisted from the CSE as at the close of trading on January 9, 2020 and the Common Shares were delisted from the OTCQX as at the close of trading on January 10, 2020.

10. No securities of the Applicant, including debt securities, are listed, traded or quoted in Canada or another country on a "marketplace" as defined in National Instrument 21-101 – *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

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

12. On January 28, 2020, the Applicant was granted an order pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with the simplified procedure set out in National Policy 11-206 – *Process for Cease to be a Reporting Issuer Applications*.

13. The Applicant is not in default of any requirement of the securities legislation in any jurisdiction in Canada.

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

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

DATED at Toronto on this 18th day of February, 2020.

"Craig Hayman"
Commissioner
Ontario Securities Commission

"Ray Kindiak"
Commissioner
Ontario Securities Commission

2.2.3 Landry Investment Management Inc. et al.

Headnote

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

Applicable Legislative Provisions

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

[TRANSLATION]

February 10, 2020

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

AND

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

AND

IN THE MATTER OF
LANDRY INVESTMENT MANAGEMENT INC.
(the Filer)

AND

LANDRY CANADIAN EQUITY FUND,
LANDRY U.S. EQUITY FUND,
LANDRY GLOBAL EQUITY FUND
(the Funds)

ORDER

Background

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

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

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

b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System,* CQLR, c. V-1.1, r.1 (**Regulation 11-102**) is intended to be relied upon in Ontario, and

c) this order is the order of the principal regulator and evidences the decision of

the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r.3, Regulation 11-102 and, in Québec, in *Regulation 14-501Q respecting Definitions*, CQLR, c. V-1.1, r.4 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:

The Filer

1. The Filer, a company incorporated under the laws of Canada having its principal office at Montreal, Quebec, is registered as an investment fund manager and portfolio manager in Quebec and Ontario, as an exempt market dealer in Quebec, as a portfolio manager in Alberta, British Columbia, Yukon, and as an investment fund manager in Newfoundland and Labrador.

2. The Filer is the investment fund manager and portfolio manager of the Funds, which were established under the laws of Ontario.

3. The Funds are reporting issuers in Québec and Ontario.

Class A and Class F Units of the Funds

4. Until March 12, 2019, the units of class A and class F of the Funds were offered by simplified prospectus in Québec and Ontario, while no other units of the Funds were offered by prospectus.

5. With the exception of one unitholder of class F of the Landry Canadian Equity Fund and one unitholder of the class F of the Landry Global Equity Fund, all holders of class A and class F units of the Funds have entered into discretionary management agreements with Landry at the time they became subscribers of the Funds. The two abovementioned holders of class F who have not entered into discretionary management agreements with the Filer qualify today, and at the time they became subscribers of the Funds, as accredited investors.

6. All holders of units of the class A and class F of the Funds meet the requirements of *Regulation 45-106 respecting Prospectus Exemptions*, CQLR, c. V-1.1, r.21 (**Regulation 45-106**) in order to benefit from a prospectus exemption.

7. Considering all unitholders of the Funds qualify as accredited investors, that the Funds have ceased to offer any of its units to the public through simplified prospectus and that the Funds will make significant savings, it is in the best interest of the Funds to cease to be reporting issuers.

8. As of the date of this decision, the Filer does not intend to enter into any transaction affecting unitholders rights, having the effect of transferring unitholders into another legal entity, merging the Funds' assets with another legal entity, or making unitholders become holders of securities of a new legal entity. Except for the loss of their reporting issuer status, as of the date of this Decision, the Funds in which unitholders are currently invested will remain the same and their investment objectives will not change due to the loss of reporting issuer status. In the future, should the Filer decide to complete any reorganization involving the Funds it will complete such reorganization in accordance with the terms of the Funds' constating documents.

9. None of the current unitholders of class A and class F of the Funds have, in their investment policies, investment restrictions which restrict them to investing exclusively in investment funds distributed by way of prospectus.

10. The Filer will ensure that all future unitholders of the Funds will enter into discretionary account management agreements or otherwise qualify as "accredited investors" as defined in Regulation 45-106.

11. On February 6, 2019, the independent review committee of the Funds recommended that the Funds cease to offer their class A and F units through simplified prospectus and apply to surrender their status as reporting issuer in accordance with section 5.3 *of Regulation 81-107 respecting Independent Review Committee for Investment Funds*, CQLR, c. V-1.1, r.43.

12. The Filer will ensure that the Funds comply with all the requirements established by the securities legislations of Québec and Ontario as they pertain to investment funds that are not reporting issuers, including the provisions of *Regulation 81-106 respecting Investment Fund Continuous Disclosure*, CQLR, c. V-1.1, r.42 applicable to non-reporting issuers.

13. The Filer and the Funds are not in default of securities legislation in any jurisdiction of Canada.

14. The Funds are not eligible to cease being reporting issuers pursuant to the simplified procedure in section 19 of *Policy Statement 11-206 respecting process for cease to be a reporting issuer applications* because the number of outstanding securities, including debt securities, of each Fund are beneficially owned, directly or indirectly, by more than 15 securityholders in one or more jurisdictions in Canada and more than 51 securityholders in total worldwide.

15. None of the Funds are OTC reporting issuers under *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*, CQLR, c. V-1.1, r.24.1.

16. No securities of any of the Funds are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation*, CQLR, c. V-1.1, r.5 or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

17. The Order Sought is not detrimental to the protection of investors.

18. Upon granting of the Order Sought, the Funds will not be reporting issuers or the equivalent in any jurisdiction in Canada.

Order

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

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

"Louis-Martin Ouellet"
Acting Director, Investment Funds Oversight Branch

2.2.4 Paul Se Hui Oei and Canadian Manu Immigration & Financial Services Inc.

**IN THE MATTER OF
PAUL SE HUI OEI AND
CANADIAN MANU IMMIGRATION & FINANCIAL SERVICES INC.**

File No. 2020-1

Heather Zordel, Commissioner and Chair of the Panel

February 21, 2020

ORDER

WHEREAS on February 20, 2020, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider the scheduling of an oral hearing on the merits in this proceeding;

ON HEARING the submissions of the representative for Staff of the Commission (**Staff**) and Paul Se Hui Oei and Canadian Manu Immigration & Financial Services Inc. (together, the **Respondents**);

IT IS ORDERED THAT:

1. the Respondents shall serve and file written submissions by no later than April 9, 2020;

2. Staff shall serve and file written submissions in reply, if any, by no later than April 23, 2020; and

3. the hearing on the merits in this proceeding is scheduled for May 7, 2020 at 11:00 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.

"Heather Zordel"

2.2.5 Eurex Clearing AG – ss. 144, 147

Headnote

Variation and Restatement of the Commission Order made under section 147 of the Securities Act (Ontario) (Act) exempting Eurex Clearing AG from the requirement in section 21.2 of the Act to be recognized as a clearing agency.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.2, 144 and 147.

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(THE OSA)**

AND

**IN THE MATTER OF
EUREX CLEARING AG**

**ORDER
(Sections 144 and 147 of the OSA)**

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated July 14, 2017 exempting Eurex Clearing AG (**Eurex Clearing**) from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA (**Original Exemption Order**);

AND WHEREAS Eurex Clearing has filed an application (**Application**) with the Commission pursuant to section 144 of the OSA requesting that the Commission issue an order varying the Original Exemption Order to (i) expand the scope of Eurex Clearing's permitted clearing services in Ontario to include clearing services with respect to derivatives under OSC Rule 91-506 *Derivatives: Product Determination* (**OTC Derivatives**), and (ii) reflect recent material changes to categories of participants at Eurex Clearing that impact the terms and conditions of the Original Exemption Order;

AND WHEREAS Eurex Clearing has represented to the Commission that:

1.1 Eurex Clearing is a stock corporation (*Aktiengesellschaft*) incorporated under German law and is a wholly owned subsidiary of Eurex Frankfurt AG and an indirect wholly owned subsidiary of Deutsche Börse AG, a publicly traded company listed on the Frankfurt Stock Exchange.

1.2 Eurex Clearing qualifies as a central counterparty (**CCP**) pursuant to Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (**EMIR**), which sets out clearing and bilateral risk-management requirements for over-the-counter (**OTC**) derivative contracts, reporting requirements for derivative contracts, and uniform requirements for the performance of activities of CCPs and trade repositories. It was granted authorization as a CCP under EMIR effective from April 10, 2014.

1.3 Eurex Clearing is of the opinion that it fully observes the international standards applicable to financial market infrastructures described in the April 2012 report *Principles for financial market infrastructures* (**PFMI**), having prepared a detailed assessment of its compliance against the PFMI and the associated disclosure framework as of February 2015, which was reviewed and validated by KPMG as an independent outside auditor. Eurex Clearing subsequently performed an updated detailed assessment of its compliance against the PFMI and the associated disclosure framework as of March 2018.

1.4 Eurex Clearing is subject to regulatory supervision by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (**BaFin**) and the German Central Bank.

1.5 Eurex Clearing is required to deliver to the German Central Bank monthly returns showing its liquidity and capital adequacy. The German Central Bank forwards these returns to BaFin, together with its comments. In addition, Eurex Clearing delivers its audited annual report and timely reports on specified types of organizational changes (e.g., new members of its executive board, departure of executive board members, establishment of subsidiaries, and opening of branches). The German Central Bank reviews Eurex Clearing's annual financial statements and auditors' reports and does an annual risk classification of Eurex Clearing, including an assessment of the adequacy of Eurex Clearing's capital and risk management procedures. The German Central Bank shares its findings with BaFin. In addition, BaFin may order site audits, which are also carried out by members of the German Central Bank and BaFin.

1.6 Eurex Clearing is a registered derivatives clearing organization (**DCO**) with the U.S. Commodity Futures Trading Commission (**CFTC**), and is thus subject to and complies with the CFTC's DCO Core Principles and applicable CFTC regulations.

1.7 Eurex Clearing functions as the CCP for all transactions concluded on Eurex Deutschland, which is operated by Eurex Frankfurt AG. Eurex Clearing also acts as the CCP for Eurex Repo GmbH and the Frankfurt Stock Exchange, including its Xetra® order book. In addition, Eurex Clearing offers clearing services for OTC interest rate swap transactions and inflation swaps as well as for securities lending transactions. Products cleared by Eurex Clearing include derivatives, equities, bonds, swaps, and secured funding and financing.

1.8 Eurex Clearing currently has the following categories of members (**Clearing Members**), all of which will be available to Ontario residents:

1.8.1 General Clearing Member (**GCM**)

A GCM is a Clearing Member that may clear proprietary and client transactions for any type of instrument listed in paragraph 1.10 (**Instrument**).

1.8.2 Direct Clearing Member (**DCM**)

A DCM is a Clearing Member that is restricted in respect of its clearing activities through Eurex Clearing. The degree of restriction depends on the Instrument the DCM is clearing. For OTC Derivatives, a DCM may only clear proprietary transactions. For all other Instruments, a DCM may clear proprietary and client transactions, except that a DCM may only clear transactions for DC Market Participants and Indirect Client Market Participants (discussed further below in subparagraph 1.12.1) if the DCM and the DC Market Participant or Indirect Client Market Participant are affiliated.

1.8.3 Futures Commission Merchant (**FCM**) Clearing Member (**FCM Clearing Member**)

An FCM Clearing Member is a Clearing Member that clears transactions under Eurex Clearing's LSOC Clearing Model (discussed in subparagraph 1.13.3).

1.8.4 Basic Clearing Member (**BCM**)

A BCM is a Clearing Member that participates in clearing under Eurex Clearing's BCM Clearing Model, with facilitation by a clearing agent (discussed in subparagraph 1.13.4).

1.9 When an entity applies to be a GCM, DCM, BCM and/or an FCM Clearing Member it will concurrently apply for a clearing license for each Instrument it may clear. There are specific requirements for each license. BCMs may only apply for licenses for transactions concluded at Eurex Repo GmbH and OTC Interest Rate Derivative Transactions. FCM Clearing Members may only clear Swaps.

1.10 Eurex Clearing currently offers clearing licenses for the following categories of Instruments, and all such clearing licenses will be available to Ontario residents:

- Transactions concluded at Eurex Deutschland (Chapter II of Eurex Clearing's Clearing Conditions (Clearing Conditions));
- Transactions concluded at Eurex Repo GmbH (Chapter IV of the Clearing Conditions);
- Transactions concluded at Frankfurter Wertpapierbörse (Chapter V of the Clearing Conditions);
- OTC Interest Rate Derivative Transactions (Chapter VIII, Part 2 of the Clearing Conditions);
- OTC FX Transactions, including OTC foreign exchange spot transactions, OTC foreign exchange swap transactions and OTC foreign exchange forward transactions (Chapter VIII, Part 3 of the Clearing Conditions);
- OTC XCCY (cross currency swap) Transactions (Chapter VIII, Part 4 of the Clearing Conditions);
- Securities Lending Transactions (Chapter IX of the Clearing Conditions); and
- Transactions that qualify as swaps (**Swaps**) as defined in section 1a(48) of the U.S. Commodity Exchange Act and CFTC Regulation 1.3 (Chapter I of Eurex Clearing's FCM Regulations (**FCM Regulations**)).

1.11 Eurex Clearing currently offers the following additional clearing licenses for participation in securities lending and repo markets, both of which will be available to Ontario residents:

1.11.1 Specific Lender License

A "specific lender license" (**Specific Lender License**) allows a participant to transact in the securities lending market. The holder of a Specific Lender License (in such capacity, a **Specific Lender**) is accepted by Eurex Clearing as a direct participant. Specific Lenders are not required to post margin to Eurex Clearing or contribute to its clearing fund. Specific Lenders do not create a risk position for Eurex Clearing.

1.11.2 Specific Repo License

A "specific repo license" (**Specific Repo License**) allows a participant to transact in the repo market at Eurex Repo GmbH. The holder of a Specific Repo License (in such capacity, a **Specific Repo Participant**) is accepted by Eurex Clearing as a direct participant, without being required to post margin to Eurex Clearing or contribute to its clearing fund. Specific Repo Participants do not create a risk position for Eurex Clearing.

1.11.3 Specific Lenders and Specific Repo Participants are treated as Clearing Members under the Clearing Conditions for most purposes.

1.12 Eurex Clearing currently offers the following client categories:

1.12.1 Disclosed Direct Client (**DDC**)

A DDC is a direct client of a GCM or DCM that is disclosed to Eurex Clearing. A DDC does not enter into any clearing agreement with Eurex Clearing and therefore has no contractual clearing relationship with Eurex Clearing. The only contractual relationship between Eurex Clearing and a DDC would be a connection or similar agreement that would grant the DDC technical access to Eurex Clearing's systems. The Clearing Conditions do not govern the legal relationship between a DDC and its Clearing Member.

There are currently three sub-categories of DDCs:

- A Direct Client Market Participant (or **DC Market Participant**) is a DDC that is a trading participant on one or more exchanges to which Eurex Clearing provides clearing services (a **trading participant**) and which conducts post-trade management with respect to the transactions relating to the DC Market Participant.

- A **DC With System Access** is a DDC that has access to the systems of Eurex Clearing and can conduct post-trade management with respect to the transactions relating it. Unlike a DC Market Participant, a DC With System Access is not a trading participant.

- A **Basic DC** is a DDC that does not conduct post-trade management with respect to transactions relating to it. A Basic DC is not a trading participant and does not have access to the systems of Eurex Clearing or have the ability to conduct post-trade management like a DC With System Access. A client of a Disclosed Direct Client of a Clearing Member that is a trading participant may be classified by the Clearing Member as an **Indirect Client Market Participant**.

Eurex Clearing does not currently permit Clearing Members to classify Ontario entities as DC Market Participants or Indirect Client Market Participants, because Eurex Clearing does not currently provide clearing services to any exchange that is recognized in Ontario or exempt from Ontario's exchange recognition requirement.

1.12.2 Undisclosed Direct and Indirect Clients

An **Undisclosed Client** is a direct or indirect client of a GCM or DCM that is not disclosed to Eurex Clearing.

1.12.3 FCM Client

An **FCM Client** is a direct client of an FCM Clearing Member under the LSOC Clearing Model (as discussed in subparagraph 1.13.4). An FCM Client is disclosed to Eurex Clearing.

1.13 Eurex Clearing currently offers the following clearing models, all of which will be available to Ontario resident Clearing Members and their clients (subject to the exceptions noted in subparagraphs 1.13.1 and 1.13.2, which are not in line with certain requirements under National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**) and accordingly will not be offered to local customers (unless these account models are otherwise deemed to be compliant with applicable Canadian derivatives legislation or Eurex Clearing has obtained any required exemptive relief)):

1.13.1 The Elementary Clearing Model (**ECM**)

The ECM is an omnibus client segregation model within the meaning of Article 39(2) of EMIR. The ECM provides for the segregation of proprietary positions and assets of a Clearing Member from its client-related positions and assets. Within the ECM, Eurex Clearing distinguishes between: (i) “net omnibus client segregation”, where margin is posted by the Clearing Member to Eurex Clearing on a net basis across transactions relating to multiple direct clients of the Clearing Member, and (ii) “gross omnibus client segregation”, where margin is posted by the Clearing Member to Eurex Clearing on a gross basis across transactions relating to a particular direct client.

Ontario “local customers” within the meaning of NI 94-102 may only clear OTC Derivatives using the “gross omnibus segregation” (**GOSA**) offering. Under the GOSA offering, there is no mutualisation of loss and no pooling of risk between direct clients’ positions recorded in different margin accounts, which are transaction accounts for which the margin collateral requirement is calculated and called on a gross basis.

Eurex Clearing will not, for OTC Derivatives, on-board any indirect client of any Canadian resident GOSA direct client or any Canadian resident indirect client of any direct client until such time as it has obtained any required exemptive relief from any applicable provisions of NI 94-102 or such offering is otherwise in compliance with applicable Canadian derivatives legislation.

1.13.2 The Individual Segregated Account Model (**ISA Model**)

The ISA Model is an individual client segregation model within the meaning of Article 39(3) of EMIR. The ISA Model provides for the segregation of proprietary positions and assets of a Clearing Member, and for the segregation of each Clearing Member’s client’s positions and assets. Under the ISA Model Eurex Clearing determines margin requirements on a gross basis.

Eurex Clearing will not, for OTC Derivatives, on-board any indirect client of any Canadian resident ISA direct client or any Canadian resident indirect client of any direct client until such time as it has obtained any required exemptive relief from any applicable provisions of NI 94-102 or such offering is otherwise in compliance with applicable Canadian derivatives legislation.

1.13.3 The Legally Separated Operationally Commingled Clearing Model (**LSOC Clearing Model**)

The LSOC Clearing Model is a client-clearing framework that complies with Part 22 of the CFTC regulations. The LSOC Clearing Model must be used by Clearing Members that are registered as FCMs with the CFTC that clear Swaps for U.S. Persons, as defined under applicable CFTC regulations and guidance. In addition, FCM Clearing Members may use the LSOC Clearing Model for non-U.S. Person clients.

1.13.4 The BCM Clearing Model (**BCM Clearing Model**)

The BCM Clearing Model, also called the ISA Direct Model, is a sponsored direct access model. It permits buy side customers, such as regulated financial services companies, investment funds, pension funds, insurance companies and reinsurance companies, to become BCMs and gain direct access to Eurex Clearing. BCMs have a complete clearing relationship with Eurex Clearing, and their transactions are established directly between the BCM and Eurex Clearing. The BCM’s access to Eurex Clearing is facilitated by a clearing agent. BCMs may only enter into proprietary transactions under the BCM Clearing Model.

1.14 For purposes of reporting value and volume required under paragraphs 9(e)a and 9(e)b of Schedule “A” to this order, Eurex Clearing may, subject to any changes in reporting that may result from regulatory, operational or other changes in relation to Eurex Clearing, use the following asset classes, providing separate figures for futures and options as applicable:

- Equity Index Futures/Options
- Interest Rate Futures/Options
- Equity Futures/Options
- Exchange Traded Fund and Exchange Traded Commodity Futures/Options
- Volatility Index Futures/Options
- Dividend Futures/Options

- Commodity Futures/Options
- Property Futures/Options
- Foreign Exchange Futures/Options
- OTC Derivatives (including OTC Interest Rate Derivative Transactions, OTC FX Transactions, OTC XCCY Transactions and Swaps)

1.15 For purposes of reporting margin required under paragraphs 9(e)c and 9(e)d of Schedule "A" to this order, Eurex Clearing will report on the Liquidation Group level. Eurex Clearing has introduced the concept of Liquidation Groups and calculates risk on this level. Cleared products that share similar risk characteristics are assigned to the same Liquidation Group. This allows for a more comprehensive portfolio risk calculation and also enables cross margining across Liquidation Group Splits. Eurex Clearing currently has the following ten Liquidation Groups, which are subject to change:

- Listed Equity (Index) Derivatives Liquidation Group
- Listed Fixed Income Liquidation Group
- Listed Corporate Bond Liquidation Group
- Asian cooperation KOSPI/TAIFEX Liquidation Group
- Commodity (Index) Derivatives Liquidation Group
- Derivatives on Fixed Income ETFs Liquidation Group
- Precious Metal Derivatives Liquidation Group
- Property Futures Liquidation Group
- FX Derivatives Liquidation Group
- IRS Constant Maturity Futures Liquidation Group

The Listed Fixed Income Liquidation Group contains all OTC Interest Rate Derivatives Transactions.

1.16 Eurex Clearing anticipates that banks, pension plans, asset managers and insurance companies that are resident in Ontario may be interested in participating in its offerings listed in paragraphs 1.8, 1.11 and 1.12. Potential bank participants could be interested in becoming GCMs or DCMs. Pension plans, asset managers and insurance firms, among other institutions, could be interested in the Specific Lender License or the Specific Repo License. It is possible there could be further, other unanticipated interest.

1.17 An applicant to become a Clearing Member is required to have sufficient financial resources and operational capacity to meet the obligations arising from participation in Eurex Clearing and enter into a Clearing Agreement with Eurex Clearing. The admission requirements are set forth in the Clearing Conditions and FCM Regulations, which are available on Eurex Clearing's website. Eurex Clearing's participation requirements are non-discriminatory and objective so as to ensure fair and open access. The admission requirements do not limit access on grounds other than risk (*e.g.*, sufficient liable equity capital, compliance with technical requirements, and verification of the legal validity and enforceability of the Clearing Conditions and FCM Regulations).

1.18 Eurex Clearing's risk model, known as Eurex Clearing Prisma, is used for all exchange-traded derivatives and OTC products. Prisma is based on the view of each member's entire portfolio, accounting for hedging and cross-correlation effects by determining the margin requirement on a portfolio level rather than a product-by-product view. The elements of the model are selected to ensure the ability to withstand new shocks and changes to the financial markets and to flexibly adapt to changes in the risk environment. Eurex Clearing Prisma integrates both a backward looking and a forward looking margin component. The backward looking component encompasses price alignment interest, variation margin and premium margin. The forward looking component encompasses liquidity risk, market risk based on filtered historical simulation, market risk based on stress scenarios, and model error add-on. A separate Risk Based Margining Method is used for equities, bonds, repos and securities lending; however, these products will be migrated to Prisma at some point in the future.

1.19 Eurex Clearing's clearing fund serves as a safeguard for the viability of the clearing system against Clearing Member defaults. Each Clearing Member has to contribute to the clearing fund. It consists of Clearing Members' direct

deposited cash and securities. It is used for securing the counterparty risk in case of a default of a Clearing Member in case the provided margin deposits are not sufficient to cover all losses of Eurex Clearing. The clearing fund is separated into clearing fund segments (CFSs), whereby each Liquidation Group is assigned to a particular CFS. The size of each CFS depends on the exposure of the Clearing Members active in the liquidation group relative to the overall exposure of all Clearing Members.

1.20 Eurex Clearing would provide its services to Ontario residents without establishing an office or having a physical presence in Ontario or elsewhere in Canada.

1.21 Eurex Clearing submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.

AND WHEREAS Eurex Clearing has agreed to the respective terms and conditions as set out in Schedule “A” to this order;

AND WHEREAS based on the Application and the representations made to the Commission by Eurex Clearing, the Commission has determined that it would be not prejudicial to the public interest to vary and restate the Original Exemption Order;

AND WHEREAS Eurex Clearing has acknowledged to the Commission that the scope of and the terms and conditions imposed by the Commission attached hereto as Schedule “A” to this order, or the determination whether it is appropriate that Eurex Clearing continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of developments in international and domestic capital markets or Eurex Clearing's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

IT IS HEREBY ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the Original Exemption Order is granted.

IT IS HEREBY ORDERED, pursuant to section 147 of the Act, that Eurex Clearing continues to be exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act, provided that Eurex Clearing complies with the Terms and Conditions attached hereto as Schedule “A”.

DATED July 14, 2017 as varied and restated on February 6, 2020.

“T. Moseley”
Vice-Chair

“D. Grant Vingoe”
Vice-Chair

SCHEDULE "A"

Terms and Conditions

Definitions:

For the purposes of this Schedule "A":

"client clearing" means the ability of a Clearing Member to clear transactions on Eurex Clearing for and on behalf of a client.

"Ontario Clearing Member" means a Clearing Member resident in Ontario that uses the Permitted Clearing Services, as defined below.

"Ontario Lender/Repo Participant" means an Ontario resident holding the Specific Lender License or Specific Repo License that uses the Permitted Clearing Services.

Unless the context requires otherwise, other terms used in this Schedule "A" shall have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this order).

COMPLIANCE WITH ONTARIO LAW

1. Eurex Clearing will comply with Ontario securities law (as defined in the OSA) and, where applicable, Ontario commodity futures law (as defined in the *Commodity Futures Act* (Ontario)).

2. Eurex Clearing's derivative services will comply with National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**).

SCOPE OF PERMITTED CLEARING SERVICES IN ONTARIO

3. Eurex Clearing's activities in Ontario will be limited to the clearing of transactions described in paragraph 1.10 of Eurex Clearing's representations set out above in this order; including client clearing services of derivative products for and on behalf of Ontario residents (**Permitted Clearing Services**).

REGULATION OF EUREX CLEARING

4. Eurex Clearing will maintain its status as a CCP under EMIR and will continue to be subject to the regulatory oversight of BaFin or any successor, and, so long as Eurex Clearing remains a registered DCO with the CFTC or any successor, to the regulatory oversight of the CFTC or successor.

5. Eurex Clearing will continue to comply with its ongoing regulatory requirements as a CCP under EMIR, with the ongoing regulatory requirements of BaFin and, so long as Eurex Clearing remains a registered DCO with the CFTC, with the ongoing regulatory requirements of the CFTC.

GOVERNANCE

6. Eurex Clearing will promote within Eurex Clearing a governance structure that minimizes the potential for any conflict of interest between Eurex Clearing and its shareholders that could adversely affect the Permitted Clearing Services or the effectiveness of Eurex Clearing's risk management policies, controls and standards.

REPORTING REQUIREMENTS

Reporting with BaFin

7. Eurex Clearing will promptly provide staff of the Commission the following information, to the extent that it is required to provide to or submit such information to BaFin or its successor:

   (a) details of any material legal proceeding instituted against Eurex Clearing;

   (b) notification that Eurex Clearing has failed to comply with an undisputed obligation to pay money or deliver property to a Clearing Member for a period of thirty days after receiving notice from the Clearing Member of Eurex Clearing's past due obligation;

   (c) notification that Eurex Clearing has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate Eurex Clearing or has a proceeding for any such petition instituted against it;

   (d) notification that Eurex Clearing has initiated its recovery plan;

(e) the appointment of a receiver or the making of any voluntary arrangement with creditors;

(f) the entering of Eurex Clearing into any resolution regime or the placing of Eurex Clearing into resolution by a resolution authority; and

(g) material changes to its bylaws and rules where such changes would impact the Permitted Clearing Services used by Ontario residents (whether as a Clearing Member or otherwise).

(h) new services or clearing of new types of products in the Permitted Clearing Services to be offered to Ontario residents or services or types of products that will no longer be available to Ontario residents; and

(i) any new category of membership in respect of the Permitted Clearing Services if Eurex Clearing expects that category of membership would be available to Ontario residents.

Prompt Notice

8. Eurex Clearing will promptly notify staff of the Commission of any of the following:

(a) any material change to its business or operations

(b) any material change or proposed material change in Eurex Clearing's status as a CCP under EMIR or in its regulatory oversight by BaFin or any successor or in its regulatory oversight by the CFTC or any successor;

(c) any material problems with the clearing and settlement of transactions that could materially affect the safety and soundness of Eurex Clearing;

(d) the admission of any new Ontario Clearing Member or the granting of any new Specific Lender License or Specific Repo License to any Ontario resident;

(e) any event of default by, or removal from Permitted Clearing Services of, a Clearing Member and Ontario Lender/Repo Participant; and

(f) any material system failure of a Permitted Clearing Service utilized by an Ontario Clearing Member and Ontario Lender/Repo Participant, including cybersecurity breaches.

Quarterly Reporting

9. Eurex Clearing will maintain and submit the following information to the Commission 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) current lists of all Ontario Clearing Members, Ontario Lender/Repo Participants, DDC, FCM Clients or Indirect Client Market Participants (collectively called "**Ontario Participants**" or individually "**Ontario Participant**") and the legal entity identifier (**LEI**), if any, of each such Ontario Participant;

(b) a list of all Ontario Participants against whom disciplinary or legal action has been taken in the quarter by Eurex Clearing with respect to activities at Eurex Clearing, or to the best of Eurex Clearing's knowledge, by BaFin or any other authority in Europe or the United States that has or may have jurisdiction with respect to the relevant Ontario Participant's clearing activities at Eurex Clearing, provided that the Commission will maintain the confidentiality of the identity of any such Ontario Participant, unless (i) required by a court of competent jurisdiction, law, regulation or memorandum of understanding with a regulatory authority to release such identity, (ii) disclosure is permitted or consistent with the purposes of the OSA, or (iii) such identity is publicly available;

(c) a list of all investigations by Eurex Clearing in the quarter relating to Ontario Participants, provided that the Commission will maintain the confidentiality of the identity of any such Ontario Participant, unless (i) required by a court of competent jurisdiction, law, regulation or memorandum of understanding with a regulatory authority to release such identity, (ii) disclosure is permitted or consistent with the purposes of the OSA, or (iii) such identity is publicly available;

(d) a list of all Ontario resident applicants who have been denied Clearing Member, DDC**,** FCM Client or Indirect Client Market Participant status or Specific Lender or Specific Repo Licenses in the quarter by Eurex Clearing, provided that the Commission will maintain the confidentiality of the identity of such applicant, unless (i) required by a court of competent jurisdiction, law, regulation or memorandum of understanding with a regulatory authority to release such identity, (ii) disclosure is permitted or consistent with the purposes of the OSA, or (iii) such identity is publicly available;

(e) quantitative information in respect of the Permitted Clearing Services used by Ontario Participants for transactions in the asset classes listed in paragraph 1.14, broken down by membership and client category, if known, including in particular the following:

a. the end of quarter level, maximum and average daily open interest, number of transactions and notional value of transactions cleared during the quarter for each Ontario Participant;

b. the percentage of end of quarter level and average daily open interest, number of transactions and the notional value cleared during the quarter for all Clearing Members that represents the end of quarter and average daily open interest, number of transactions and the notional value of transactions cleared during the quarter for each Ontario Participant;

c. the aggregate total margin amount on deposit at Eurex Clearing ending on the last trading day during the quarter for each Ontario Participant;

d. the portion of the total margin on deposit at Eurex Clearing ending on the last trading day of the quarter for all Clearing Members that represents the total margin required during the quarter for each Ontario Participant; and

(f) quantitative information in respect of the Permitted Clearing Services used by Ontario Participants for transactions in cash, securities lending and repo, including in particular the following:

a. as at the end of the quarter, the notional value of cash, securities lending and repo transactions for each Ontario Participant;

b. where applicable, the aggregate total margin amount on deposit at Eurex Clearing ending on the last trading day of the quarter for each Ontario Participant; and

c. where applicable, the portion of the total margin on deposit at Eurex Clearing ending on the last trading day of the quarter for all Clearing Members that represents the total margin required during the quarter for each Ontario Participant;

(g) the guaranty fund contribution, for each Ontario Clearing Member on the last trading day of the quarter, and its proportion to the total guaranty fund contributions;

(h) a summary of risk management analysis related to the adequacy of the required margins and the guaranty fund requirement, including but not limited to stress testing and back testing results;

(i) if known to Eurex Clearing, for each Clearing Member (identified by its LEI) clearing for a client resident in Ontario (other than a DDC, FCM Client or Indirect Client Market Participant): (i) the identity of the Ontario resident client (including LEI, if any) (ii) the value and volume of trades cleared by asset class or transaction type during the quarter for and on behalf of each Ontario resident client and indicating the corresponding client category; (iii) and the aggregate total margin amount on deposit at Eurex Clearing, ending on the last trading day during the quarter, for each Ontario resident client, and indicating the corresponding client category;

a copy of all circulars published during the quarter that describe and show changes to the Clearing Conditions or FCM Regulations made during the quarter.

INFORMATION SHARING

10. Eurex Clearing will promptly 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 that would prevent the sharing of such information and subject to the application of solicitor-client privilege.

11. Unless otherwise prohibited under applicable law, Eurex Clearing will share information relating to regulatory and enforcement matters and otherwise cooperate with other recognized and exempt clearing agencies on such matters, as appropriate.

2.2.6 Joseph Debus

IN THE MATTER OF
JOSEPH DEBUS

File No. 2019-16

M. Cecilia Williams, Commissioner and Chair of the Panel

February 24, 2020

ORDER

WHEREAS on February 24, 2020, the Ontario Securities Commission (**Commission**) held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representative of Joseph Debus (**Debus**), the representatives of Staff of the Investment Industry Regulatory Organization of Canada (**IIROC**), and Staff of the Commission;

IT IS ORDERED THAT:

1. Debus shall serve and file written submissions and any affidavit evidence related to his request for the Panel to summons documents from a third party by no later than March 5, 2020;

2. Staff of the Commission shall serve and file responding written submissions by no later than March 6, 2020;

3. IIROC Staff shall serve and file responding written submissions and any affidavit evidence by no later than March 12, 2020;

4. Debus shall serve and file an expert report, if any, by no later than March 21, 2020;

5. a further attendance in this proceeding is scheduled for March 23, 2020 at 10:00 a.m.;

6. the hearing date of March 24, 2020 is vacated;

7. Debus shall serve and file his hearing brief and witness summaries, if any, and written submissions, by no later than April 23, 2020;

8. IIROC Staff shall serve and file their hearing brief and witness summaries, if any, and responding written submissions, by no later than May 7, 2020;

9. Staff of the Commission shall serve and file written submissions by no later than May 14, 2020;

10. Debus shall serve and file reply written submissions, if any, by no later than May 20, 2020; and

11. the hearing of the Application will be held on May 21, 2020 and shall continue on May 22, 2020, commencing at 10:00 a.m. on each scheduled day, or on such other dates or times as may be agreed to by the parties and set by the Office of the Secretary.

“M. Cecilia Williams”

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 The Catalyst Capital Group Inc. et al. – s. 127

Citation: *The Catalyst Capital Group Inc. (Re)*, 2020 ONSEC 6
Date: 2020-02-19
File No. 2019-41

**IN THE MATTER OF
THE CATALYST CAPITAL GROUP INC.**

AND

**IN THE MATTER OF
HUDSON'S BAY COMPANY, RICHARD A. BAKER, LISA BAKER,
LISA AND RICHARD BAKER ENTERPRISES, LLC,
RED TRUST, YELLOW TRUST, BLUE TRUST,
ROBERT BAKER, CHRISTINA BAKER,
A TRUST FOR BETTINA JANE RICHMAN,
A TRUST FOR EMMA RICHMAN,
A TRUST FOR FRANCESCA RICHMAN,
ASHLEY S. BAKER 3/15/84 TRUST, LION TRUST,
MR. AND MRS. ROBERT BAKER FAMILY FOUNDATION,
CHRISTINA BAKER TRUST FOR GRANDCHILDREN,
ROBERT C. BAKER TRUST FOR GRANDCHILDREN, WILLIAM MACK,
THE WILLIAM AND PHYLLIS MACK FAMILY FOUNDATION, INC.,
MACK 2010 FAMILY TRUST I,
RICHARD MACK WRS ADVISORS III, LLC,
WRS ADVISORS IV, LLC, LEE NEIBART,
LEE S. NEIBART 2010 GRAT,
HANOVER INVESTMENTS (LUXEMBOURG) S.A., ABRAMS CAPITAL PARTNERS I, L.P.,
ABRAMS CAPITAL PARTNERS II, L.P.,
WHITECREST PARTNERS, LP,
FABRIC LUXEMBOURG HOLDINGS S.À.R.L.,
L&T B (CAYMAN) INC. and
RUPERT ACQUISITION LLC**

**REASONS AND DECISION
(Section 127 of the *Securities Act*, RSO 1990, c S.5)**

Hearing:	December 11, 12 and 13, 2019	
Decision:	February 19, 2020	
Panel:	D. Grant Vingoe Timothy Moseley Lawrence P. Haber	Vice-Chair and Chair of the Panel Vice-Chair Commissioner
Appearances:	Paul Davis Brett Harrison Adam D. H. Chisholm Sandra Zhao Samantha Gordon Kelly Kan	For The Catalyst Capital Group Inc.
	R. Seumas M. Woods Jeffrey R. Lloyd Michael I. Gans Ryan A. Morris	For Hudson's Bay Company

Eliot Kolers Libby Nixon Jonah Mann Brian Pukier Sean Vanderpol	For Richard A. Baker, Lisa Baker, Lisa and Richard Baker Enterprises, LLC, Red Trust, Yellow Trust, Blue Trust, Robert Baker, Christina Baker, A Trust for Bettina Jane Richman, A Trust for Emma Richman, A Trust for Francesca Richman, Ashley S. Baker 3/15/84 Trust, Lion Trust, Mr. and Mrs. Robert Baker Family Foundation, Christina Baker Trust for Grandchildren, Robert C. Baker Trust for Grandchildren, William Mack, The William and Phyllis Mack Family Foundation, Inc., Mack 2010 Family Trust I, Richard Mack, WRS Advisors III, LLC, WRS Advisors IV, LLC, Lee Neibart, Lee S. Neibart 2010 GRAT, Hanover Investments (Luxembourg) S.A., Abrams Capital Partners I, L.P., Abrams Capital Partners II, L.P., Whitecrest Partners, LP, and Fabric Luxembourg Holdings S.À.R.L., L&T B (Cayman) Inc. and Rupert Acquisition LLC
Rikin Morzaria Charlie Pettypiece Naizam Kanji Jason Koskela	For Staff of the Commission

REASONS AND DECISION

I. OVERVIEW

[1] On December 2, 2019, The Catalyst Capital Group Inc. (**Catalyst**) submitted an application (the **Catalyst Application**) to the Ontario Securities Commission (the **Commission**) complaining about alleged abusive or coercive conduct and disclosure deficiencies in connection with a going-private transaction involving Hudson's Bay Company (**HBC**), led by Mr. Richard Baker, HBC's Governor and Executive Chairman (**Baker**).

A. The Proposed Arrangement

[2] On June 10, 2019, the group led by Baker announced the proposal to take HBC private. The going-private transaction was proposed to be implemented through an Arrangement Agreement dated October 20, 2019 (the **Arrangement Agreement**), to give effect to a plan of arrangement (the **Plan of Arrangement**) under the *Canada Business Corporations Act* (**CBCA**).[1] Pursuant to the Plan of Arrangement, Rupert Acquisition LLC, an entity owned by Baker, his family and related interests (**Rupert LLC**) and entities related to four existing shareholders consisting of Fabric Luxembourg Holdings S.à.r.l (**Fabric**), Hanover Investments (Luxembourg) S.A., L&T B (Cayman) Inc. and Abrams Capital Management L.P. (collectively, the **Continuing Shareholders**), would own all of the common shares of HBC (the **Common Shares**) if the Plan of Arrangement was completed (the **Transaction**). The Continuing Shareholders control approximately 57% of the voting shares of HBC.

[3] HBC, Baker, entities and family members associated with Baker, the Continuing Shareholders and Rupert LLC are the Respondents in this proceeding (the **Respondents)**.

[4] Fabric, which is an investment vehicle affiliated with Rhone Capital L.L.C., alone controls 23.5% of the voting shares of HBC. Fabric had been subject to a standstill agreement set out in an Investor Rights Agreement between HBC and Fabric, dated October 24, 2017 (the **Standstill Agreement**). Under the Standstill Agreement, among other restrictions and subject to certain exceptions, Fabric was prohibited from transferring or agreeing to transfer any portion of its Common Shares of HBC to any person or group of persons that would beneficially own or control more than 10% of the Common Shares. As discussed below, the Standstill Agreement was waived by HBC to enable the Continuing Shareholders to pursue the Transaction.

[5] The Continuing Shareholders initially offered a price of C$9.45 per share to the public shareholders who would be bought out in the Transaction. HBC's Special Committee formed to consider the Transaction (the **Special Committee**) found this price to be inadequate. The Continuing Shareholders then increased the price to C$10.30. If this price were applied to all the Common Shares, it would result in a market capitalization of approximately C$1.9 billion for HBC.

[6] By virtue of HBC's by-laws and corporate law, approval of the Transaction requires 75% approval of the votes cast at the meeting called to consider the matter. By virtue of MI 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**),[2] which is in effect in Ontario,[3] approval of the Transaction also requires the approval of a

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[1] RSC 1985, c C-44.
[2] (2008), 31 OSCB 1321.

'majority of the minority', based on the votes cast at the meeting. For this purpose, the minority excludes the Continuing Shareholders and certain other categories of persons specified in MI 61-101. Under the CBCA, the Transaction would also require the approval of the Ontario Superior Court of Justice, based on the Court's assessment of the fairness of the transaction.

[7] On the same day as, but shortly prior to, the Continuing Shareholders' announcement of the Arrangement Agreement, HBC also announced that it had entered into definitive agreements to sell its remaining European real estate and related European retail joint venture to its then partner, SIGNA Retail Holdings, for proceeds of approximately C$1 billion (the **SIGNA Transactions**). HBC's announcement stated that the SIGNA Transactions were expected to close in the fall of 2019. The parties acknowledged that the proceeds from the SIGNA Transactions would help fund the Transaction.

[8] After a process leading to the increased price and the Special Committee's favourable recommendation of the Transaction, HBC scheduled the shareholders meeting to consider the Transaction for December 17, 2019 (the **Special Meeting**). HBC disseminated a management information circular, dated November 14, 2019, to solicit HBC's shareholders to vote and to obtain proxies to obtain the required votes in favour of the Transaction (the **Circular**).

[9] The Circular contained a valuation of the Common Shares prepared by TD Securities Inc. (**TD Securities**) in accordance with the requirements of MI 61-101 and an opinion concerning the fairness, from a financial point of view, of the consideration to be received by the minority common stock holders (the **TD Valuation and Fairness Opinion**).

[10] The TD Valuation and Fairness Opinion, which was dated October 20, 2019, relied on the third-party appraisals of HBC's real estate holdings. In certain cases, TD Securities adjusted the appraised value.

[11] Notably, the TD Valuation and Fairness Opinion relied on the appraisal of the value of the Saks Fifth Avenue flagship property (the **Saks Flagship**) prepared by CBRE, Inc. (**CBRE**) at the direction of the Special Committee, as at July 15, 2019, and brought forward to October 15, 2019 (the **CBRE Appraisal**).

[12] The TD Valuation and Fairness Opinion stated that:

a. subject to specified assumptions and limitations, "the fair market value of the Common Shares is in the range of C$10.00 to C$12.25 per Common Share"; and

b. the consideration offered in the Transaction of C$10.30 was, in the opinion of TD Securities, fair to the minority shareholders from a financial point of view.

[13] The Circular also included fairness opinions prepared by J.P. Morgan Securities Canada Inc. (**J.P. Morgan Securities**) and Centerview Partners LLC (**Centerview**), each dated October 20, 2019. Each firm concluded, subject to the assumptions and limitations set out in its opinion, that the Transaction was fair to the minority shareholders from a financial point of view.

[14] The CBRE Appraisal was not included in the Circular, but was available for review on HBC's website. The CBRE Appraisal utilized three different scenarios, discussed in greater detail below, and concluded that those three scenarios yielded a market value for the Saks Flagship of US$1.6 billion, US$250 million or US$1.180 billion.

[15] The CBRE Appraisal was an input into the TD Valuation and Fairness opinion and the other two fairness opinions.

[16] The TD Valuation and Fairness Opinion states that TD "reviewed and relied upon (without attempting to verify independently the accuracy of)", among other listed items, the CBRE Appraisal. The Centerview fairness opinion states that it "used and relied on, at the direction of the Special Committee, … the Real Estate Appraisals for purposes of our analysis and this Opinion." Centerview, however, did not express an opinion as to such appraisals or the assumptions on which they were based. The J.P Morgan Securities fairness opinion states that J.P. Morgan Securities assumed the completeness of all information furnished to it by HBC and that it had been provided with "certain third-party appraisals of certain assets of [HBC] provided by [HBC]…", which we infer included the CBRE Appraisal. J.P. Morgan Securities similarly disclaimed any obligation to independently verify such information.

B. The Catalyst Offer

[17] Catalyst is a Canadian private equity firm that controls approximately 17.49% of the Common Shares, acquired principally after the Transaction was announced.

[18] Catalyst has actively opposed the Transaction through its engagement with HBC, through the press and through complaints to Staff of the Commission (**Staff**). On November 27, 2019, Catalyst announced that it had offered to purchase all the Common Shares of HBC at a price of C$11.00 per share (the **Catalyst Offer**). HBC's Special

[3] MI 61-101 is also in effect in Quebec, Alberta, Manitoba and New Brunswick.

Committee responded on December 2, 2019 by stating that the Catalyst "transaction is incapable of being completed", since a 75% vote was required to complete an acquisition and the Continuing Shareholders, which control approximately 57% of the Common Shares, "are not interested in a transaction that would result in a sale of their interests in HBC".

[19] The Respondents seek no relief in this proceeding regarding the Catalyst Offer. We refer to it solely to provide context for the events that transpired.

C. Orders Sought by Catalyst

[20] The Catalyst Application sought the following orders from the Commission pursuant to s. 127 of the *Securities Act*[4] (the **Act**):

a. an order for documentary discovery of HBC;

b. an interim order, pursuant to s. 127(1)2.1 of the Act, prohibiting the acquisition of shares pursuant to the Plan of Arrangement until this matter is dealt with through a final order of the Commission and no later than January 7, 2020;

c. an order for an expedited hearing;

d. an order granting standing to Catalyst to pursue the Catalyst Application;

e. an order:

i. pursuant to s. 127(1)2.1 of the Act permanently prohibiting the acquisition of securities pursuant to the Plan of Arrangement or any similar transaction;

ii. or, in the alternative,

(a) an order pursuant to s. 127(1)5 of the Act requiring HBC to amend the Circular to address the issues raised in the Catalyst Application, and to provide Staff with a copy of the Circular so amended (the **Amended Circular**) at least five business days before it is sent to shareholders of the Company;

(b) an interim order requiring HBC to postpone the Special Meeting to a date not earlier than 21 calendar days after the date the Amended Circular is sent to shareholders of HBC; and

(c) an interim order pursuant to s. 127(1)2 of the Act cease trading the securities of HBC in connection with the privatization transaction until such time that HBC complies with clauses e.ii.*(a)* and *(b)* above.

II. PRELIMINARY ISSUES

A. Scheduling and Procedural Issues

[21] At the first attendance in this matter on December 5, 2019, the Commission ordered an expedited exchange of application materials, with the hearing of the application scheduled to begin on December 11, 2019, and to continue, if necessary, on December 12 and 13, 2019. As a result, the hearing was scheduled to end three calendar days (one business day) before the Special Meeting. In order to more readily accommodate the expedited hearing schedule, Catalyst abandoned its request for documentary discovery of HBC.

[22] The Commission also ordered, with the consent of the parties, that all evidence in chief would be entered by way of affidavits. The parties were required to make the affiants available for cross-examination at the hearing of the application.

[23] At the first attendance, the panel directed that the standing of Catalyst would be the first matter to be considered in a potentially bifurcated hearing commencing on December 11, 2019.

B. Standing

[24] Only Staff has the ability as of right to bring an application under s. 127 of the Act. Therefore, on the first day of the hearing, we heard submissions from the parties regarding whether Catalyst ought to be granted standing to bring its application.

[4] RSO 1990, c S.5.

[25] In *MI Developments Inc. (Re),*[5] the Commission enumerated the following factors that were relevant to the exercise of its discretion to permit a private party to bring an application under s. 127 of the Act in appropriate circumstances:

a. the application involves or relates to both past and possible future conduct regulated by Ontario securities law;

b. the application is not purely enforcement in nature;

c. the relief sought by the applicant is future-looking;

d. the Commission has the authority to impose an appropriate remedy in the circumstances;

e. the applicant, as a substantial shareholder of the respondent, is directly affected by the past and future conduct of the respondents; and

f. the Commission is satisfied that it was in the public interest to hear the application.

[26] In subsequent decisions relating to standing, the Commission has applied the factors enumerated in *MI Developments* and has expanded the non-exhaustive list of factors to include whether the application raises a novel issue, whether the issues could have been addressed in prior applications, whether there was a *prima facie* case, and the timing of the application.[6]

[27] After hearing submissions, we gave an oral decision, with reasons to follow, by which we granted standing to Catalyst. The following are our reasons for that decision.

1. Timeliness of the Catalyst Application

[28] Catalyst brought its application on a timely basis, considering the timing of its engagement with HBC and Staff before and after the dissemination of the Circular. The Circular itself was not filed until November 18, 2019. The information in the Circular was restated in material respects by a press release issued on December 6, 2019, entitled “Special Committee of the Board of Hudson’s Bay Provides Additional Information Regarding Background to Proposed Privatization Transaction” (the **December 6 Press Release**).[7] The December 6 Press Release goes into considerable detail concerning the SIGNA Transactions and their interrelationship with the Transaction – details that were not initially included in the Circular. Catalyst was entitled to consider this information in evaluating whether it should make a revised complaint to Staff and to determine what relief it should seek from the Commission. The December 6 Press Release was issued one day after the first attendance in this matter. Bearing in mind the new information in the December 6 Press Release, Catalyst was timely in pursuing its application in these circumstances.

2. Fundamental Securities Regulatory Issues Raised by the Catalyst Application

[29] Catalyst’s application raises fundamental securities regulatory issues involving compliance with MI 61-101 and the protection of minority shareholders who are faced with a management-led going-private transaction. Those issues include both process and disclosure issues involving:

a. the timing of the formation and mandate of the Special Committee and its involvement in key decisions after the Lead Director, Mr. David Leith (**Leith**), learned of the Transaction;

b. the Special Committee’s role in negotiating the Transaction and its consideration of the interrelationship between the Transaction and the SIGNA Transactions; and

c. the effect of the CBRE Appraisal of the Saks Flagship on the TD Valuation and Fairness Opinion.

[30] These issues were apparent from the application record before us, which demonstrated that before a Special Committee was mandated with considering and negotiating the Transaction, Leith authorized Baker to share material non-public information regarding HBC with Fabric to enable Baker to form the group of Continuing Shareholders.

[31] The application record also demonstrated the close proximity in time of the announcement of the SIGNA Transactions with the announcement of the going-private proposal (approximately six minutes). The record also showed how little the Circular disclosed about the Special Committee’s consideration regarding the interrelationship of the two and the committee’s involvement with regard to the timing of the two announcements.

[5] *MI Developments (Re)*, 2009 ONSEC 47, (2009) 32 OSCB 126 (***MI Developments***) at paras 107-110.
[6] *Growthworks Canadian Fund Ltd (Re)*, 2011 ONSEC 17, (2011) 34 OSCB 6755; *Central GoldTrust (Re)*, 2015 ONSEC 44, (2015) 38 OSCB 10768; *Catalyst Capital Group Inc*, 2016 ONSEC 14, (2016) 39 OSCB 4079; *Pearson (Re)*, 2018 ONSEC 53, (2018) 41 OSCB 8795.
[7] Exhibit 3, Affidavit of David Leith sworn December 9, 2019 at Tab 1T, HBC Press Release dated December 6, 2019 (**December 6 Press Release**).

[32] In addition, the CBRE Appraisal, which had a central role in the TD Valuation and Fairness Opinion, was ambiguous as to whether CBRE was bound by certain scenarios directed by the Special Committee and whether its appraisal could be properly be relied upon in the formulation of a valuation under MI 61-101.

[33] These concerns, in the context of the need to afford appropriate protections to minority investors in a transaction subject to significant conflicts of interest, are sufficient to demonstrate the existence of a *prima facie* case that should proceed to a full hearing.

3. No Undue Interference with Commercial and Market Expectations

[34] Since the hearing was scheduled to be concluded prior to the Special Meeting and well before the outside date contemplated in the Arrangement Agreement, a hearing on the merits of the application did not unduly interfere with commercial and market expectations.

4. Other Factors and Conclusion on Standing

[35] All other *MI Developments* factors were satisfied:

a. the Catalyst Application relates to both past and possible future conduct regulated by Ontario securities law,

b. the Catalyst Application seeks forward-looking relief,

c. the Catalyst Application is not enforcement in nature, but is directed to the prevention of abusive conduct, compliance with MI 61-101, and disclosure issues that are central to the ability of minority shareholders to make an informed voting decision,

d. the cease-trade orders and remedial disclosure sought by Catalyst are within the Commission's authority, and

e. Catalyst is a significant minority shareholder who is directly affected by the conduct that forms the subject of its complaints.[8]

[36] For these reasons, we granted Catalyst standing to pursue its Application pursuant to s. 127 of the Act.

III. ISSUES

[37] Catalyst's Application raises the following issues:

a. What is the standard for disclosure for the Circular?

b. Did the Circular meet the standard of disclosure?

c. If the standard of disclosure was not met, what is the appropriate relief:

i. Should the Transaction be permanently cease-traded?

ii. Should we require the Circular to be amended and restated so that investors can review the material within the 'four corners' of the document? If so, what additional disclosures should be ordered?

iii. What other relief, if any, is appropriate?

d. Was the process leading to the Transaction abusive to minority shareholders such that the transaction should be permanently cease-traded?

IV. ANALYSIS

A. Law on Protection of Minority Security Holders

[38] The primary securities law framework for considering the Transaction and the Catalyst Application is set out in MI 61-101.

[39] The Transaction is embodied in the Plan of Arrangement and is a business combination that is subject to Part 4 of MI 61-101. It contemplates that the minority shareholders' equity interests in HBC would be terminated in return for cash, without their consent. It involves the Continuing Shareholders, who are acting jointly in pursuing the Transaction and who control approximately 57% of the Common Shares. The Continuing Shareholders are led by Baker and are related

[8] See section IV.H of these Reasons for a discussion of Catalyst's allegations concerning early warning and insider reporting.

parties of HBC. MI 61-101 is premised on the need to protect minority shareholders in such business combinations from:

a. the informational advantages that parties related to the issuer enjoy as a result of their insider status, when those parties seek to buy out the other shareholders, and

b. the conflict of interest arising from the insider's role as a buyer acting in its own self-interest by seeking the lowest possible price.

[40] The Companion Policy to MI 61-101 states that:[9]

> We do not consider that the types of transactions covered by this Instrument are inherently unfair. We recognize, however, that these transactions are capable of being abusive or unfair, and have made the Instrument to address this.

We agree with this statement. Such transactions are an established feature of the marketplace and can provide valuable liquidity events for minority shareholders.

[41] MI 61-101 requires the following primary special protections for this type of transaction:

a. Enhanced disclosure requirements, which include the following elements that are particularly relevant to the Catalyst Application:[10]

   i. a description of the background to the business combination,

   ii. disclosure of every prior valuation in respect of the issuer known to the issuer or directors or senior officers that has been made in the prior 24 months,

   iii. a discussion of the review and approval process adopted by, in this case, the Special Committee,

   iv. a summary of the independent valuation obtained by HBC and the other information concerning the valuator and the valuation required by Part 6 of MI 61-101,

   v. any specific direct or indirect benefit to directors or officers of HBC obtained as a result of the transaction, and

   vi. by virtue of the incorporation of the required disclosures in Item 29 of Form 62-104F2 – *Issuer Bid Circular*, any other matter that has not previously been generally disclosed, that is known to the issuer, "and that would reasonably be expected to affect the decision of the security holders of the issuer to accept or reject the offer…."

b. Preparation of a formal valuation of the Common Shares by an independent, qualified valuator, selected and supervised by a special committee. The valuation must express the valuator's opinion (which may be in the form of a price range) as to the fair market value of the Common Shares as of an effective date within 120 days of the earlier of the date the Circular was sent to the Common Share holders or filed. The valuator must not make a downward adjustment for the liquidity of the shares, the effect of the transaction on the shares or the fact that the shares do not form part of a controlling interest.[11]

c. Majority of the minority approval at a shareholders' meeting. The minority in this case would exclude the Continuing Shareholders. It would also exclude, among others, joint actors in relation to the Continuing Shareholders and directors and officers who would be entitled to receive different consideration for their shares or a collateral benefit as defined in MI 61-101.[12]

B. Law on Special Committees

[42] MI 61-101 requires the establishment of a special committee of independent directors only in the case of an insider bid – that is, a take-over bid implemented by insiders of the issuer, rather than an arrangement or other transaction implemented by a shareholder vote such as the Transaction.

[43] Notwithstanding that a Special Committee is not mandated by MI 61-101 in these circumstances, the Special Committee in making its recommendation described its responsibilities in a manner similar to what would be required of

[9] Companion Policy 61-101CP to MI 61-101 – *Protection of Minority Security Holders in Special Transactions* (2008), 31 OSCB 1357, s 1.1.
[10] MI 61-101, s 4.2(3).
[11] MI 61-101, s 6.4.
[12] MI 61-101, s 8.1.

a special committee under this instrument, stating in its October 21, 2019 press release:

> The Special Committee of independent directors was established by the HBC Board of Directors … to consider the initial privatization proposal, as well as other alternatives available to the Company, including the status quo, and, if it deemed advisable, to negotiate with the Shareholder Group on pricing and other terms of the arrangement to ensure that the arrangement was fair to the HBC shareholders other than the Shareholder Group.

[44] To a similar effect, the HBC Investor presentation stated twice that the:[13]

✓ **Special Committee and its advisors conducted independent and thorough evaluation process**

- Offer price is within the fair market value range provided by TD Securities, the independent valuator
- Estimated value of real estate at $8.75 per share based on independent appraisals
- Thorough evaluation of management's operating plan for the retail business

[45] In the Circular, HBC described the role of the Special Committee as follows:

> The Board asked the Special Committee to evaluate the Initial Proposal (and any other privatization proposal) and consider alternatives available to the Company, including the option of doing no transaction at all. The Special Committee also was asked to supervise or engage in negotiations with respect to any potential transaction and provide a recommendation to the full Board as to whether any potential transaction considered by the Special Committee is in the best interests of the Company and should be recommended for approval by shareholders.

[46] HBC recognized the value of a special committee in this case in order to assist the board in carrying out its mandate, in mitigating the conflicts of interest of the Continuing Shareholders and to provide a reasonable basis for the required majority of the minority vote.

[47] Where, as in this case, a special committee is established as the appropriate protective mechanism, disclosure of its processes and the basis for its recommendation should be subject to the same disclosure standards in a management information circular that would apply if a special committee was required. This is because in both cases the information is equally important to investors' voting decisions regardless of why the company had to or chose to initiate a special committee process. In each case the standard of disclosure will be what is important to enable an investor to make an informed decision.[14] If a company has embarked on a special committee process and made commitments to investors of the kind made by HBC about the process, investors are entitled to disclosure concerning the mandate, timing and material decisions made by or relating to the special committee to allow for an informed vote on the transaction and to give them confidence that the process supported the special committee's recommendation. This is equally true whether the special committee is mandated by Ontario securities law or put in place by the company for other reasons.

[48] Among other matters, investors reasonably need disclosure concerning decisions related to the Special Committee's power to negotiate or supervise the negotiation of transactions and to consider alternatives. The circular should also describe its approach to the use of independent counsel and its possession of sufficient resources to carry out its mandate, free of undue influence.

[49] Once such a special committee process is set in motion, shareholders are entitled to disclosures that are equally as effective as for other related party transactions posing similar risks to minority shareholders. If a special committee is employed, the disclosures related to its process will be open to the same scrutiny as if its establishment was mandated, whether it was formed as a result of corporate law considerations, securities law requirements, and best practices, or as a perceived necessary step to gain shareholder approval in a conflicted transaction.

C. Law on Standard for Disclosure

[50] In *Magna (Re)*, the Commission summarized the standard for disclosure required by Ontario securities law, corporate law and common law in a management information circular, where the circular relates to a transaction that requires a shareholder vote:[15]

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[13] Exhibit 1, Affidavit of Gabriel De Alba sworn December 6, 2019 (**De Alba Affidavit**) at Tab 2DD, HBC Investor Presentation dated October 21, 2019, pp 3 and 15.

[14] See section IV.C of these Reasons for a discussion of the standard of disclosure.

[15] *Magna International Inc (Re)*, 2010 ONSEC 14, (2011) 34 OSCB 1290 (***Magna***) at para 109.

> They require that disclosure be provided in the Circular in sufficient detail to enable a reasonable shareholder to make an informed decision on how to vote on the Proposed Transaction. That standard of disclosure constitutes an objective test that must be applied in the specific circumstances.

[51] The Commission in *Magna* emphasized that disclosure in an information circular "must be accurate, complete and not misleading and must be contained within the four corners of the applicable circular".[16]

[52] A circular "must set forth the information that would be important to a reasonable shareholder in deciding how to vote on the particular transaction" and "must not omit facts necessary to make any statement or information not misleading."[17]

[53] *Magna* also states, "while the applicable disclosure standard does not change based on the circumstances, how that standard is applied is contextual and will vary with the circumstances."[18]

[54] We apply this disclosure standard to the disclosure deficiencies asserted by Catalyst with regard to the Circular.

D. Application of the Standard for Disclosure

1. The TD Valuation and Fairness Opinion

[55] The summary of the TD Valuation and Fairness Opinion in the Circular states:

> On October 20, 2019, TD Securities orally delivered its opinion (subsequently confirmed in writing) to the Special Committee that subject to the assumptions, limitations and qualifications set forth in the TD Securities Valuation and Fairness Opinion, it was of the opinion that, as of October 20, 2019, (i) the fair market value of the Common Shares is in the range of $10.00 to $12.25 per Common Share, and (ii) the Consideration to be received by the Common Shareholders other than the Continuing Shareholders pursuant to the Arrangement is fair, from a financial point of view, to the Common Shareholders other than the Continuing Shareholders.

[56] The full text of the TD Valuation and Fairness Opinion is appended to the Circular as Appendix C.

[57] The "Assumptions and Limitations" section of the TD Valuation and Fairness Opinion states:

> …TD Securities relied upon the appraisals of value of HBC's 100%-owned and joint venture owned real estate properties prepared by the Appraisers, as adjusted by TD Securities following discussions with the Real Estate Specialists, which is more particularly described in the Valuation.[19]

[58] The section entitled "Approach to Real Estate Value" states that the real estate appraisals prepared by the Appraisers, which included both Cushman and Wakefield, Inc. for 87 of HBC's 100%-owned and joint venture owned real estate properties, and CBRE for the Saks Flagship, conducted their appraisals based on the same defined scenarios for the use of all these properties:

> The Appraisers provided an appraisal of the value of each property, either 100%-owned or owned through the Real Estate JVs, based on the following scenarios, the higher of which was determined to be the appraised value ("Appraised Value"):
>
> 1. value assuming HBC as the tenant (the "As-Is Value"); and
> 2. greater of the hypothetical value assuming the property is rented to: (i) a single tenant; or (ii) multiple tenants, other than HBC (the "Dark Value").[20]

[59] The multi-tenant scenario described in 2(ii) above in respect of the Saks Flagship is stated to be based exclusively on a scenario in which "the existing tenant footprint was rationalized to occupy the basement to floor four, the restaurant maintained its current footprint and office tenants occupied the remaining space. The value under this scenario was less than the As-Is Value." [21]

[60] CBRE also disregarded a variant of the above scenario 2(ii) in which upper floors would be converted to residential condominiums based on the stated weakness in the luxury residential market in Manhattan.

[61] TD Securities made certain adjustments to the value of the real estate for purposes of its valuation, utilizing the mid-

[16] *Magna* at para 113.
[17] *Magna* at para 117.
[18] *Magna* at para 128.
[19] De Alba Affidavit at Exhibit Q, Management Information Circular dated November 14, 2019 (the **Circular**), p C-7.
[20] Circular, p C-30.
[21] Circular, p C-33.

point of a range calculated by adjusting the gross occupancy cost ratio in the case of the Saks Flagship. The market rents for the Saks Flagship implied a gross occupancy cost ratio at the high end of market benchmarks for comparable properties, as determined by CBRE, but the range was not included in the TD Valuation and Fairness Opinion since the Special Committee considered the sales information for the Saks Flagship, which could be derived from the ratio, to be commercially sensitive.

[62] After the adjustments made by TD Securities, the Saks Flagship is stated to have an Adjusted Real Estate Value Range of between C$2,036.4 million and C$2,162.4 million. HBC's equity value in all real estate holdings is stated to be in the range of C$1,465.4 million to C$1,719.4 million. It is readily apparent that the vast majority of the value of HBC attributable to the Common Shares arises from HBC's equity interest in its real estate holdings, with the Saks Flagship representing a value in the range of approximately 1/4 to 1/3 of HBC's total equity value in real estate.

[63] The CBRE Appraisal, dated October 15, 2019, is addressed to Leith as the Chairman of the Special Committee of the Board of Directors of HBC. The CBRE Appraisal was not appended to the Circular, but was made available on HBC's website, with the redactions of the asserted commercially sensitive information.

[64] Throughout its appraisal report, CBRE refers to directions received from "the Client". While CBRE defines "the Client" to be HBC, it is clear from the context that the term refers to the Special Committee specifically.

[65] The TD Valuation and Fairness Opinion gives a fair summary of the scenarios set out in the CBRE Appraisal. However, the CBRE Appraisal states that "at the request of the Client, we have appraised the subject property according [to] the following three scenarios…"

[66] Nowhere in the CBRE Appraisal does it state unequivocally that these scenarios were selected by CBRE as most appropriate.

[67] A plain reading of the language introducing the three scenarios is that CBRE was directed to use these scenarios by the Special Committee rather than independently determining that they were the most appropriate scenarios and that three were sufficient.

[68] This language indicating that the Special Committee directed the use of particular scenarios is repeated elsewhere in the CBRE Appraisal. For example, in the introduction to Scenario 2, the report states:

> At the request of the Client, we have appraised the subject property assuming it is vacant and ready for occupancy. Further, also at the Client's request, this hypothetical scenario assumes a single retail tenant will lease the entire building, replacing Saks Fifth Avenue.

[69] Similar language is used in the case of Scenario 3, which involves a "conversion into a mixed-use office/retail building."

[70] During the hearing, counsel for HBC directed us to a discussion on pages 73 and 74 of the CBRE Appraisal, entitled "Highest and Best Use". This section does not analyze the status quo, with the Saks Flagship in full occupancy, which scenario, in fact, yielded the highest "value conclusion" in the CBRE Appraisal. The section goes on to discuss the application of this appraisal principle to Scenario 2 ("as vacant") and Scenario 3 ("as improved") but expresses very general conclusions regarding the property's continued use for "retail development" and if vacant, as a "mixed-use office/retail property." If the property were vacant, the buyers could be "an investor (land speculation) or a developer" or "Institutional".

[71] For a valuation to comply with Part 6 of MI-101, it must reflect the "valuator's opinion" concerning the fair market value of the subject shares. If the valuator relies without independent investigation on an appraisal of a highly material asset such as the Saks Flagship, and that appraisal is conducted in accordance with scenarios directed by the board of directors or a special committee without the appraiser's or valuator's clear reasoned acceptance of being limited to those scenarios, the valuation has been inappropriately constrained by the board or special committee. The valuator must express its own opinion, constrained only by circumstances beyond its own control and that of its client, and not constrained by limitations imposed by that client. A valuator cannot escape this responsibility for expressing its independent opinion by relying on an appraisal of material assets that is subject to limitations imposed by its client.

[72] We adopt the following language from the Companion Policy to MI 61-101:

> The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion. Scope limitations should not be imposed by the issuer, an interested party or the valuator, but should be limited to those beyond their control that arise solely as a result of unusual circumstances.

[73] The CBRE Appraisal repeatedly stresses that the scenarios have been directed by the Special Committee. It does not state unequivocally that CBRE has concluded that they are the right ones, that they are sufficiently detailed, and that

three is the right number, with or without possible variations. The TD Valuation and Fairness Opinion, by virtue of its reliance on the CBRE Appraisal, is therefore similarly constrained. The adjustments made by TD Securities were strictly within the confines of these three scenarios and did not address the appropriateness of the scenarios themselves.

[74] A special committee should test the work done by the valuator to ensure that it results in an appropriate valuation of the subject securities, and it should ensure that the valuator has the necessary access to information to conduct the valuation and help ensure that the valuator is free from undue influence. It should not constrain the valuator to particular scenarios or constrain the work of appraisers of material assets whose work will be a critical input relied upon by the valuator.

[75] Catalyst submits that the CBRE Appraisal is a Prior Valuation as defined in MI 61-101, requiring that it be disclosed in the Circular, since it is an appraisal of a highly material asset, disclosure of which "would be expected to affect the decision of a security holder to vote for or against a transaction…"

[76] HBC argues that we should not consider the CBRE Appraisal to be a "prior valuation". Rather, HBC urges that we consider the CBRE Appraisal to be a "current appraisal" commissioned by the Special Committee to assist TD Securities in preparing the TD Valuation and Fairness Opinion because it was delivered to the Special Committee a month before the date the Circular was filed.

[77] If the CBRE Appraisal were not ambiguous in its language concerning the limitations imposed upon CBRE's work, and if the appraisal had otherwise been adequately disclosed in the TD Valuation and Fairness Opinion, this might have constituted sufficient disclosure of the appraisal for the purposes of MI 61-101. In this case, however, the limitations on the CBRE Appraisal were not clearly disclosed and there was no discussion of whether CBRE had a reasoned acceptance of such scenarios as supporting values based on the highest and best use of the Saks Flagship.

[78] For these reasons, we ordered that HBC amend the Circular to include the following additional information:

a. a description of any limitation on the scope of the review of the appraisal of the value of the Saks Flagship prepared by CBRE, and whether CBRE, in its professional judgment, considered such appraisal to be based on scenarios constituting the highest and best use of the Saks Flagship; and

b. the effect, if any, of the disclosures made pursuant to clause (a) above on the contents of the TD Valuation and Fairness Opinion.

2. Direct and Indirect Benefits

(a) Restricted Share Units and Deferred Share Units

[79] Subsection 4.2 of MI 61-101 incorporates certain disclosure requirements from Form 62-104F2 – *Issuer Bid Circular*, including the requirement that benefits to directors and officers of the shareholders accepting or refusing the offer, or in this case, approving the transaction through the voting requirements applicable to the Transaction, be disclosed.

[80] Catalyst submits that the payouts to directors and officers arising from the cashing out of their Restricted Share Units (**RSUs**) and Deferred Share Units (**DSUs**) should be disclosed. Catalyst submits that this is a distinct disclosure requirement, and that it constitutes material information that would reasonably be expected to affect the voting decisions of the minority shareholders.

[81] The Circular does disclose the treatment of RSUs and DSUs generally, but does not quantify the payout to any one individual or the payouts in aggregate. HBC asserts that these payouts are not material to the voting decision to be made by shareholders.

[82] Item 14 of Form 62-104F2 is unambiguous in requiring disclosure of direct or indirect benefits to "any person" among those specified in Item 11, including directors and officers of HBC. The relevant payouts are specifically required by s. 2.3(f) and (g) of the Arrangement Agreement and therefore are direct cash benefits to directors and officers that must be disclosed.

[83] The amounts of the payouts calculated by Catalyst were not disputed by the Respondents. Catalyst's calculation also included payouts from direct holdings of the Common Shares, but the vast majority of cash proceeds to directors and officers arise from RSUs and DSUs, and all together aggregate close to C$50 million, with Baker receiving approximately C$12.8 million of this amount.[22] The aggregate amount represents over 6% of the total cash proceeds to be received by shareholders.

[22] Exhibit 2, Reply Affidavit of Gabriel De Alba sworn December 10, 2019, at Tab 1E, Cash Payout Calculations.

[84] In our view, disclosure of that information is not just something required by a form. It is material information for minority shareholders to consider in connection with the exercise of their voting rights, particularly given that:

a. the Continuing Shareholders are advancing an offer in which they state that they would not be sellers under any circumstances;

b. cash benefits will be paid to directors and officers, including the most senior officer of HBC, who is leading the bid; and

c. the Special Committee was able to negotiate an 8.25% increase in the initial offer to C$10.30 per share.

[85] Contrary to submissions made by Catalyst, what Baker chooses to do with his proceeds, including rolling them into newly issued shares of HBC, however, is not likely to be material to the voting decision of the minority shareholders. He is included in the group of Continuing Shareholders and such an additional investment is a future event. There may, however, be circumstances in which disclosure is required. Purely by way of example, if there is an agreement between Baker and HBC arising in connection with the Transaction that he could purchase new shares at a price less than the consideration offered minority shareholders, this could be a direct or indirect benefit to Baker requiring disclosure. The Panel had insufficient information to find that there were any additional benefits of that kind.

(b) Tax Structure

[86] Catalyst submits that the transaction's atypical structure, as a share buyback by HBC rather than a sale to another party, results in a potentially adverse tax treatment to the minority shareholders. This is acknowledged in the Circular, which states: "**As a result, Shareholders may prefer to sell their Common Shares in the public markets with a settlement date that is prior to the completion of the Transaction**" (emphasis in original).[23]

[87] HBC responds by stating:

> The applicable disclosure requirement, however, is to disclose the direct or indirect benefits of the Arrangement, which the Circular clearly discloses by stating that the Continuing Shareholders will own all of the shares of the Company upon completion of the Arrangement. The Agreed Reorganization does not involve third parties and is intended to facilitate structure simplification and repatriate cash held by non-Canadian subsidiaries to [*sic*] of HBC.

[88] We consider HBC's view of the direct or indirect benefits of a transaction to be too narrow. Merely to imply that any structural advantages resulting from the status of the Continuing Shareholders accrue to them in the post-transaction company even if that structure was an affirmative choice with trade-offs as between the financial consequences to the Continuing Shareholders and the minority shareholders is not adequate disclosure. This is especially true where the after-tax return to at least most retail investors who do choose not to sell out in advance in the market may be significantly less than the headline offer price.

[89] In a business combination subject to MI 61-101, there is the ever-present risk that the conflict of interest, to which the management-led continuing shareholders are subject, may result in their interests being favoured in the structuring of the transaction. A special committee, in negotiating or supervising the negotiation of such a transaction, must be alert to all factors affecting value, including tax structuring.

[90] HBC should explain how the Special Committee in this case considered these issues in giving its favourable recommendation. This is particularly important where shareholders are advised that they may be better off selling their shares rather than exercising their voting rights in respect of a transaction, when there is no assurance that the transaction will be approved or that the consideration will not be increased in the future and the selling shareholder will miss the improved price. To the extent that the tax structure benefits the Continuing Shareholders, and the Special Committee believes it was necessary or appropriate for this benefit to be conferred on them, the Circular should include an explanation.

[91] In light of these considerations, we ordered that the Circular be amended to disclose the direct or indirect benefits to be obtained by the persons specified in Item 11 of Form 62-104F2 - *Issuer Bid Circular* in connection with the Transaction, including, without limitation:

a. those to be obtained by directors and officers of HBC and involving treatment of restricted share units and options; and

b. those to be obtained by the Continuing Shareholders arising from the tax structure proposed to implement the Transaction.

[23] Circular, p 20.

E. Operation of the Special Committee

1. Leith's Authorization of the Sharing of Confidential Information and Use of Historical Transaction Counsel

[92] The December 6 Press Release revealed for the first time significant discussions that had taken place more than two months before June 9, 2019, the date on which the HBC Board enlarged the mandate of the Special Committee to include consideration of the Transaction. Specifically, on or about March 25, 2019, Baker and another director informed Leith, as HBC's lead independent director, about Baker's desire to evaluate a privatization proposal along with the Continuing Shareholders, contingent on the SIGNA Transactions proceeding.

[93] The December 6 Press Release states:

> Mr. Leith consented to Mr. Baker exploring such a transaction and sharing certain limited financial information with the Continuing Shareholders on a confidential basis. Mr. Leith also provided consent to the use by Mr. Baker of the Company's historical transaction counsel in connection with that initial evaluation….

[94] Catalyst and Staff questioned the process by which Leith made these decisions, apparently on his own, without a Special Committee being formed with an appropriate mandate and without the benefit of advice from independent counsel.

[95] These events occurred earlier than disclosed in the unamended Circular, which stated that Baker informed the Board of his evaluation of a privatization proposal in April 2019, and which does not mention the permission Leith granted to Baker.

[96] Leith's explanation under cross-examination was that there were many matters requiring the attention of directors, including the SIGNA Transactions, which were still developing, and that in 2017, Baker had embarked on and later decided not to proceed with a privatization proposal. Leith testified that as a result, when faced with the possible emergence in 2019 of a new proposal, he did not want to use up time and resources until the proposal had greater certainty.

[97] That account, however, does not explain why Leith made some important decisions that might have affected the later negotiation of a proposal, were it to firm up. It is not apparent how, if at all, the fact that Fabric was subject to the Standstill Agreement prohibiting it from joining the group of continuing shareholders figured in his thinking about the permission to share confidential information. It was apparent from Leith's cross-examination that he did not have a precise understanding of the different contractual confidentiality commitments and more general duties of confidentiality to which each of the Continuing Shareholders may be subject. He was not required to have such a detailed understanding, but this fact demonstrates the potential value of a properly mandated and advised special committee.

[98] Even if the going-private proposal was only nascent at that time, Leith's decisions may have had far-reaching consequences. Implicit in Leith's decision to release Fabric from its standstill obligation may have been the assumption that Fabric would likely be part of the Continuing Shareholders, since that is why Baker was seeking permission from Leith. Without Fabric's 23.5%, the Continuing Shareholders would have represented only 33.5% of the Common Shares. This would still have been enough to block any other business combination, given the requirement in HBC's bylaw for 75% approval, but any conclusion as to how the negotiations would have proceeded would be impermissibly speculative. Perhaps Baker would not have proceeded at all if the buyout of the Fabric position was required and he perceived that the financing of the privatization proposal would impose too much leverage on HBC. Perhaps the waiver of Fabric's standstill commitments would nonetheless have been negotiated, but with certain commitments on the terms of the transaction being obtained by the Special Committee. Perhaps new sources of equity could have been lined up by Baker and the Continuing Shareholders, with or without Fabric. It is impossible to know how Fabric would have responded to a transaction had it not been given the right to be a Continuing Shareholder and were it instead to form part of the minority. It is also impossible to know what the effect would be on the price offered to minority shareholders.

[99] Even though these possible outcomes are speculative, they illustrate the advantage of early special committee involvement. Before important decisions are made and rights are given up, a properly mandated and advised special committee should be in place to apply its best and well-informed judgment to the process and the negotiations, and to consider the possible ramifications of these early decisions.

[100] At an early stage of the events giving rise to this proceeding, the SIGNA Transactions were advancing and a Special Committee had been formed to consider options for the European real estate assets and retail joint venture, including the potential SIGNA Transactions. Given that the SIGNA Transactions were interrelated with Baker's privatization proposal in that they were intended to be a source of funding, and given that conflicts of interest arose from that fact alone, prudence would dictate that a special committee would be in place to address all of these transactions and their interrelationships at this early stage. We question whether the absence of a special committee at this time compromised the Special Committee's later effectiveness, since it was not active during the early stage of negotiations,

at which time critical issues such as Fabric's participation and the allocation of the proceeds from the SIGNA Transactions were being addressed.

[101] As noted above, Leith asserted that it would have been an unnecessary use of resources to form a special committee at the stage of his March 25 conversation with Baker. We disagree. The Board was on the verge of establishing a special committee that would consider a transaction that was related to the potential going-private transaction. It would have been an opportune time to combine consideration of these transactions. Indeed, without a properly mandated special committee in place, questions can arise as to whether, in the absence of some express delegated authority, a single director, even the lead independent director, is authorized to make these potentially far-reaching decisions.

[102] The mandate of a newly-formed special committee would address the issue of authorization. As stated above, although MI 61-101 does not require a special committee for this type of business combination, once a special committee process is used in transactions that involve significant conflicts of interest, it will be scrutinized on public interest grounds on the same basis as if it were required. Investors should not have to rely on a weaker process when the special committee asserts that it has had a robust process, based solely on whether the formation of the committee was legally required.

[103] In CSA Notice 61-302, Staff of the Canadian Securities Administrators commented on the timely formation of special committees as follows:[24]

> As part of our reviews, Staff have identified occasions where special committees were formed after a proposed transaction had been substantially negotiated or where it appeared that the special committee was passive and failed to conduct a robust review of the circumstances leading to the transaction, alternatives to the transaction that were available in the circumstances, and the transaction itself. In Staff's view, in those circumstances the special committee was ineffective and failed to fulfill the important functions of considering the interests of security holders and assisting the board of directors in determining whether to recommend the transaction to security holders.

[104] We endorse this concern and would extend it to cases where critical decisions that will later circumscribe the effectiveness of a special committee are made before its formation.

[105] In the same Notice, Staff also stated:[25]

> … where the special committee has not been involved in preliminary negotiations, we believe it is critical that the board of directors and special committee not be bound by any such negotiations and that other aspects of the role of the special committee be robust, such as a mandate to review, negotiate further, and consider alternatives that may be available.

[106] We agree with this analysis and note that the decisions made by Leith set the groundwork for later negotiations and were potentially difficult to reverse once the Special Committee was operating. Once Fabric was cooperating with the other Continuing Shareholders, how feasible would it be for the Special Committee to refuse to waive the standstill provision? Possible, but unlikely with the course of action set in motion by Leith at the outset. Again, this points to the need for an independently-advised special committee that is charged with considering both the potential going-private transaction and the SIGNA Transactions simultaneously. Leith should not have compromised the process to be undertaken by a special committee by making these important decisions on his own.

[107] We apply the same reasoning to the waiver that allowed HBC's traditional transaction counsel to act for the Continuing Shareholders. We agree that different teams and informational barriers can be used to make this a reasonable course of action. However, the detailed protections could have been usefully reviewed by a special committee, rather than Leith making this decision in a less formal way.

2. Disclosure ordered regarding the Special Committee

[108] We consider below whether these deficiencies in the operation of the Special Committee required us to cease-trade the Transaction because it arose from an irredeemably flawed process. However, for purposes of disclosure, we ordered disclosure concerning:

a. Leith's analysis leading to his decision on or about March 25, 2019, to consent to Baker sharing certain financial information with the Continuing Shareholders on a confidential basis, in the context of exploring a potential privatization transaction, including:

[24] Multilateral CSA Staff Notice 61-302, *Staff Review and Commentary on MI 61-101 – Protection of Minority Security Holders in Special Transactions*, 40 OSCB 6577 (**CSA Notice 61-302**) at p 4.
[25] CSA Notice 61-302 at p 5.

i. his consideration of the effects of such decision on the confidentiality obligations of each of the Continuing Shareholders at that time; and

ii. his consideration of the effects of such decision on the Standstill Agreement;

b. Leith's analysis leading to his decision on or about March 25, 2019, to consent to Baker's use of HBC's historical transaction counsel in connection with the initial evaluation of Baker's contemplated privatization proposal;

c. Leith's analysis concerning whether he did make, and if so was authorized to make, and should have made, the decisions described in (a) and (b) above on his sole authority and without the benefit of a special committee authorized to consider the privatization proposal and/or without the advice of counsel; and

d. The HBC Board's reasons for deciding that a special committee was not required to address the conflicts of interest arising from the contemplated privatization proposal until June 9, 2019.

F. Interrelationship with the SIGNA Transactions

1. Timeline of SIGNA Transactions

[109] The December 6 Press Release reveals for the first time that the Transaction was contingent on the SIGNA Transactions, stating:

> While the Special Committee was aware that any privatization proposal, if received, would be conditional on the SIGNA Transactions, the SIGNA Transactions were not conditional on a privatization transaction proceeding.

[110] It goes on to reveal that Baker reiterated on April 27 that he was evaluating the possibility of a privatization transaction, but no terms were provided other than that any proposal would be conditional on the completion of the SIGNA Transactions. However, despite the fact that (according to the press release) no more information was available to the Special Committee on April 27 than it had on March 27, the Special Committee nevertheless retained counsel and a financial advisor to advise it in connection with a privatization proposal "should one be received".

[111] On April 30, the Special Committee discussed the potential timing of the announcement of a going-private proposal in relation to the SIGNA Transactions "including the advantages and disadvantages of the privatization proposal being announced at the same time as the announcement of the SIGNA Transactions or at a different time."[26] At this point, the Special Committee's mandate was not enlarged to include the Transaction and there is no indication that the Special Committee reached a conclusion about the timing of the announcements that they sought to negotiate with Baker.

[112] On May 31st, Baker reiterated that "he was continuing to consider making a going-private proposal with other large shareholders, including Fabric".[27] This should not have been news to the Special Committee since Leith already knew that the other large shareholders were potentially involved on March 27, when he gave his permission to share confidential information for this purpose. Baker again reiterated what was already known; namely, that any going-private transaction was conditional on completion of the SIGNA Transactions. The timing of the respective announcements was also said to have been discussed, but there is no indication of the positions being advanced or this timing issue being treated as a matter for negotiation.

[113] On Tuesday, June 4, the Special Committee received a draft of the Continuing Shareholders' proposal letter and proposed press release "(to follow the Company's announcement of the SIGNA Transactions)".[28] The pricing, however, was not included.

[114] Finally, on Sunday, June 9, the mandate of the Special Committee was enlarged by the Board to include consideration of the Transaction. On this date, the Special Committee formally waived the Standstill Agreement with Fabric because, in its view, allowing Fabric to be part of the Continuing Shareholders group "was in the best interests of the Company in the circumstances". The Board also approved the SIGNA Transactions.

[115] As stated in the Circular, on June 10, HBC entered into definitive agreements for the SIGNA Transactions and the Continuing Shareholders submitted a formal initial proposal priced at C$9.45 per common share. At the same time, the Continuing Shareholders informed the Special Committee that they would not be sellers in any alternative transaction.

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[26] December 6 Press Release, p 3.
[27] December 6 Press Release, p 3.
[28] December 6 Press Release, p 3.

2. Analysis

[116] The announcement of the SIGNA Transactions did not mention the proposal by the Continuing Shareholders. It was followed within minutes by the announcement by the Continuing Shareholders of their proposal.

[117] As previously mentioned, in Leith's evidence under cross-examination, he indicated that he would have preferred a longer period of time between the two announcements, but this was a decision for the Continuing Shareholders to make.

[118] Leith had been aware of the interrelationship of the two transactions since March 2019. His view that the timing of the announcement of the proposal was in the sole control of the Continuing Shareholders appears somewhat conclusory and it is unclear how an earlier mandated special committee could have influenced or directed a result that would have given the market more time to assimilate the effect of the SIGNA Transactions on HBC's financial condition. A special committee with authority to supervise or directly negotiate potential transactions could well have had the bargaining power to insist on a longer period of time between the two announcements – authority that Leith, acting alone, did not apparently believe he possessed.

[119] We are not in a position to determine what price effect, if any, would have resulted if more time had elapsed before a potential ceiling was established by an offer by a 57% percent controlling block, arising, in part by the waiver of Fabric's Standstill Agreement the day before. Similarly, it is uncertain whether an earlier, properly mandated Special Committee could have managed a process under which alternative offers could be considered. At least one offer – the Catalyst offer – did in fact emerge at C$11.00 per share but was rejected by the Special Committee because of the Continuing Shareholders' statement that they would never be sellers. In addition, nothing restricted the Continuing Shareholders from changing their minds if a sufficiently attractive price were offered or a proposal emerged that could affect the majority of minority vote or the value of dissent rights.

[120] The Continuing Shareholders are not legally required to sell to a higher-priced offer. They can say 'thank you but NO!' or words to that effect.[29] However, their ability to make this edict stick was arguably affected by the waiver of Fabric's Standstill Agreement. An earlier mandated special committee could have sought to negotiate:

a. the timing of the announcement of the Transaction,

b. the waiver of the Fabric Standstill Agreement and any conditions that would be attached to the waiver, and

c. the ability to consider superior proposals.

It was also open to the Continuing Shareholders to change their minds about their stated intention not to sell.

[121] Given that the Special Committee was properly mandated, after numerous approaches and status reports from Baker that he was considering moving forward, there is a paucity of analysis in the Circular, even as amended and restated by the December 6 Press Release, to support the view that an earlier mandated and properly advised Special Committee could not have sought to influence these dynamics in a manner more protective of minority shareholders.

3. Disclosure ordered regarding the SIGNA Transactions

[122] For these reasons, we ordered disclosure of:

a. the HBC Board's analysis of the effect of the potential use of the proceeds of the SIGNA Transactions to partially fund the privatization proposal on the HBC Board's decision not to enlarge the mandate of the Special Committee, which included consideration of the SIGNA Transactions, to also consider the contemplated privatization proposal, until June 9, 2019;

b. the Special Committee's reasons for granting a waiver of the Standstill Agreement and the effect of such waiver on whether alternative transactions to the privatization proposal could emerge, both with and without regard to the Continuing Shareholders' assertion that they would not be sellers under any circumstances;

c. the factors involved in any negotiation by the Special Committee with the Continuing Shareholders of the terms of the "Superior Proposal" definition and related provisions in the Arrangement Agreement and the effect of such provisions on the practicality of alternative transactions emerging; and

d. the Special Committee's discussions and decisions regarding the timing of the two press releases issued on June 10, 2019 (regarding the SIGNA Transactions and the privatization proposal) and the implications of the timing of those press releases, including, without limitation:

[29] *Pente Investment Management Ltd v Schneider Corp* (1998), 40 BLR (2d) 244 (Gen Div) at para 13.

i. on the ability of the market to absorb the significance of the SIGNA Transactions in advance of the announcement of the privatization proposal; and

ii. on the magnitude of the premium to market reflected in the initial privatization proposal.

G. Reconciliation of the December 6 Press Release, Leith Affidavit and Leith Evidence under Cross-examination

[123] After a review of the December 6 Press Release, the Leith Affidavit and Leith's evidence under cross-examination, it became apparent that the presentation of the facts surrounding the communications between Leith and Baker had inconsistencies. For example, the mandate of the Special Committee as it evolved is described in differing ways at what appears to be the same point in time.

[124] The Circular states:

> On March 27, 2019, the Board established the Special Committee, … to supervise the review and evaluation of the Company's strategies and options with respect to the Company's Lord + Taylor business unit and its European real estate joint venture and European retail joint venture and real estate assets.[30]

[125] In the December 6 Press Release, the mandate is described somewhat differently:

> On March 27, 2019, the Board established the Special Committee, … to supervise the review and evaluation of the Company's strategies and options with respect to (i) the Company's Lord + Taylor business unit and (ii) its European real estate joint venture and European retail joint venture and real estate assets, which were the subject of the potential SIGNA Transactions. The Special Committee's mandate included oversight and supervision of the review and evaluation of the various possible strategic alternatives that were available to the Company and oversight of the Company's activities in furtherance thereof. In fulfilling its mandate, the Special Committee evaluated such transactions independently from any potential privatization proposal. While the Special Committee was aware that any privatization proposal, if received, would be conditional on the SIGNA Transactions, the SIGNA Transactions were not conditional on a privatization transaction proceeding.[31]

[126] On the other hand, Leith's Affidavit reverts to the more restrictive description in the original Circular.

[127] We agree with Staff's submissions that these variable formulations may leave investors in a state of confusion concerning the scope of the mandate. The scope of the mandate, and its effect as it evolved, should be clarified.

[128] In addition, on cross-examination Leith provided new material details regarding the events preceding the decision to mandate the Special Committee to consider Baker's going-private proposal. The new evidence included the fact that Baker was directly involved in the negotiation of the SIGNA Transactions, and the Special Committee's preference for successive announcements of the SIGNA Transactions and any privatization proposal, with a longer duration between the two announcements than in fact occurred.

[129] We agree with Staff that this information provides valuable additional information related to the background to the Transaction and the process followed prior to and following the expanded mandate for the Special Committee. This information would reasonably be expected to affect the decision of a security holder to vote for or against the Transaction or to retain or dispose of the Common Shares.

[130] These are two examples only. Catalyst also highlighted differences in the narratives concerning the actions taken by Leith and the Special Committee.

[131] For these reasons, we ordered that the Circular be amended so as to provide a reconciliation of the disclosures made in the December 6 Press Release and the evidence contained in the Leith Affidavit, together with his testimony given at the hearing.

H. Early Warning and Insider Reporting

[132] Catalyst alleges that after Leith authorized disclosure of confidential information to the Continuing Shareholders, they were acting jointly or in concert and had formed an intention to exercise control over HBC that should have been reported in revised insider and early warning reports by each of the Continuing Shareholders. Catalyst alleges that the market should have been made aware of a change in intent and group formation at an earlier point in time than June 10, when the Transaction was announced.

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[30] Circular, p 22.
[31] December 6 Press Release, p 2.

[133] This allegation relates exclusively to past conduct, since the information was subsequently disclosed. As such, the allegation is more appropriately the subject of review by Staff. We disregard this allegation for the purposes of this proceeding.

V. RELIEF

A. Temporary Cease-Trade Order was Not Necessary

[134] Because at the end of the hearing we indicated our intention to order amended disclosure, HBC agreed to postpone the Shareholders Meeting until such disclosure could be provided in accordance with an order to be issued later. A cease-trade order was therefore not necessary to give effect to our order for disclosure and no cease-trade order was issued.

B. Permanent Cease-Trade Order was Not Necessary

[135] We also concluded that amended disclosure was a sufficient response to the deficiencies demonstrated at the hearing and that it was not necessary to bar the transaction from proceeding at all.

[136] The *Magna* decision describes the basis for utilizing the Commission's public interest jurisdiction in s. 127 of the Act to prevent a transaction from moving forward as follows:[32]

> The Commission recognized in *Re Canadian Tire* that it should act to restrain a transaction that is clearly abusive of shareholders and of the capital markets, whether or not that transaction constitutes or involves a breach of Ontario securities law. The Commission's mandate under section 127 is not, however, to intervene in transactions under some rubric of ensuring fairness. To invoke its public interest jurisdiction, in the absence of a demonstrated breach of securities law or the animating principles underlying that law, a transaction must be demonstrated to be abusive of shareholders in particular, or of the capital markets in general. A showing of abuse is something different from, and must go beyond, a complaint of unfairness (See *Re Canadian Tire* [10 OSCB 857, January 14, 1987] … and *Re Canfor Corp*. (1995), 18 OSCB 475, 487).

[137] Catalyst asserts that there was egregious conduct in the process leading to the initial proposal that was coercive to HBC's shareholders, requiring the Transaction to be permanently cease-traded.

[138] The principal grounds raised by Catalyst, and our view of each ground, are set out below.

1. Insiders with a conflict of interest negotiated the SIGNA Transactions

[139] Catalyst asserts that the interrelationship of the SIGNA Transactions and the proposal, which became clear with the December 6 Press Release, presents a conflict of interest leading to a flawed process. The apparent conflict is that Baker and another director, who is also alleged to be conflicted, instigated and negotiated the SIGNA Transactions while knowing that the proceeds would be used to finance the Transaction.

[140] However, in the case of the SIGNA Transactions, once the Special Committee was formed to consider the alternatives with regard to the European assets, it was considering the SIGNA Transactions with knowledge of the potential use of the proceeds for Baker's proposal. This information had been imparted to Leith, who chaired the Special Committee both before and after its mandate was extended to include the going-private proposal. There was no evidence that with this knowledge, the SIGNA Transactions were not considered by the Special Committee on their merits, regardless of the conflict that Baker would have. There was no evidence that the Special Committee's review of the SIGNA Transactions, in which they were advised by counsel and financial advisors, was tainted such that the Special Committee's approval was coercive to HBC's shareholders in connection with the Transaction.

[141] As indicated above, we do believe that the Special Committee should have been mandated to consider both transactions following the March 27 meeting between Leith and Baker, and we have required that HBC make further disclosure on the reasons for and effects of this delay and the staging of the announcements of the two transactions. The record reveals a disclosure deficiency in the description of the background of the Transaction and a delay in the optimal time for a properly mandated Special Committee to be engaged, but we do not consider this to be sufficient, on the record before us, to permanently cease-trade the transaction as abusive.

2. Waiver of the Standstill Agreement

[142] Catalyst asserts that the waiver of the Standstill Agreement was not carefully negotiated, beginning with Leith's decision on March 27 to permit the sharing of confidential information with the Continuing Shareholders, including Fabric.

[32] *Magna* at para 185.

[143] As we have stated, Leith's decision would have benefitted from a properly mandated and advised Special Committee following the March 27 meeting. By the time the Special Committee formally waived the Standstill Agreement in June, Fabric's participation in Baker's planning may have become so essential that it could not be reversed. We have required additional disclosure concerning the reasons for and effects of these decisions. The record does not establish a clear case of abuse, as opposed to deficient orchestration of the Special Committee timing and process, and incomplete disclosure. We are loath to take the offer off the table through a cease-trade order on that basis.

3. Disclosure of Material Non-Public Information

[144] As discussed, Leith permitted the disclosure of confidential information to the Continuing Shareholders for the purpose of evaluating a possible going-private proposal. We have ordered that additional disclosure be made about this decision.

[145] There is no indication that any of the Continuing Shareholders traded on such information. It may have given Baker an advantage in accelerating his offer or forming the group of Continuing Shareholders, but such authorization was given with apparent authority by Leith in his capacity as HBC's lead director. Leith could have investigated the confidentiality and standstill requirements more thoroughly and the decision would have benefitted by a properly mandated and advised special committee, but this conduct does not rise to the level of abuse requiring the Transaction to be permanently cease-traded. This is especially true if a Baker-led offer was the most realistic opportunity to provide a premium sale opportunity to HBC's shareholders, and if Leith took at face value the Continuing Shareholders' statement that they were not willing to be sellers. The consequences of Leith's actions are too speculative to say clearly that such conduct was abusive, rather than the Special Committee prematurely giving up negotiation power in these respects. We also must be mindful that in assessing such conduct we not impose on independent directors a standard of perfection, with each flaw justifying barring a transaction.

[146] In addition, with Leith's authorization, s. 76(3) of the Act permitted Baker to share such information with the Continuing Shareholders for the purpose of enabling him to evaluate a business combination in the necessary course of business related to such a combination.

4. Independence of the Special Committee

[147] Catalyst questions the independence of the Special Committee once constituted because of:

a. the role of J.P. Morgan Securities Canada Inc. in both the SIGNA Transactions and in the privatization transaction, for which it prepared a fairness opinion, in light of the interrelationship of the two transactions;

b. Leith's actions prior to the formation of the Special Committee;

c. the purported restatement of the Circular through the December 6 Press Release;

d. the alleged ineffective negotiation of the "Superior Proposal" provisions in the Arrangement Agreement;

e. the Special Committee's waiver of the Standstill Agreement; and

f. the alleged untimely establishment of the Special Committee and lack of robust process and influence of conflicted persons over its conduct.

[148] We consider all these matters to be too inconclusive in their effects on HBC's minority shareholders to bar the Transaction in these circumstances. Instead, we required additional disclosure to shed further light on these issues and to better inform investors regarding how the Transaction came about and the Special Committee's recommendation in favour of the Transaction.

5. Additional Disclosures Ordered

[149] In addition to the other disclosures that we have ordered, we required that HBC disclose "whether the Special Committee continues to view the [Arrangement] as fair and reasonable in accordance with the applicable corporate law standard…."[33]

[150] With regard to all the additional disclosures, we have specified that such amendments only need be made if the Continuing Shareholders proceed with the Transaction or any similar modified transaction.

C. Other Relief

[151] Our order required that the Amended Circular include a blacklined comparison showing the changes, for readers' ease

[33] *The Catalyst Capital Group Inc (Re)*, (2020) 43 OSCB 28 at para 2(m).

of reference. Our order further required that the Amended Circular be delivered to Staff at least five days before it is mailed to shareholders so that any concerns by Staff can be dealt with. Staff is entitled to receive copies of any records that HBC is required to keep pursuant to s. 19(1) of the Act and are necessary in Staff's opinion to facilitate its review of the amended Circular.

[152] The Amended Circular must be disseminated at least 14 days prior to the revised date of the Shareholders Meeting.

VI. CONCLUSION

[153] For all the above reasons, we issued our order on December 18, 2019, requiring HBC to amend the Circular, if it wishes to proceed with a vote for shareholder approval of the Transaction or any similar modified transaction. We emphasize that this decision arises from the interpretation of the Act and related instruments, particularly MI 61-101, including our public interest jurisdiction pursuant to s. 127 of the Act, based on our securities law mandates to provide investor protection and to foster fair and efficient markets and confidence in capital markets. Our decision should not be interpreted as bearing on the interpretation of the corporate law applicable to any person.

Dated at Toronto this 19th day of February, 2020.

"D. Grant Vingoe"

"Timothy Moseley"

"Lawrence P. Haber"

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
Resources Auxico Canada	05 February 2020	18 February 2020
Torque Exports Corp.	06 January 2020	24 February 2020

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

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
CannTrust Holdings Inc.	15 August 2019	
EEStor Corporation	29 January 2020	

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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:
AGF Emerging Markets Balanced Fund
AGF Global Bond Fund
AGF Income Focus Fund
AGF Tactical Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated February 19, 2020
Received on February 19, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
N/A
Project #2885099

Issuer Name:
NBI High Yield Bond Fund
NBI High Yield Bond Private Portfolio
Principal Regulator - Quebec
Type and Date:
Amendment #2 to Final Simplified Prospectus dated February 18, 2020
Received on February 18, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
National Bank Investments Inc..
National Bank Financial Inc
Promoter(s):
National Bank Investments Inc.
Project #2888229

Issuer Name:
Ninepoint Enhanced Balanced Fund
Ninepoint Enhanced Equity Class
Ninepoint Enhanced U.S. Equity Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated February 18, 2020
Received on February 19, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Ninepoint Partners GP Inc.
Project #2889042

Issuer Name:
AGF Emerging Markets Balanced Fund
AGF Global Bond Fund
AGF Income Focus Fund
AGF Tactical Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated February 19, 2020
NP 11-202 Receipt dated February 24, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
N/A
Project #2885099

Issuer Name:
Ninepoint Enhanced Balanced Fund
Ninepoint Enhanced Equity Class
Ninepoint Enhanced U.S. Equity Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated February 18, 2020
NP 11-202 Receipt dated February 24, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Ninepoint Partners GP Inc.
Project #2889042

Issuer Name:
Portland Canadian Focused Fund
Portland Canadian Balanced Fund
Portland Global Banks Fund
Portland Advantage Fund
Portland Value Fund
Portland 15 of 15 Fund
Portland Global Dividend Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated February 10, 2020
NP 11-202 Receipt dated February 19, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Mandeville Private Client Inc.
Promoter(s):
N/A
Project #2887141

Issuer Name:
Probity Mining 2020 Short Duration Flow-Through Limited Partnership - British Columbia
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 20, 2020
NP 11-202 Receipt dated February 20, 2020
Offering Price and Description:
Maximum Offering: aggregate of $40,000,000 comprising $20,000,000 for National Class Units; $10,000,000 for British Columbia Class Units; and $10,000,000 for Québec Class Units
(2,000,000 NC-A and/or NC-F Units; 1,000,000 BC-A and/or BC-F Units; and 1,000,000 QC-A and/or QC-F Units)
Minimum Offering: $1,500,000 - 150,000 Class A and/or Class F Units
Price per Unit: $10.00
Minimum Purchase: $5,000 - 500 Units
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Echelon Wealth Partners Inc.
PI Financial Corp.
Hampton Securities Limited
Laurentian Bank Securities Inc.
Promoter(s):
Probity 2020 Mining Flow Through Management Corp and Probity Capital
Project #3001784

Issuer Name:
Probity Mining 2020 Short Duration Flow-Through Limited Partnership - National Class
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 20, 2020
NP 11-202 Receipt dated February 20, 2020
Offering Price and Description:
Maximum Offering: aggregate of $40,000,000 comprising $20,000,000 for National Class Units; $10,000,000 for British Columbia Class Units; and $10,000,000 for Québec Class Units
(2,000,000 NC-A and/or NC-F Units; 1,000,000 BC-A and/or BC-F Units; and 1,000,000 QC-A and/or QC-F Units)
Minimum Offering: $1,500,000 - 150,000 Class A and/or Class F Units
Price per Unit: $10.00
Minimum Purchase: $5,000 - 500 Units
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Echelon Wealth Partners Inc.
PI Financial Corp.
Hampton Securities Limited
Laurentian Bank Securities Inc.
Promoter(s):
Probity 2020 Mining Flow Through Management Corp and Probity Capital
Project #3001786

Issuer Name:
Probity Mining 2020 Short Duration Flow-Through Limited Partnership - Quebec
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated February 20, 2020
NP 11-202 Receipt dated February 20, 2020
Offering Price and Description:
Maximum Offering: aggregate of $40,000,000 comprising $20,000,000 for National Class Units; $10,000,000 for British Columbia Class Units; and $10,000,000 for Québec Class Units
(2,000,000 NC-A and/or NC-F Units; 1,000,000 BC-A and/or BC-F Units; and 1,000,000 QC-A and/or QC-F Units)
Minimum Offering: $1,500,000 - 150,000 Class A and/or Class F Units
Price per Unit: $10.00
Minimum Purchase: $5,000 - 500 Units
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Echelon Wealth Partners Inc.
PI Financial Corp.
Hampton Securities Limited
Laurentian Bank Securities Inc.
Promoter(s):
Probity 2020 Mining Flow Through Management Corp and Probity Capital
Project #3001789

Issuer Name:
Caldwell U.S. Dividend Advantage Fund
Caldwell Canadian Value Momentum Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Amendment to Final Simplified Prospectus dated February 13, 2020
NP 11-202 Final Receipt dated Feb 21, 2020
Offering Price and Description:
ETF units, Series A units, Series D units, Series F units and Series I units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2929944

Issuer Name:
Venator Alternative Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Annual Information Form dated February 11, 2020
NP 11-202 Final Receipt dated Feb 18, 2020
Offering Price and Description:
Class A Units, Class D Units, Class F Units, Class I Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2997637

NON-INVESTMENT FUNDS

Issuer Name:
Ag Growth International Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated February 20, 2020
NP 11-202 Preliminary Receipt dated February 20, 2020
Offering Price and Description:
$85,000,000.00 - 5.25% Senior Subordinated Unsecured Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
CORMARK SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
Promoter(s):
-
Project #3017393

Issuer Name:
Can-Gow Capital Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated February 20, 2020
NP 11-202 Preliminary Receipt dated February 24, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
LEEDE JONES GABLE INC
Promoter(s):
-
Project #3020038

Issuer Name:
Choice Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated February 21, 2020
NP 11-202 Preliminary Receipt dated February 21, 2020
Offering Price and Description:
$2,000,000,000.00 – Units, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3019769

Issuer Name:
Diversified Royalty Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated February 24, 2020
NP 11-202 Preliminary Receipt dated February 24, 2020
Offering Price and Description:
$30,080,000.00 - 9,400,000 Shares
Per Offered Share - $3.20
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
CIBC WORLD MARKETS INC.
STIFEL NICOLAUS CANADA INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
PI FINANCIAL CORP.
HAYWOOD SECURITIES INC.
INDUSTRIAL ALLIANCE SECURITIES INC.
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #3018297

Issuer Name:
Newtopia Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 24, 2020
NP 11-202 Preliminary Receipt dated February 24, 2020
Offering Price and Description:
14,422,822 Common Shares and 7,211,411 Warrants issuable without payment upon deemed exercise of 14,422,822 Special Warrants
Underwriter(s) or Distributor(s):
BLOOM BURTON SECURITIES INC.
CLARUS SECURITIES INC.
INFOR FINANCIAL INC.
BEACON SECURITIES LIMITED
HAYWOOD SECURITIES INC.
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
Jeff Ruby
Project #3020275

Issuer Name:
Slate Retail REIT
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated February 14, 2020
NP 11-202 Preliminary Receipt dated February 18, 2020
Offering Price and Description:
U.S.$750,000,000 Units Debt Securities Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3017869

Issuer Name:
The Very Good Food Company Inc. (formerly The Very Good Butchers Inc.)
Principal Regulator - British Columbia
Type and Date:
Amendment dated February 18, 2020 to Preliminary Long Form Prospectus dated January 10, 2020
NP 11-202 Preliminary Receipt dated February 19, 2020
Offering Price and Description:
14,000,000 Common Shares ($3,500,000)
Price: $0.25 Per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3006838

Issuer Name:
Uranium Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus - MJDS dated February 21, 2020
NP 11-202 Preliminary Receipt dated February 24, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3020009

Issuer Name:
Baylin Technologies Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated February 19, 2020
NP 11-202 Receipt dated February 20, 2020
Offering Price and Description:
$100,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2999682

Issuer Name:
GoGold Resources Inc.
Principal Regulator - Nova Scotia
Type and Date:
Final Short Form Prospectus dated February 18, 2020
NP 11-202 Receipt dated February 18, 2020
Offering Price and Description:
C$24,999,999.50 - 35,714,285 Units
Price: C$0.70 per Unit
Underwriter(s) or Distributor(s):
SPROTT CAPITAL PARTNERS LP
PI FINANCIAL CORP.
BMONESBITT BURNS INC.
Promoter(s):
-
Project #3014531

Issuer Name:
Goodfood Market Corp. (formerly Mira VII Acquisition Corp.)
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated February 19, 2020
NP 11-202 Receipt dated February 20, 2020
Offering Price and Description:
$30,000,000.00 - 5.75% Convertible Unsecured Subordinated Debentures Due March 31, 2025
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3015343

Issuer Name:
XTM Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 18, 2020
NP 11-202 Receipt dated February 20, 2020
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2977455

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Taylor Asset Management Inc.	Exempt Market Dealer, Portfolio Manager & Investment Fund Manager	February 11, 2020
Change in Registration Category	Hamilton Lane (Canada) LLC	From: Exempt Market Dealer To: Exempt Market Dealer and Portfolio Manager	February 18, 2020

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.3 Clearing Agencies

13.3.1 Eurex Clearing AG – Application for Variation of Exemptive Relief – Notice of Commission Order

EUREX CLEARING AG

APPLICATION FOR VARIATION OF EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On February 6, 2020, the Commission issued an order (**Order**) under sections 144 and 147 of the *Securities Act* (Ontario) (**Act**) varying and restating its order dated July 14, 2017 exempting Eurex Clearing AG from the requirement in subsection 21.2(0.1) of the Act to be recognized as a clearing agency.

The Order reflects recent changes to Eurex Clearing AG's clearing categories and expands the scope of its permitted services, subject to the terms and conditions set out in the Order.

A copy of the Order is published in Chapter 2 of this Bulletin.

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