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Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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1.1 Notices

1.1.1 Executive Director's Designation and Determination

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
THE DESIGNATION BY THE EXECUTIVE DIRECTOR OF POSITIONS FOR
THE PURPOSES OF THE DEFINITION OF DIRECTOR IN THE ACT

AND

IN THE MATTER OF
THE ASSIGNMENT OF CERTAIN POWERS AND DUTIES OF
THE ONTARIO SECURITIES COMMISSION

Executive Director's Designation and Determination

WHEREAS:

A. On May 25, 2016 (the **2016 Assignment**), the Commission issued an amended and restated assignment pursuant to subsection 6(3) of the Act, assigning certain of its powers and duties under the Act to each "Director" as that term is defined in subsection 1(1) of the Act, acting individually.

B. Under subsection 1(1) of the Act, "Director" means the Executive Director of the Commission, a Director or Deputy Director of the Commission, or a person employed by the Commission in a position designated by the Executive Director.

C. The 2016 Assignment provides that the Executive Director of the Commission shall from time to time determine which one or more other Directors, in each case acting alone, should, as an administrative matter, exercise each of the powers or perform each of the duties assigned by the Commission in paragraph 2 of the Assignment, each of which powers may also be exercised and performed by the Executive Director, acting alone.

D. On April 18, 2017, the Executive Director issued a designation and determination (the **2017 Designation**) whereby the Executive Director, among other things: (i) revoked the previous existing designation and determination, (ii) designated certain positions, whether or not in an acting capacity, for the purposes of the definition of "Director" contained in subsection 1(1) of the Act, and (iii) determined that, in addition to the Executive Director acting alone, each Director (other than certain specified Directors) may exercise the powers and perform the duties assigned by the Commission to Directors in an assignment issued by the Commission pursuant to subsection 6(3) of the Act on December 14, 2015 and any other successor assignment in effect from time to time, until otherwise determined by the Executive Director.

The Executive Director considers it desirable to amend and restate the 2017 Designation to reflect: (i) the addition of the Office of Mergers and Acquisitions, (ii) the addition of the position of Manager in certain Branches of the Commission, (iii) the elimination of the position of Assistant Manager in certain Branches of the Commission, (iii) the addition of the position of Associate Chief Accountant of the Commission, and (iv) the deletion of the delegation to Senior Legal Counsel and Senior Accountants in the Corporate Finance Branch of the authority to grant exemptions from fees for late filing of insider reports.

NOW THEREFORE, the Executive Director:

1. revokes the 2017 Designation;

2. designates each of the following positions, whether or not in an acting capacity, for the purposes of the definition of "Director" contained in subsection 1(1) of the Act:

   (a) each Manager in the Corporate Finance Branch of the Commission,

(b) each Manager in the Commission's Office of Mergers and Acquisitions,

(c) each Manager and Registration Supervisor in the Compliance and Registrant Regulation Branch of the Commission,

(d) each Manager in the Market Regulation Branch of the Commission,

(e) each Manager in the Enforcement Branch of the Commission,

(f) each Manager in the Investment Funds and Structured Products Branch of the Commission,

(g) each Manager in the Derivatives Branch of the Commission,

(h) the Chief Accountant and the Associate Chief Accountant of the Commission, and

(i) the General Counsel of the Commission;

3. designates the Business Processes Supervisor in the Corporate Finance Branch of the Commission for the purposes of the definition of "Director" contained in subsection 1(1) of the Act, but solely for the purpose of granting exemptions from fees for the late filing of insider reports on Form 55-102F2 under Commission Rule 13-502 Fees; and

4. determines that, in addition to the Executive Director acting alone, each Director, other than the Business Processes Supervisor in the Corporate Finance Branch of the Commission, may exercise the powers and perform the duties assigned by the Commission to Directors in the 2016 Assignment and any successor assignment in effect from time to time, until otherwise determined by the Executive Director.

DATED at Toronto this 13th day of March, 2020.

"Leslie Byberg"
Executive Director
Ontario Securities Commission

1.1.2 Paramount Equity Financial Corporation et al. – Notice of Withdrawal

IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
PARAMOUNT ALTERNATIVE CAPITAL CORPORATION,
PACC AINSLIE CORPORATION,
PACC COSTIGAN CORPORATION,
PACC CRYSTALLINA CORPORATION,
PACC DACEY CORPORATION,
PACC GOULAIS CORPORATION,
PACC HARRIET CORPORATION,
PACC MAJOR MACK CORPORATION,
PACC MAPLE CORPORATION,
PACC MULCASTER CORPORATION,
PACC REGENT CORPORATION,
PACC SCUGOG CORPORATION,
PACC SECHELT CORPORATION,
PACC SHAVER CORPORATION,
PACC SIMCOE CORPORATION,
PACC THOROLD CORPORATION,
PACC WILSON CORPORATION,
TRILOGY MORTGAGE GROUP INC.,
TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP,
MARC RUTTENBERG,
RONALD BRADLEY BURDON AND
MATTHEW LAVERTY

File No. 2019-12

NOTICE OF WITHDRAWAL

WHEREAS Paramount Alternative Capital Corporation (**PACC**) and the PACC Affiliates, as defined in the Amended Statement of Allegations, dated May 24, 2019, are inactive corporations and do not hold any funds or assets;

AND WHEREAS All PACC Affiliates, except for PACC Costigan Corporation, PACC Regent Corporation, PACC Sechelt Corporation, and PACC Thorold Corporation (collectively, the **Non-Receivership PACC Affiliates**), are subject to Receivership;

AND WHEREAS The Non-Receivership PACC Affiliates either did not hold any interest in any existing development project, or held interest in a development project where the associated mortgage was discharged;

AND WHEREAS Trilogy Equities Group Limited Partnership is not an existing entity;

Staff of the Enforcement Branch (**Staff**) withdraws the Statement of Allegations against:

a. Paramount Alternative Capital Corporation;

b. PACC Ainslie Corporation;

c. PACC Costigan Corporation;

d. PACC Crystallina Corporation;

e. PACC Dacey Corporation;

f. PACC Goulais Corporation;

g. PACC Harriet Corporation;

h. PACC Major Mack Corporation;

i. PACC Maple Corporation;

j. PACC Mulcaster Corporation;

k. PACC Regent Corporation;

l. PACC Scugog Corporation;

m. PACC Sechelt Corporation;

n. PACC Shaver Corporation;

o. PACC Simcoe Corporation;

p. PACC Thorold Corporation;

q. PACC Wilson Corporation; and

r. Trilogy Equities Group Limited Partnership,

as shown in the Amended Amended Statement of Allegations attached as Schedule A if Staff's motion for permission to amend the Amended Statement of Allegations dated February 27, 2020 (the **Amendment Motion**) is granted, or alternatively, Schedule B if Staff's Amendment Motion is not granted.

DATED this 9th day of March, 2020.

Mark Bailey
Senior Litigation Counsel
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Vivian Lee
Litigation Counsel
(416) 597-7243

Staff of the Enforcement Branch
Ontario Securities Commission
20 Queen St W, Suite 2200
Toronto, Ontario M5H 3S8

1.1.3 CSA Notice Amendments to National Instrument 24-102 Clearing Agency Requirements and Changes to Companion Policy 24-102 Clearing Agency Requirements

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Notice

Amendments to National Instrument 24-102 Clearing Agency Requirements
and *Changes to Companion Policy 24-102 Clearing Agency Requirements*

March 19, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to National Instrument 24-102 *Clearing Agency Requirements* (**Instrument**) and changes to Companion Policy 24-102 *Clearing Agency Requirements* (**Companion Policy** or **CP**), together referred to as the **Amendments**. The Instrument and the Companion Policy are collectively referred to as **NI 24-102**.

The Amendments are expected to be adopted by each member of the CSA. In some jurisdictions, Ministerial approvals are required for the implementation of the Amendments. Provided all necessary ministerial approvals are obtained, the Amendments will come into force on June 19, 2020. Further details can be found in Annex G of this Notice.

The purpose of the Amendments is described in the "Substance and Purpose" section below.

This Notice contains the following annexes:

- **Annex A** – List of commenters
- **Annex B** – Summary of comments and CSA responses
- **Annex C** – Amendments to National Instrument 24-102 *Clearing Agency Requirements*
- **Annex D** – Changes to Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*
- **Annex E** – Blacklined Amendments to National Instrument 24-102 *Clearing Agency Requirements* (showing the changes under the Amendments to the Instrument)
- **Annex F** – Blacklined Changes to Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements* (showing the changes under the Changes to the CP)
- **Annex G** – Adoption of the Instrument

This Notice, including its annexes, is available on websites of CSA jurisdictions, including:

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

Background

The Instrument sets out ongoing requirements for regulated clearing agencies, including requirements that are based on international standards applicable to financial market infrastructures (**FMIs**) operating as a central counterparty (**CCP**), central securities depository (**CSD**) or securities settlement system (**SSS**). The Companion Policy includes an annex (**Annex I**) with supplementary guidance (**Joint Supplementary Guidance**) that was developed jointly by the Bank of Canada and CSA regulators to provide additional clarity on the PFMI principles for domestic recognized clearing agencies that are also overseen by the Bank of Canada. The Instrument also sets forth certain requirements for clearing agencies intending to apply for recognition as a clearing agency under securities legislation, or for an exemption from the recognition requirement.

We published proposed amendments to the Instrument and the Companion Policy for comment on October 18, 2018 (the **October 2018 Proposal**).

Summary of Comments Received by the CSA

In response to the October 2018 Proposal, we received submissions from 3 commenters. We have considered the comments received and thank all of the commenters for their input. A list of those who submitted comments and a summary of the comments and our responses are attached to this Notice at Annexes A and B respectively. Copies of the comment letters are available at www.osc.gov.on.ca.

Substance and Purpose

1. Purposes of Amendments

The Amendments seek to enhance operational system requirements, align aspects of NI 24-102 more closely with similar provisions in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), and reflect the latest developments and findings of the Committee on Payments and Market Infrastructures of the Bank for International Settlements and the International Organization of Securities Commissions (**CPMI-IOSCO**) with relevance for the Canadian market. They also incorporate certain comments we received on the October 2018 Proposal.

Specifically, the Amendments:

- enhance the systems-related requirements in Part 4, Division 3, of the Instrument and related provisions in the Companion Policy by aligning them more closely with similar provisions in NI 21-101, emphasizing the importance of cyber resilience, and clarifying testing and reporting expectations;
- update NI 24-102 to include a general reference in the Companion Policy to CPMI-IOSCO guidance reports that have been published on various aspects of the PFMI Principles since the publication of the PFMI Report;
- adopt findings made by the CPMI-IOSCO PFMI implementation monitoring assessment, including substantially simplifying the Joint Supplementary Guidance; and
- make other non-substantive changes, corrections and clarifications to NI 24-102.

2. Summary of Amendments

We have set out below a brief summary of the key changes and policy rationales for the Amendment.

a. Financial reporting

Under subsection 2.5(2) of the October 2018 Proposal, we had proposed to clarify that an interim period for financial statements had the same meaning as under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**). To avoid potential confusion arising from the reference to NI 51-102 and the applicability of exemptions from that instrument, we have removed this language from the Amendments. Instead, we have clarified in the CP our expectation that exempt clearing agencies should file interim financial statements in accordance with the interim filing requirements of their home regulator, as our intention is not to require such entities to produce and file additional financial statements. We have also clarified in the CP the content of interim financial statements required to be filed by exempt and recognized clearing agencies under the Instrument.

b. Systems requirements

(i) Cyber resilience has been added to subparagraph 4.6(a)(ii) as one of the controls a recognized clearing agency must develop and maintain. While cyber resilience should already be covered by an entity's general controls, its explicit addition to the Instrument reflects its increasing importance, as discussed in the June 2016 CPMI-IOSCO *Guidance on cyber resilience for*

financial market infrastructures.[1]

(ii) The concept of "security breach" in relation to the notifications that must be provided by a recognized clearing agency pursuant to subsection 4.6(c) has been broadened to "security incident". The change extends the concept beyond actual breaches, as we are of the view that a material event may include one where a breach has not necessarily occurred. We describe "security incidents" in the CP with reference to the general definition used by the National Institute of Standards and Technology (U.S. Department of Commerce) (**NIST**),[2] a recognized standard also followed by CPMI-IOSCO.

(iii) We have adopted a requirement in the Instrument under section 4.6 that recognized clearing agencies must keep records of any systems failures, malfunctions, delays or security incidents and identify whether they are material. In response to concerns raised in the comments, and to avoid placing an undue burden on recognized clearing agencies, we have not proceeded with additional related reporting requirements that were included in the October 2018 Proposal. However, as noted in the revised CP language, in circumstances where we consider it appropriate we may nonetheless request additional information from a recognized clearing agency. We have also clarified the CP language and aligned it with the revised Instrument.

(iv) A new section 4.6.1 regarding auxiliary systems has been adopted. An auxiliary system of a recognized clearing agency is a system that is operated by or on behalf of the clearing agency that, if breached, would pose a security threat to one or more of the systems operated by or on behalf of the agency that support its clearing, settlement and depository functions. We have made minor changes to the definition of auxiliary system in the October 2018 proposal to clarify its intended scope. Consistent with section 4.6, section 4.6.1 includes requirements relating to auxiliary systems with respect to controls and records, and notifications in connection with security incidents.

(v) Amended section 4.7 states that a recognized clearing agency must engage a "qualified external auditor" to conduct and report on its independent systems reviews. We expect the clearing agency to discuss with us its choice of qualified external auditor and the scope of the systems review mandate.

c. Additional CPMI-IOSCO guidance reports

The Companion Policy states that, in interpreting and implementing the PFMI Principles, regard is to be given to the explanatory notes in the PFMI Report unless otherwise indicated in section 3.1 or Part 3 of the CP. Since the publication of the PFMI Report, CPMI-IOSCO has published related documents and additional guidance on certain specific aspects of the PFMI Principles.[3] We have therefore adopted an addition to the CP that these and other future CPMI-IOSCO reports should be used as guidance in interpreting and implementing the PFMI Principles.

d. CPMI-IOSCO implementation monitoring assessment for Canada

The CPMI-IOSCO implementation monitoring assessment[4] noted that a reporting line from the chief compliance officer and the chief risk officer to the chief executive officer may result in insufficient independence of the risk and audit functions unless there are adequate safeguards in place that address potential conflicts of interest. In the October 2018 Proposal, proposed amendments to subsection 4.3(1) could have been interpreted as removing the ability of a recognized clearing agency's board of directors to determine that the chief risk officer and chief compliance officer should report directly to the chief executive officer. In response to the comments we received regarding the October 2018 Proposal, we decided not to proceed with this change. Instead, we have clarified in the CP that dual line reporting is permitted if there are adequate safeguards in place to ensure that the chief risk officer and chief compliance officer are sufficiently independent from the other members of management.

Also in response to the CPMI-IOSCO assessment, we have simplified and clarified the Joint Supplementary Guidance with respect to the application of the PFMI Principles to domestic recognized clearing agencies that are also overseen by the Bank of Canada.

e. Additional non-substantive changes

Lastly, a number of non-substantive changes, corrections and clarifications were adopted, including modernizing the drafting of NI 24-102 in accordance with recently revised CSA rule-making drafting guidelines. By their nature, none of the non-substantive changes should have any impact on the application of NI 24-102 to market participants.

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[1] The guidance is available at https://www.bis.org/cpmi/publ/d146.pdf.

[2] The NIST definition of "security incident" is available at https://csrc.nist.gov/Glossary.

[3] Links to this material are presently available at https://www.bis.org/cpmi/info_pfmi.htm.

[4] See *Implementation monitoring of PFMI: Level 2 assessment report for Canada*, August 2018 at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD608.pdf.

Questions

Please refer questions to any of the following:

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ANNEX A

List of Commenters on Proposed Amendments to National Instrument 24-102
***Clearing Agency Requirements* and related Companion Policy 24-102CP**
(as published for comment on October 18, 2018)

Commenters:

CME Group Inc.
LCH Limited
TMX Group Limited

ANNEX B

Summary of Comments on Proposed Amendments to National Instrument 24-102
***Clearing Agency Requirements* and related Companion Policy 24-102CP and CSA Responses**

1. Theme/question[1]	2. Summary of comments	3. CSA response
Records retention period	One commenter noted that while subsection 5.1(1) requires that books and records be retained for seven years, the equivalent requirement under U.S. law is five years. The commenter asked that the retention period in the Instrument be reduced to five years, or that substituted compliance be permitted.	The commenter's proposal is beyond the scope of this initiative, as there are no proposed amendments to subsection 5.1(1) in the materials published for comment. This comment will be considered outside of the proposed amendments, for example as part of the OSC's initiative to reduce regulatory burden. A clearing agency may also choose to apply for an exemption from this requirement on the basis of substituted compliance, and the relevant CSA jurisdictions will consider any application on a case by case basis.
Reporting changes to PFMI Disclosure Document	One commenter requested that substituted compliance with an entity's home-country regulatory requirements be permitted for exempt clearing agencies with respect to the requirement in subsection 2.2(5). Subsection 2.2(5) requires that the securities regulatory authority be notified in writing of any material change to, or subsequent inaccuracy in, its PFMI Disclosure Framework Document and related application materials.	The commenter's proposal is beyond the scope of this initiative, as there are no proposed amendments to subsection 5.1(1) in the materials published for comment. This comment will be considered outside of the proposed amendments, for example as part of the OSC's initiative to reduce regulatory burden. A clearing agency may also choose to apply for an exemption from this requirement on the basis of compliance with an entity's home country regulatory requirements, and the relevant CSA jurisdictions will consider any application on a case by case basis.
Chief Risk Officer (CRO) and Chief Compliance Officer (CCO) reporting line	Two commenters expressed concern that the proposed amendments to paragraph 4.3(1) could be interpreted to eliminate dual reporting lines of the CRO and CCO to both the management and Board of Directors. The commenters stated that the elimination of dual reporting would require a change in their current practices, even though such practices do not contravene the PFMIs. They find the flexibility of direct reporting to the Board of Directors, while retaining administrative reporting to management, to be efficient and practical, as long as there are parallel mechanisms to ensure that the independence of the CRO and CCO functions from the management is preserved. One of the commenters also noted that dual reporting can be found in a number of foreign clearing agencies, including non-domestic clearing agencies that operate in Canada.	It is not our intention to prohibit dual reporting lines for the CRO and CCO to management and the Board of Directors. Rather, our intention is to avoid interpretations and practices that may undermine the independence of key risk and audit roles, a concern raised in the CPMI-IOSCO implementation monitoring assessment and which we share. We recognize, however, that the deletion of language referencing reporting to the CEO may have caused some confusion. We have therefore added explanatory language in a new subsection 4.3(1) to the CP to better reflect our intent.
Filing of interim financial statements	One commenter submitted that substituted compliance should be permitted for	We have modified the amendment to subsection 2.5(2) to allow clearing agencies to

[1] A reference to a provision (i.e. Part, section, subsection, paragraph, etc.) is a reference to a provision of the proposed Instrument, unless otherwise indicated. Defined terms used in this summary table, which are not otherwise defined herein, have the meanings given in the Notice.

	exempt clearing agencies with respect to the interim financial statement filing requirement in subsection 2.5(2).	file interim financial statements in CSA jurisdictions at the same intervals they are required to file them in their home jurisdictions, which is generally consistent with the approach taken in NI 51-102 and NI 71-102. We have also added clarifying language to the CP to this effect. Given that the proposed reference in subsection 2.5(2) to NI 51-102 has now been deleted, we have also amended the CP to clarify the content of interim financial statements based on IFRS IAS 34.
Independent system reviews	One commenter disagreed with the proposed amendment to paragraph 4.7(1)(a) that would require an external party, as opposed to an internal auditor, from conducting independent system reviews of recognized clearing agencies. The commenter expressed the view that the independent nature of the internal audit function provides sufficient objectivity and that the proposed amendment would not enhance the resilience of the control environment.	While the CSA recognizes the professional objectivity required of internal auditors, we are of the view that requiring independent systems reviews be conducted by a qualified external auditor at arms-length from the clearing agency both enhances and promotes confidence in the process. It is also consistent with industry best practices.
Auxiliary systems	One commenter expressed concern that the definition of “auxiliary systems” is too broad and submitted that the term should only cover systems that are part of the clearing agency ecosystem and under its control.	After careful consideration of the comments, we have modified the definition of auxiliary systems in subsection 4.6.1(1) to capture those systems operated by or on behalf of the recognized clearing agency that, if breached, would pose a security threat to the clearing agency’s critical systems i.e. systems that support the recognized clearing agency’s clearing, settlement and depository functions
Security incidents and related reporting obligations	One commenter expressed concern with the proposed change from the obligation in paragraph 4.6(c) to report material security breaches to an obligation to report material security incidents, as well as proposed new language in the CP regarding materiality. The commenter submitted that the resulting obligations would be much broader than the current requirements and would be unduly onerous without providing a clear material benefit. The commenter expressed similar concerns regarding the proposed new subsection 4.6(2), which would require clearing agencies to provide a log and explanation for any system issue or security incident regardless of its impact.	Given the evolving and multidimensional nature of cyber threats, a sophisticated attack on the entity’s systems and controls can have serious operational, financial or even reputational impact on the entity even if a breach has yet to happen. This is a view that is shared by regulators, organizations and stakeholders globally. The definition of incidents by the National Institute of Standards and Technology (NIST) captures this reality, which is why the CSA has incorporated it into the proposed definition of security incident, in paragraph 4.6(c) to the CP. With regards to the issue of materiality, we find that relying on internal corporate controls for establishing the materiality threshold is a straightforward and reasonable regulatory anchor for the purpose of event reporting. We have modified paragraph 4.6(c) to clarify the guidance with respect to determining materiality. In addition, we have removed the proposed new subsection 4.6(2) in the Instrument which would have required a recognized clearing agency to file with the regulator quarterly reports of any all system issues and security

		incidents logs. Instead we have added language to the CP which reiterates the securities regulator's discretion to ask for any information related to system issues or securities incidents as part of its broader information access rights under section 5.1 of the Instrument.

ANNEX C

AMENDMENTS TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

1. National Instrument 24-102 Clearing Agency Requirements is amended by this Instrument.

2. Section 1.2 is amended

(a) in subsection (2),

(i) by replacing "company if***" with "***company if any of the following apply:***",***

(ii) by replacing "fifty percent***" with "***50%***" wherever the expression occurs,***

(iii) by replacing "by way of security***" with "***by way of a security interest***" in subparagraph (a)(i), and***

(iv) by deleting "or***" at the end of paragraph (b), and***

(b) in subsection (3),

(i) by replacing "company if***" with "***company if either of the following applies:***", and***

(ii) by replacing paragraph (a) with the following:

(a) it is a controlled entity of any of the following:

(i) that other;

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

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

3. Section 1.3 is replaced with the following:

1.3 Interpretation –meaning of affiliate for the purposes of the PFMI principles - For the purposes of the PFMI Principles, a person or company is considered to be an affiliate of a participant, the person or company and the participant each being subsequently referred to in this section as a "party", if any of the following apply:

(a) a party holds, otherwise than by way of a security interest only, voting securities of the other party carrying more than 20% of the votes for the election of directors of the other party;

(b) a party holds, otherwise than by way of a security interest only, an interest in the other party that allows it to direct the management or operations of the other party;

(c) financial information in respect of both parties is consolidated for financial reporting purposes***.***

4. Subparagraph 2.1(1)(b) is replaced with the following:

(b) sufficient information to demonstrate that the applicant is

(i) in compliance with applicable provincial and territorial securities legislation, or

(ii) subject to and in compliance with the regulatory requirements of the foreign jurisdiction in which the applicant's head office or principal place of business is located that are comparable to the applicable requirements under this Instrument;***.***

5. Subsection 2.1(2) is amended

(a) by replacing "books and records***" with "***books, records and other documents***", wherever the expression occurs, and***

(b) in paragraph (b) by replacing "such***" with "***the***".***

6. ***Subsection 2.1(3) is amended by replacing "****Submission to Jurisdiction and Appointment of Agent for Service****" with "****Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process****".***

7. ***Subsection 2.1(4) is amended by replacing "****material change to the information provided in its application****" with "****change to the information provided in its application that is material****".***

8. ***Subsection 2.2(1) is amended***

(a) ***by adding "****any of the following:****" immediately after "****in relation to a clearing agency,****" at the end of the first sentence, and***

(b) ***in paragraph (h) by replacing "****recognition terms and conditions.****" with "****terms and conditions of a decision to recognize the clearing agency under securities law.****".***

9. ***Subsection 2.2(3) is replaced with the following:***

(3) The written notice referred to in subsection (2) must include an assessment of how the significant change is consistent with the PFMI Principles applicable to the recognized clearing agency***. .***

10. ***Subsection 2.3(1) is replaced with the following:***

2.3(1) A recognized clearing agency or exempt clearing agency that intends to cease carrying on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority at least 90 days before ceasing to carry on business***. .***

11. ***Subsection 2.5(2) is amended by adding "****of the recognized clearing agency's or exempt clearing agency's financial year****" immediately after "****each interim period****".***

12. ***Section 3.1 is amended***

(a) ***by replacing the first paragraph with the following:***

3.1 A recognized clearing agency must establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds PFMI Principles 1 to 3, 10, 13 and 15 to 23, other than key consideration 9 of PFMI Principle 20 and the following:***, and***

(b) ***by deleting "****and****" at the end of paragraph (b).***

13. ***Section 4.1 is amended in paragraph (2)(b) by replacing "****not employees or executive officers of a participant or****" with "****neither employees nor officers of a participant nor****".***

14. ***Section 4.3 is amended***

(a) ***in subsection (1), by deleting "****or, if determined by the board of directors, to the chief executive officer****",***

(b) ***in paragraph (2)(a),***

(i) ***by deleting "****full****", and***

(ii) ***replacing "****maintain, implement****" with "****implement, maintain****",***

(c) ***by replacing the "****,****" with a "****;****" at the end of each of subparagraphs (3)(c)(i) and (ii),***

(d) ***in subparagraph (3)(c)(iii) by replacing "****non-compliance, or****" with "****non-compliance;****", and***

(e) ***in paragraph (3)(f) by replacing "****such****" with "****the****".***

15. ***Section 4.4 is amended***

(a) ***in paragraph (4)(b) by replacing "****not employees or executive officers of a participant or****" with "****neither employees nor officers of a participant nor****", and***

(b) ***by adding the following subsection:***

(5) For the purpose of this section, an individual is independent of a clearing agency if the individual has no

relationship with the agency that could, in the reasonable opinion of the clearing agency's board of directors, be expected to interfere with the exercise of the individual's independent judgment***. .***

16. Section 4.6 is amended

(a) in paragraph (a)

(i) in subparagraph (i) by replacing "an adequate system of internal controls***" with "***adequate internal controls***", and***

(ii) in subparagraph (ii) by adding "cyber resilience and***" immediately before "***information technology***",***

(b) in subparagraph (b)(ii) by replacing "ability***" with "***processing capability***", "***process transactions***" with "***perform***" and by deleting*** "and"***,***

(c) by replacing paragraph (c) with the following:

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material, and provide timely updates to the regulator or, in Québec, the securities regulatory authority regarding the following:

(i) any change in the status of the failure, malfunction, delay or security incident;

(ii) the resumption of service, if applicable;

(iii) the results of any internal review, by the clearing agency, of the failure, malfunction, delay or security incident; and***, and***

(d) by adding the following paragraph:

(d) keep a record of any systems failure, malfunction, delay or security incident and whether or not it is material***..***

17. The Instrument is amended by adding the following section:

Auxiliary systems

4.6.1 (1) In this section, "**auxiliary system**" means a system, other than a system referred to in section 4.6, operated by or on behalf of a recognized clearing agency that, if breached, poses a security threat to another system operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement or depository functions.

(2) For each auxiliary system, a recognized clearing agency must

(a) develop and maintain adequate information security controls that address the security threats posed by the auxiliary system to the system that supports the clearing, settlement or depository functions,

(b) promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates to the regulator or, in Québec, the securities regulatory authority on

(i) any change in the status of the incident,

(ii) the resumption of service, if applicable, and

(iii) the results of any internal review, by the clearing agency, of the security incident, and

(c) keep a record of any security incident and whether or not it is material***. .***

18. Subsection 4.7(1) is replaced with the following:

4.7(1) A recognized clearing agency must

(a) on a reasonably frequent basis and, in any event, at least annually, engage a qualified external auditor to conduct an independent systems review and prepare a report, in accordance with established audit standards and best industry practices, that assesses the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a) and section 4.9, and

(b) on a reasonably frequent basis and, in any event, at least annually, engage a qualified party to perform assessments and testing to identify any security vulnerability and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a)**. .**

19. Subsection 4.7(2) is amended by replacing "subsection (1)***" with "***paragraph (1)(a)***".***

20. Paragraph 4.10(g) is amended by replacing "an appropriate***" with "***a reasonable***".***

21. Subsection 5.1(1) is amended by deleting "and must keep those other books, records and documents as may otherwise be required under securities legislation***".***

22. Section 5.2 is amended

(a) by replacing subsection (1) with the following:

5.2(1) In this section, "**Global Legal Entity Identifier System**" means the system for unique identification of parties to financial transactions.***,***

(b) in subsection (2), by replacing "a single***" with "***the***", and***

(c) by adding the following subsection:

(2.1) During the period that a clearing agency is a recognized clearing agency or is exempt from the requirement to be recognized as a clearing agency, the clearing agency must maintain and renew the legal entity identifier referred to in subsection (2)**.**

23. Subsection 6.1(3) is amended by adding "Alberta and***" immediately before "***Ontario***".***

24. Form 24-102F1 is amended

(a) in paragraph 7, by replacing "[province of local jurisdiction]***" with "***[name of local jurisdiction]***",***

(b) in paragraph 10, by replacing "be a recognized***" with "***be recognized***", and***

(c) after the heading "AGENT CONSENT TO ACT AS AGENT FOR SERVICE" ***by deleting "***insert***" wherever it occurs.***

25. Form 24-102F2 is amended

(a) under the heading "Exhibit B" by replacing "ceasing business***" with "***ceasing to carry on business***",***

(b) by replacing "the cessation of***" with "***ceasing to carry on***" in Exhibits C and D, and***

(c) after the heading "**CERTIFICATE OF CLEARING AGENCY***"***

(i) by deleting the round brackets immediately before and after "Name of clearing agency***",***

(ii) by replacing "(Name of director, officer or partner – please type or print)***" with "***Name of director, officer or partner (please type or print)***",***

(iii) by deleting the round brackets immediately before and after "Signature of director, officer or partner***", and***

(iv) by replacing "(Official capacity – please type or print)***" with "***Official capacity (please type or print)***".***

26. (1) This Instrument comes into force on June 19, 2020.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after June 19, 2020, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX D

CHANGES TO COMPANION POLICY 24-102CP *CLEARING AGENCY REQUIREMENTS*

1. Companion Policy 24-102CP Clearing Agency Requirements is changed by this Document.

2. Subsection 1.1(2) is changed by replacing "this Part 1 of the CP, section 3.2 and 3.3 of Part 3 of this CP, and the *text boxes* in Annex I***" with "***this section, sections 1.2 and 1.3 of this CP, and Annexes I and II***".***

3. Subsection 1.2(3) is changed by replacing "Annex I to this CP includes supplementary guidance in *text boxes* that applies***" with "***Annexes I and II to this CP include supplementary guidance that applies***".***

4. Part 1 is changed by adding the following section:

1.5 Section 1.5 provides clarity on the application of the different parts of the Instrument to a clearing agency that has been recognized by a securities regulatory authority, or exempted from recognition, as is further described in section 2.0 of this CP. Unless otherwise specified, Parts 1, 2, and 5 to 7 generally apply to both a recognized clearing agency and one that is exempted from recognition.**.**

5. Subsection 2.0 is changed:

(a) in subsection (2) by replacing "will generally***" with "***would generally need to***", and***

(b) in subsection (4) by replacing "certain material changes to information provided to the securities regulatory authority***" with "***certain changes to information provided to the securities regulatory authority that are material***".***

6. Section 2.1 is changed:

(a) by adding "in both substance and process, though its oversight program may differ***" immediately after "***agency is similar***",***

(b) by adding "comprehensive and***" immediately after "***completion of***", and***

(c) by adding "for either recognition or exemption***" immediately after "***application materials***".***

7. Subsection 2.2(2) is changed:

(a) by replacing the first sentence with the following:

The written notice should provide a reasonably detailed description of the significant change (as defined in subsection 2.2(1)), the expected date of the implementation of the change, and an assessment of how the significant change is consistent with the PFMI Principles applicable to the clearing agency (see subsection 2.2(3)).**, and**

(b) by deleting the last sentence.

8. Section 2.3 is changed by deleting "within the appropriate timelines***".***

9. Part 2 is changed by adding the following section:

Financial statements

2.4 Financial statements filed under sections 2.4 and 2.5 must disclose the accounting principles used to prepare them. For clarity, financial statements prepared either in accordance with Canadian GAAP applicable to publicly accountable enterprises or in accordance with IFRS should include:

(a) in the case of annual financial statements, an unreserved statement of compliance with IFRS;

(b) in the case of interim financial statements, an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting.*

10. Part 2 is changed by adding the following section:

Filing of interim financial statements

2.5 The term "interim period" in subsection 2.5(2) means a period commencing on the first day of the recognized or exempt clearing agency's financial year and ending nine, six or three months before the end of the same financial year, or otherwise in accordance with the regulatory requirements of the jurisdiction in which the clearing agency's head office or principal place of business is located**.**.

11. Part 3 is changed

(a) in section 3.1

(i) by adding "and other reports or explanatory material published by CPMI and IOSCO that provide supplementary guidance to FMIs on the application of the PFMI Principles***" immediately after "***explanatory notes in the PFMI Report***", and***

(ii) by deleting "separate *text boxes* in***",***

(b) in current section 3.2 by deleting "(see Box 5.1 in Annex I to this CP)***",***

(c) in current section 3.3 by deleting the ":" after the words "domestic cash markets because***" in the paragraph immediately after the subheading "****- Customers of IIROC dealer members****", and***

(d) by deleting the numbering of sections 3.2 and 3.3.

12. Section 4.0 is changed by adding "recognized***" immediately before "***clearing agency***".***

13. Subsection 4.1(4) is changed

(a) by replacing "reasonably***" with "***, absent exceptional circumstances,***",***

(b) by deleting "executive***" immediately before "***officer***" in paragraph (a), (b) and (e), and***

(c) by replacing "ten per cent***" with "***10%***" wherever it occurs.***

14. Section 4.2 is deleted.

15. Section 4.3 is changed by adding the following paragraph immediately after the first paragraph:

Consistent with PFMI Principle 2, Key Consideration 6, subsection 4.3(1) is not intended to prevent the CRO and the CCO from reporting to both management and the board, provided that there are adequate safeguards in place to ensure that the CRO and the CCO have sufficient independence from the other members of management in performing their functions as CRO and CCO, particularly their obligations under subsections 4.3(2) and 4.3(3)**.**.

16. Subsection 4.3(3) is changed by adding "(or certain aspects of the role)***" immediately after "***role of a CCO***".***

17. Section 4.6 is changed

(a) by replacing paragraph (a) with the following:

(a) The intent of these provisions is to ensure that controls are implemented to support cyber resilience, information technology planning, acquisition, development and maintenance, computer operations, information systems support and security. Recognized guides as to what constitutes adequate information technology controls may include guidance, principles or frameworks published by the Chartered Professional Accountants - Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO), or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST). We are of the view that internal controls include controls which support the processing integrity of the models used to quantify, aggregate, and manage the clearing agency's risks.

(b) in paragraph (b), by replacing "subsection 4.6(b)***" with "***paragraph 4.6(b)***" and "***once a year***" with "***once in each 12-month period***",***

(c) by replacing paragraph (c) with the following:

(c) A security incident is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of an information system or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies. A failure, malfunction, delay or security incident is considered to be "material" if the clearing agency would, in the normal course of operations, escalate the matter to or inform its senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the clearing agency's operations or on participants, although non-material events may become material if they recur or have a cumulative effect. Any event that requires non-routine measures or resources by the clearing agency would also be considered material and thus reportable to the securities regulatory authority. The onus would be on the clearing agency to document the reasons for any security incident it did not consider material. It is expected that, as part of the notification required under paragraph 4.6(c), the clearing agency will provide updates on the status of the event and the resumption of service. Further, the clearing agency should have comprehensive and well-documented procedures in place to record, analyze, and resolve all systems failures, malfunctions, delays and security incidents. In this regard, the clearing agency should undertake a "post-mortem" review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the clearing agency's participants. The results of such internal reviews are required to be communicated to the securities regulatory authority as soon as practicable.[1]***, and***

(d) adding the following paragraph:

(d) Pursuant to section 5.1, a recognized clearing agency may be asked to provide the regulator or, in Quebec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a systems failure, malfunction, delay, security incident or any other system or process related data.**.**

18. Part 4 is changed by adding the following subsection:

Auxiliary systems

4.6.1(2) A recognized clearing agency should also refer to the considerations for paragraph 4.6(c) above with regards to security incidents that arise in connection with auxiliary systems. Pursuant to section 5.1, a recognized clearing agency may be asked to provide the regulator or, in Quebec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a security incident**.**

19. Subsection 4.7(1) is replaced with the following:

4.7 (1)(a) An independent systems review must be conducted and reported on at least once in each 12-month period by a qualified external auditor in accordance with established audit standards and best industry practices. We consider that best industry practices include the 'Trust Services Criteria' developed by the American Institute of CPAs and CPA Canada. For the purposes of paragraph 4.7(1)(a), we consider a qualified external auditor to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. Before engaging a qualified external auditor to conduct the independent systems review, a clearing agency is expected to discuss its choice of external auditor and the scope of the systems review mandate with the regulator or, in Québec, the securities regulatory authority. We further expect that the report prepared by the external auditor include, to the extent applicable, an audit opinion that (i) the description included in the report fairly presents the systems and controls that were designed and implemented throughout the reporting period, (ii) the controls stated in the description were suitably designed, and (iii) the controls operated effectively throughout the reporting period.

(1)(b) The clearing agency must also establish and perform effective assessment and testing methodologies and practices and would be expected to implement appropriate improvements where necessary. The assessments and testing required in this section, such as vulnerability assessments and penetration tests, are to be carried out by a qualified party on a reasonably frequent basis and, in any event, at least once in each 12-month period. For the purposes of paragraph 4.7(1)(b), we consider a qualified party to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. We consider that qualified parties may include external auditors or third party information system consultants, as well as employees of the clearing agency or an affiliated entity of the clearing agency, but may not be persons responsible for the development or operation of the systems or

[1] Adapted from the NIST definition of "incident". See https://csrc.nist.gov/Glossary/?term=4730#AlphaIndexDiv.

capabilities being tested. The securities regulatory authority may, in accordance with securities legislation, require the clearing agency to provide a copy of any such assessment.**.**

20. Section 4.9 is changed by replacing "annually***" with "***at least once in each 12-month period***".***

21. Subsection 5.2(1) is replaced with the following:

5.2 (1) The Global Legal Entity Identifier System defined in subsection 5.2(1) is a G20 endorsed system[2] that is intended to serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers (LEIs) globally in order to uniquely identify parties to transactions. It was designed and implemented under the direction of the LEI Regulatory Oversight Committee, a governance body endorsed by the G20.

22. Subsection 5.2(3) is deleted.

23. Annex I is replaced with the following:

ANNEX I

TO COMPANION POLICY 24-102CP

JOINT SUPPLEMENTARY GUIDANCE

DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS

ON THE PFMI PRINCIPLES

Joint Supplementary Guidance has been developed by the BOC and the securities regulatory authorities to provide additional clarity on certain aspects of selected PFMI Principles within the Canadian context. It is found on the BOC website and in annexes to the Companion Policy (to the CSA National Instrument 24-102 *Clearing Agency Requirements*).

The Joint Supplementary Guidance applies in respect of recognized domestic clearing agencies that are designated as systemically important by the BOC and jointly overseen by the BOC and one or more securities regulatory authorities (referred to in this Joint Supplementary Guidance as an "FMI").

Beyond observation of the PFMI Principles, an FMI is expected to take into account the "Explanatory Notes" for each applicable PFMI Principle, other reports and explanatory materials published by CPMI and IOSCO that supplement the PFMI Report and that provide guidance to FMIs on the application of the PFMI Principles, as well as this Joint Supplementary Guidance or any future guidance published jointly by the BOC and the securities regulatory authorities.

The Joint Supplementary Guidance below appears under the relevant headings for each applicable PFMI Principle (referred to by the BOC as its "Risk-Management Standards for Designated FMIs").

PFMI Principle 3: Framework for the comprehensive management of risks

a. Joint Supplementary Guidance for PFMI Principle 3 has been developed by the BOC and CSA pertaining to FMI recovery planning. This guidance can be found separately on the BOC website and in Annex II to the Companion Policy.

PFMI Principle 5: Collateral

a. An FMI should not rely solely on external opinions to determine collateral eligibility.

b. In general, most of the FMI's collateral pools should be composed of cash and debt securities issued or guaranteed by the Government of Canada, a provincial government or the U.S. Treasury.

c. Additional asset classes may be acceptable as collateral if they are subject to conservative haircuts and concentration limits. An FMI should limit such assets to a maximum of 40% of the total collateral posted from each participant. It should also limit securities issued by a single issuer to a maximum of 5% of total collateral from each participant. Such assets are:

- Securities issued by a municipal government;
- Bankers' acceptances;

[2] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

- Commercial paper;
- Corporate bonds;
- Asset-backed securities that meet the following criteria:
    1) sponsored by a deposit-taking financial institution that is prudentially-regulated at either the federal or provincial level;
    2) part of a securitization program supported by a liquidity facility; and
    3) backed by assets of an acceptable credit quality;
- Equity securities traded on marketplaces regulated by a member of the CSA; and
- Other securities issued or guaranteed by a government, central bank or supranational institution classified as Level 1 high-quality assets by the Basel Committee on Banking Supervision.

d. Since it is highly likely that the value of debt and equity securities issued by companies operating in the financial sector would be adversely affected by the default of an FMI participant – introducing wrong-way risk for an FMI that has accepted such securities as collateral – an FMI should:

- Limit the collateral from financial sector issuers to a maximum of 10% of total collateral pledged from each participant; and
- Not allow a participant to pledge as collateral securities issued by itself or an affiliate.

PFMI Principle 7: Liquidity risk

a. Liquidity facilities should include at least three independent liquidity providers to ensure the FMI has access to sufficient liquid resources even in the event one of its liquidity providers defaults.

b. Uncommitted liquidity facilities are considered qualifying liquid resources for liquidity exposure in Canadian dollars if they meet all of the following additional criteria:

- The liquidity provider has access to the Bank of Canada's Standing Liquidity Facility (SLF);
- The facility is fully-collateralized with SLF-eligible collateral; and
- The facility is denominated in Canadian dollars.

PFMI Principle 15: General business risk

a. Liquid net assets funded by equity must be held at the level of the FMI legal entity to ensure they are unencumbered and can be accessed quickly.

PFMI Principle 16: Custody and investment risks

a. It is paramount that an FMI have prompt access to assets held for risk-management purposes with minimal price impact. For the purposes of PFMI Principle 16, financial instruments can be considered to have minimal credit, market and liquidity risk if they are debt instruments that are:

- Securities issued or guaranteed by the Government of Canada;
- Marketable securities issued by the U.S. Treasury;
- Securities issued or guaranteed by a provincial government;
- Securities issued by a municipal government;
- Bankers' acceptances;
- Commercial paper;
- Corporate bonds; and

- Asset-backed securities that are:

    1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level;

    2) part of a securitization program supported by a liquidity facility; and

    3) backed by assets of an acceptable credit quality.

b. Investments should also, at a minimum, observe the following:

- To reduce concentration risk, no more than 20% of total investments should be invested in any combination of municipal and private sector securities. Investment in a single private sector or municipal issuer should be no more than 5% of total investments.

- To mitigate specific wrong-way risk, investments should, as much as possible, be inversely related to market events that increase the likelihood of those assets being required. Investment in financial sector securities should be no more than 10% of total investments. An FMI should not invest assets in the securities of its own affiliates.

- For investments that are subject to counterparty credit risk, an FMI should set clear criteria for choosing investment counterparties and setting exposure limits.

24. The Companion Policy is changed by adding the following Annex II:

ANNEX II

TO COMPANION POLICY 24-102CP

JOINT SUPPLEMENTARY GUIDANCE

DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS

ON RECOVERY PLANS

Context

In 2012, to enhance the safety and efficiency of payment, clearing and settlement systems, CPMI and IOSCO released a set of international risk-management standards for FMIs, known as the PFMIs.[1] The PFMIs provide standards regarding FMI recovery planning and orderly wind-down, which were adopted by the Bank of Canada as Standard 24 of the Bank's *Risk-Management Standards for Systemic FMIs*[2] and by the CSA as part of the Instrument.[3] In the context of recovery planning,

> *An FMI is expected to identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. This entails preparing appropriate plans for its recovery or orderly wind-down based on the results of that assessment.*

In October 2014, CPMI and IOSCO released its report, "Recovery of Financial Market Infrastructures" (the Recovery Report), providing additional guidance specific to the recovery of FMIs.[4] The Recovery Report explains the required structure and components of an FMI recovery plan and provides guidance on FMI critical services and recovery tools at a level sufficient to accommodate possible differences in the legal and institutional environments of each jurisdiction.

For the purpose of this guidance, FMI recovery is defined as the set of actions that an FMI can take, consistent with its rules, procedures and other ex ante contractual agreements, to address any uncovered loss, liquidity shortfall or capital inadequacy, whether arising from participant default or other causes (such as business, operational or other structural weakness), including actions to replenish any depleted pre-funded financial resources and liquidity arrangements, as necessary, to maintain the FMI's

1 Available at http://www.bis.org/cpmi/publ/d101a.pdf.

2 See key consideration 4 of PFMI Principle 3 and key consideration 3 of PFMI Principle 15 which are adopted in the Instrument, section 3.1.

3 The Bank of Canada's *Risk-Management Standards for Systemic FMIs* is available at http://www.bankofcanada.ca/core-functions/financial-system/bank-canada-risk-management-standards-systemic-fmis/.

4 Available at http://www.bis.org/cpmi/publ/d121.pdf.

viability as a going concern and the continued provision of critical services.[5,6]

Recovery planning is not intended as a substitute for robust day-to-day risk management or for business continuity planning. Rather, it serves to extend and strengthen an FMI's risk-management framework, enhancing the resilience of the FMI against financial risks and bolstering confidence in the FMI's ability to function effectively even under extreme but plausible market conditions and operating environments.

Key Components of Recovery Plans

Overview of existing risk-management and legal structures

As part of their recovery plans, FMIs should include overviews of their legal entity structure and capital structure to provide context for stress scenarios and recovery activities.

FMIs should also include an overview of their existing risk-management frameworks – i.e., their **pre-recovery** risk-management frameworks and activities. As part of this overview, and to determine the relevant point(s) where standard pre-recovery risk-management frameworks are exhausted, FMIs should identify all the material risks they are exposed to and explain how they use their existing pre-recovery risk-management tools to manage these risks to a high degree of confidence.

Critical services[7]

In their recovery plans, FMIs should identify, in consultation with Canadian authorities and stakeholders, the services they provide that are critical to the smooth functioning of the markets that they serve and to the maintenance of financial stability. FMIs may find it useful to consider the degree of **substitutability** and **interconnectedness** of each of these critical services, specifically

- the degree of criticality of an FMI's service is likely to be high if there are no, or only a small number of, alternative service providers. Factors related to the substitutability of a service could include (i) the size of a service's market share, (ii) the existence of alternative providers that have the capacity to absorb the number of customers and transactions the FMI maintains, and (iii) the FMI participants' capability to transfer positions to the alternative provider(s).

- the degree of criticality of an FMI's service may be high if the service is significantly interconnected with other market participants, both in terms of breadth and depth, thereby increasing the likelihood of contagion if the service were to be discontinued. Potential factors to consider when determining an FMI's interconnectedness are (i) what services it provides to other entities and (ii) which of those services are critical for other entities to function

Stress scenarios[8]

In their recovery plans, FMIs should identify scenarios that may prevent them from being able to provide their critical services as a going concern. Stress scenarios should be focused on the risks an FMI faces from its payment, clearing and settlement activity. An FMI should then consider stress scenarios that cause financial stress in excess of the capacity of its existing pre-recovery risk controls, thereby placing the FMI into recovery. An FMI should organize stress scenarios by the types of risk it faces; for each stress scenario, the FMI should clearly explain the following:

- the assumptions regarding market conditions and the state of the FMI within the stress scenario, accounting for the differences that may exist depending on whether the stress scenario is systemic or idiosyncratic;

- the estimated impact of a stress scenario on the FMI, its participants, participants' clients and other stakeholders; and

- the extent to which an FMI's existing pre-recovery risk-management tools are insufficient to withstand the impacts of realized risks in a recovery stress scenario and the value of the loss and/or of the negative shock required to generate a gap between existing risk-management tools and the losses associated with the realized risks.

5 Recovery Report, Paragraph 1.1.1.

6 For a precise definition of orderly wind-down, see the Recovery Report, Paragraph 2.2.2.

7 Recovery Report, Paragraphs 2.4.2–2.4.4.

8 Recovery Report, Paragraph 2.4.5.

Triggers for recovery

For each stress scenario, FMIs should identify the triggers that would move them from their pre-recovery risk-management activities (e.g., those found in a CCP's default waterfall) to recovery. These triggers should be both qualified (i.e., outlined) and, where relevant, quantified to demonstrate a point at which recovery plans will be implemented without ambiguity or delay.

While the boundary between pre-recovery risk-management activities and recovery can be clear (for example, when pre-funded resources are fully depleted), judgment may be needed in some cases. When this boundary is not clear, FMIs should lay out in their recovery plans how they will make decisions.[9] This includes detailing in advance their communication plans, as well as the escalation process associated with their decision-making procedures. They should also specify the decision-makers responsible for each step of the escalation process to ensure that there is adequate time for recovery tools to be implemented if required.

More generally, it is important to identify and place the triggers for recovery early enough in a stress scenario to allow for sufficient time to implement recovery tools described in the recovery plan. Triggers placed too late in a scenario will impede the effective rollout of these tools and hamper recovery efforts. Overall, in determining the moment when recovery should commence, and especially where there is uncertainty around this juncture, an FMI should be prudent in its actions and err on the side of caution.

Selection and Application of Recovery Tools[10]

A comprehensive plan for recovery

The success of a recovery plan relies on a comprehensive set of tools that can be effectively applied during recovery. The applicability of these tools and their contribution to recovery varies by system, stress event and the order in which they are applied.

A robust recovery plan relies on a range of tools to form an adequate response to realized risks. Canadian authorities will provide feedback on the comprehensiveness of selected recovery tools when reviewing an FMI's complete recovery plan.

Characteristics of recovery tools

In providing this guidance, Canadian authorities used a broad set of criteria (described below), including those from the Recovery Report, to determine the characteristics of effective recovery tools.[11] FMIs should aim for consistency with these criteria in the selection and application of tools. In this context, recovery tools should be:

- Reliable and timely in their application and have a strong legal and regulatory basis. This includes the need for FMIs to mitigate the risk that a participant may be unable or unwilling to meet a call for financial resources in a timely manner, or at all (i.e., performance risk), and to ensure that all recovery activities have a strong legal and regulatory basis.

- Measurable, manageable and controllable to ensure that they can be applied effectively while keeping in mind the objective of minimizing their negative effects on participants and the broader financial system. To this end, using tools in a manner that results in participant exposures that are determinable and fixed provides better certainty of the tools' impacts on FMI participants and their contribution to recovery. Fairness in the allocation of uncovered losses and shortfalls, and the capacity to manage the associated costs, should also be considered.

- Transparent to participants: this should include a predefined description of each recovery tool, its purpose and the responsibilities and procedures of participants and the FMIs subject to the recovery tool's application to effectively manage participants' expectations. Transparency also mitigates performance risk by detailing the obligations and procedures of FMIs and participants beforehand to support the timely and effective rollout of recovery tools.

- Designed to create appropriate incentives for sound risk management and encourage voluntary participation in recovery to the greatest extent possible. This may include distributing post-recovery proceeds to participants that supported the FMI through the recovery process.

Systemic stability

Certain tools may have serious consequences for participants and for the stability of financial markets more generally. FMIs should use prudence and judgment in the selection of appropriate tools. Canadian authorities are of the view that FMIs should be cautious in using tools that can create uncapped, unpredictable or ill-defined participant exposures, and which could create

9 Recovery Report, Paragraph 2.4.8.

10 Recovery Report, Paragraph 2.3.6 – 2.3.7 and 2.5.6 and Paragraphs 3.4.1 – 3.4.7.

11 Recovery Report, Paragraph 3.3.1.

uncertainty and disincentives to participate in an FMI. Any such use would need to be carefully justified. Participants' ability to predict and manage their exposures to recovery tools is important, both for their own stability and for the stability of the indirect participants of an FMI.

In assessing FMI recovery plans, Canadian authorities are concerned with the possibility of systemic disruptions from the use of certain tools or tools that pose unquantifiable risks to participants. When determining which recovery tools should be included in a recovery plan, and selecting and applying such tools during the recovery phase, FMIs should keep in mind the objective of minimizing their negative impacts on participants, the FMI and the broader financial system.

Recommended recovery tools

This section outlines recommended recovery tools for use in FMI recovery plans. Not all tools are applicable for the different types of FMIs (e.g., a payment system versus a central counterparty), nor is this an exhaustive list of tools that may be available for recovery. Each FMI should use discretion when determining the most appropriate tools for inclusion in its recovery plan, consistent with the considerations discussed above.

❖ **Cash calls**

Cash calls are recommended for recovery plans to the extent that the exposures they generate are fixed and determinable; for example, capped and limited to a maximum number of rounds over a specified period, established in advance. In this context, participant exposures should be linked to each participant's risk-weighted level of FMI activity.

By providing predictable exposures pro-rated to a participant's risk-weighted level of activity, FMIs create incentives for better risk management on the part of participants, while giving the FMI greater certainty over the amount of resources that can be made available during recovery.

Since cash calls rely on contingent resources held by FMI participants, there is a risk that they may not be honoured, reducing their effectiveness as a recovery tool. The management of participants' expectations, especially through the placement of clear limits on participant exposure, can mitigate this concern.

Cash calls can be designed in multiple ways to structure incentives, vary their impacts on participants and respond to different stress scenarios. When designing cash calls, FMIs should, to the greatest extent possible, seek to minimize the negative consequences of the tool's use.

❖ **Variation margin gains haircutting (VMGH)**

VMGH is recommended for recovery plans because participant exposure under this tool can be measured with reasonable confidence, as it is tied to the level of risk held in the variation margin (VM) fund and the potential for gains. Where recovery plans allow for multiple rounds of VMGH, Canadian authorities will consider the impact of each successive round of haircutting with increasing focus on systemic stability.

VMGH relies on participant resources posted at the FMI as variation margin (VM). Where the price movements of underlying instruments create sufficient VM gains for use in recovery, VMGH provides an FMI with a reliable and timely source of financial resources without the performance risk that is associated with tools reliant on resources held by participants.

VMGH assigns losses and shortfalls only to participants with net position gains; as a result, the pro rata financial burden is higher for these participants. The negative effects of VMGH can also be compounded for participants who rely on variation margin gains to honour obligations outside the FMI. FMIs should seek to minimize these negative effects to the greatest extent possible.

❖ **Voluntary contract allocation**

To recover from an unmatched book caused by a participant default, a CCP can use its powers to allocate unmatched contracts.[12] In the context of recovery, contract allocation is encouraged on a voluntary basis –for example, by auction. Voluntary contract allocation addresses unmatched positions while taking participant welfare into account, since only participants who are willing to take on positions will participate.

The reliance on a voluntary process, such as an auction, introduces the risk that not all positions will be matched or that the auction process is not carried out in a timely manner. Defining the responsibilities and procedures for voluntary

[12] A CCP "matched book" occurs when a position taken on by the CCP with one clearing member is offset by an opposite position taken on with a second clearing member. A matched book must be maintained for the CCP to complete a trade. An unmatched book occurs when one participant defaults on its position in the trade, leaving the CCP unable to complete the transaction.

contract allocation (e.g., the auction rules) in advance will mitigate this risk and increase the reliability of the tool. To ensure that there is adequate participation in an auction process, FMIs should create incentives for participants to take on unmatched positions. FMIs may also wish to consider expanding the auction beyond direct participants to increase the chances that all positions will be matched.

❖ **Voluntary contract tear-up**

Since eliminating positions can help re-establish a matched book, Canadian authorities view voluntary contract tear-up as a potentially effective tool for FMI recovery. To this end, FMIs may want to consider using incentives to encourage voluntary tear-up during recovery.[13] While contract tear-up undertaken on a voluntary basis is a recommended tool, the forced termination of an incomplete trade may represent a disruption of a critical FMI service, and can be intrusive to apply (see the section "Tools requiring further justification" for a discussion of forced contract tear-up).

To the extent that voluntary contract tear-up may disrupt critical FMI services, it can produce disincentives to participate in an FMI. There should be a strong legal basis for the relevant processes and procedures when voluntary contract tear-up is included in a recovery plan. This will help to manage participant expectations for this tool and ensure that confidence in the FMI is maintained.

Other tools available for FMI recovery include standing third-party liquidity lines, contractual liquidity arrangements with participants, insurance against financial loss, increased contributions to pre-funded resources, and use of an FMI's own capital beyond the default waterfall. These and other tools are often already found in the pre-recovery risk-management frameworks of FMIs. Canadian authorities encourage their use for recovery as well, provided they are in keeping with the criteria for effective recovery tools as found in the Recovery Report and in this guidance.[14] Where system-specific recovery needs necessitate, FMIs can also design recovery tools not explicitly listed in this guidance. The applicability of such tools will be examined by the Canadian authorities when they review the proposed recovery plan.

To the extent that the costs of recovery are shared less equally under some tools (e.g., VMGH), if it is financially feasible, FMIs could consider post-recovery actions to restore fairness where participants have been disproportionately affected. Such actions may include the repayment of participant contributions used to address liquidity shortfalls and other instruments that aim to redistribute the burden of losses allocated during recovery. It is important to note that these actions in the post-recovery period should not impair the financial viability of the FMI as a going concern.

Tools requiring further justification

Due to their uncertain and potentially negative effects on the broader financial system, tools that are more intrusive or result in participant exposures that are difficult to measure, manage or control, must be carefully considered and justified with strong rationale by the FMI when they are included in a recovery plan. Canadian authorities will provide their views on the suitability of any such tools as part of their review of recovery plans.

For example, uncapped and unlimited cash calls and unlimited rounds of VMGH can create ambiguous participant exposures, the negative effects of which must be prudently considered when including them in a recovery plan. In addition, when applied during the recovery process, Canadian authorities will monitor the application of each successive round of cash calls and VMGH with increased focus on systemic stability.

Tools such as involuntary (forced) contract allocation and involuntary (forced) contract tear-up create exposures that are difficult to manage, measure and control. To the extent that these tools are even more intrusive, they have the ability to pose greater risk to systemic stability. Canadian authorities acknowledge that such tools have potential utility when other recovery options are ineffective, and could possibly be used by a resolution authority, but expect FMIs to carefully assess the potential impact of such tools on participants and the stability of the broader financial system.

Canadian authorities do not encourage the use of non-defaulting participants' initial margin in FMI recovery plans considering the potential for significant negative impacts.[15] Similarly, a recovery plan should not assume any extraordinary form of public or central bank support.[16]

Recovery from non-default-related losses and structural weaknesses

Consistent with a defaulter-pays principle, an FMI should rely on FMI-funded resources to address recovery from non-default-related losses (i.e., operational and business losses on the part of an FMI), including losses arising from structural weakness.[17]

13 Recovery Report, Paragraph 4.5.3.

14 Recovery Report, Paragraph 3.3.1.

15 Recovery Report, Paragraph 4.2.26.

16 Recovery Report, Paragraph 2.3.1.

To this end, FMIs should examine ways to increase the loss absorbency between the FMI's pre-recovery risk-management activities and participant-funded resources (e.g., by using FMI-funded insurance against operational risks).

Structural weakness can be an impediment to the effective rollout of recovery tools and may itself result in non-default-related losses that are a trigger for recovery. An FMI recovery plan should identify procedures detailing how to promptly detect, evaluate and address the sources of underlying structural weakness on a continuous basis (e.g., unprofitable business lines, investment losses).

The use of participant-funded resources to recover from non-default-related losses can lessen incentives for robust risk management within an FMI and provide disincentives to participate. If, despite these concerns, participants consider it in their interest to keep the FMI as a going concern, an FMI and its participants may agree to include a certain amount of participant-funded recovery tools to address some non-default-related losses. Under these circumstances, the FMI should clearly explain under what conditions participant resources would be used and how costs would be distributed.

Defining full allocation of uncovered losses and liquidity shortfalls

Principles 4 (credit risk)[18] and 7 (liquidity risk)[19] of the PFMIs require that FMIs should specify rules and procedures to fully allocate both uncovered losses and liquidity shortfalls caused by stress events. To be consistent with this requirement, **Canadian FMIs should consider various stress scenarios and have rules and procedures that allow them to fully allocate any losses or liquidity shortfalls arising from these stress scenarios, in excess of the capacity of existing pre-recovery risk controls.** Tools used to address full allocation should reflect the Recovery Report's characteristics of effective recovery tools, including the need to have them measurable, manageable and controllable to those who will bear the losses and liquidity shortfalls in recovery, and for their negative impacts to be minimized to the greatest extent possible.

Legal consideration for full allocation

An FMI's rules for allocating losses and liquidity shortfalls should be supported by relevant laws and regulations. There should be a high level of certainty that rules and procedures to fully allocate all uncovered losses and liquidity shortfalls are enforceable and will not be voided, reversed or stayed.[20] This requires that Canadian FMIs design their recovery tools in compliance with Canadian laws. For example, if the FMI's loss-allocation rules involve a guarantee, Canadian law generally requires that the guaranteed amount be determinable and preferably capped by a fixed amount.[21]

FMIs should consider whether it is appropriate to involve indirect participants in the allocation of losses and shortfalls during recovery. To the extent that it is permitted, such arrangements should have a strong legal and regulatory basis; respect the FMI's frameworks for tiered participation, segregation and portability; and involve consultation with indirect participants to ensure that all relevant concerns are taken into account.

Overall, FMIs are responsible for seeking appropriate legal advice on how their recovery tools can be designed and for ensuring that all recovery tools and activities are in compliance with the relevant laws and regulations.

Additional Considerations in Recovery Planning

Transparency and coherence[22]

An FMI should ensure that its recovery plan is coherent and transparent to all relevant levels of management within the FMI, as well as to its regulators and overseers. To do so, a recovery plan should

- contain information at the appropriate level and detail; and
- be sufficiently coherent to relevant parties within the FMI, as well as to the regulators and overseers of the FMI, to effectively support the application of the recovery tools.

17 Structural weakness can be caused by factors such as poor business strategy, poor investment and custody policy, poor organizational structure, IM/IT-related obstacles, poor legal or regulatory risk frameworks, and other insufficient internal controls.

18 Under key consideration 7 of PFMI Principle 4, an FMI should establish explicit rules and procedures that fully address any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the FMI.

19 Under key consideration 10 of PFMI Principle 7, FMIs should establish rules and procedures that address unforeseen and potentially uncovered liquidity shortfalls and should aim to avoid unwinding, revoking or delaying the same-day settlement of payment obligations.

20 PFMI Report, Paragraph 3.1.10.

21 The Bank Act, Section 414(1) and IIROC Rule 100.14 prohibit banks and securities dealers, respectively, from providing unlimited guarantees to an FMI or a financial institution.

22 Recovery Report, Section 2.3

An FMI should ensure that the assumptions, preconditions, key dependencies and decision-making processes in a recovery plan are transparent and clearly identified.

Relevance and flexibility[23]

An FMI's recovery plan should thoroughly cover the information and actions relevant to extreme but plausible market conditions and other situations that would call for the use of recovery tools. An FMI should take into account the following elements when developing its recovery plan:

- the nature, size and complexity of its operations;
- its interconnectedness with other entities;
- operational functions, processes and/or infrastructure that may affect the FMI's ability to implement its recovery plan; and
- any upcoming regulatory reforms that may have the potential to affect the recovery plan.

Recovery plans should be sufficiently flexible to address a range of FMI-specific and market-wide stress events. Recovery plans should also be structured and written at a level that enables the FMI's management to assess the recovery scenario and initiate appropriate recovery procedures. As part of this expectation, the recovery plan should demonstrate that senior management has assessed the potential two-way interaction between recovery tools and the FMI's business model, legal entity structure, and business and risk-management practices.

Implementation of Recovery Plan[24]

An FMI should have credible and operationally feasible approaches to recovery planning in place and be able to act upon them in a timely manner, under both idiosyncratic and market-wide stress scenarios. To this end, recovery plans should describe

- potential impediments to applying recovery tools effectively and strategies to address them; and
- the impact of a major operational disruption.[25]

This information is important to strengthen a recovery plan's resilience to shocks and ensure that the recovery tools are actionable.

A recovery plan should also include an escalation process and the associated communication procedures that an FMI would take in a recovery situation. Such a process should define the associated timelines, objectives and key messages of each communication step, as well as the decision-makers who are responsible for it.

Consulting Canadian authorities when taking recovery actions

While the responsibility for implementing the recovery plan rests with the FMI, Canadian authorities consider it critical to be informed when an FMI triggers its recovery plan and before the application of recovery tools and other recovery actions. To the extent an FMI intends to use a tool or take a recovery action that might have significant impact on its participants (e.g. tools requiring further justification), the FMI should consult Canadian authorities before using such tools or taking such actions to demonstrate how it has taken into account potential financial stability implications and other relevant public interest considerations. Authorities include those responsible for the regulation, supervision and oversight of the FMI, as well as any authorities who would be responsible for the FMI if it were to be put into resolution.

Relevant Canadian authorities should be informed (or consulted as appropriate) early on and interaction with authorities should be explicitly identified in the escalation process of a recovery plan. Acknowledging the speed at which an FMI may enter recovery, FMIs are encouraged to develop formal communications protocols with authorities in the event that recovery is triggered and immediate action is required.

23 Recovery Report, Section 2.3.

24 Recovery Report, Paragraph 2.3.9.

25 This is also related to the FMI's backup and contingency planning, which are distinct from recovery plans.

Review of Recovery Plan[26]

An FMI should include in its recovery plan a robust assessment of the recovery tools presented and detail the key factors that may affect their application. It should recognize that, while some recovery tools may be effective in returning the FMI to viability, these tools may not have a desirable effect on its participants or the broader financial system.

A framework for testing the recovery plan (for example, through scenario exercises, periodic simulations, back-testing and other mechanisms) should be presented either in the plan itself or linked to a separate document. This impact assessment should include an analysis of the effect of applying recovery tools on financial stability and other relevant public interest considerations.[27] Furthermore, an FMI should demonstrate that the appropriate business units and levels of management have assessed the potential consequences of recovery tools on FMI participants and entities linked to the FMI.

Annual review of recovery plan

An FMI should review and, if necessary, update its recovery plan on an annual basis. The recovery plan should be subject to approval by the FMI's Board of Directors.[28] Under the following circumstances, an FMI is expected to review its recovery plan more frequently:

- if there is a significant change to market conditions or to an FMI's business model, corporate structure, services provided, risk exposures or any other element of the firm that could have a relevant impact on the recovery plan;
- if an FMI encounters a severe stress situation that requires appropriate updates to the recovery plan to address the changes in the FMI's environment or lessons learned through the stress period; and
- if the Canadian authorities request that the FMI update the recovery plan to address specific concerns or for additional clarity.

Canadian authorities will also review and provide their views on an FMI's recovery plan before it comes into effect. This is to ensure that the plan is in line with the expectations of Canadian authorities.

Orderly Wind-Down Plan as Part of a Recovery Plan[29]

Canadian authorities expect FMIs to prepare, as part of their recovery plans, for the possibility of an orderly wind-down. However, developing an orderly wind-down plan may not be appropriate or operationally feasible for some critical services. In this instance, FMIs should consult with the relevant authorities on whether they can be exempted from this requirement.

Considerations when developing an orderly wind-down plan

An FMI should ensure that its orderly wind-down plan has a strong legal basis. This includes actions concerning the transfer of contracts and services, the transfer of cash and securities positions of an FMI, or the transfer of all or parts of the rights and obligations provided in a link arrangement to a new entity.

In developing orderly wind-down plans, an FMI should elaborate on

- the scenarios where an orderly wind-down is initiated, including the services considered for wind-down;
- the expected wind-down period for each scenario, including the timeline for when the wind-down process for critical services (if applicable) would be complete; and
- measures in place to port critical services to another FMI that is identified and assessed as operationally capable of continuing the services.

Disclosure of recovery and orderly wind-down plans

An FMI should disclose sufficient information regarding the effects of its recovery and orderly wind-down plans on FMI participants and stakeholders, including how they would be affected by (i) the allocation of uncovered losses and liquidity

26 Recovery Report, Paragraph 2.3.8.

27 This is in line with key consideration 1 of PFMI Principle 2 (Governance), which states that an FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.

28 Recovery Report, Paragraph 2.3.3.

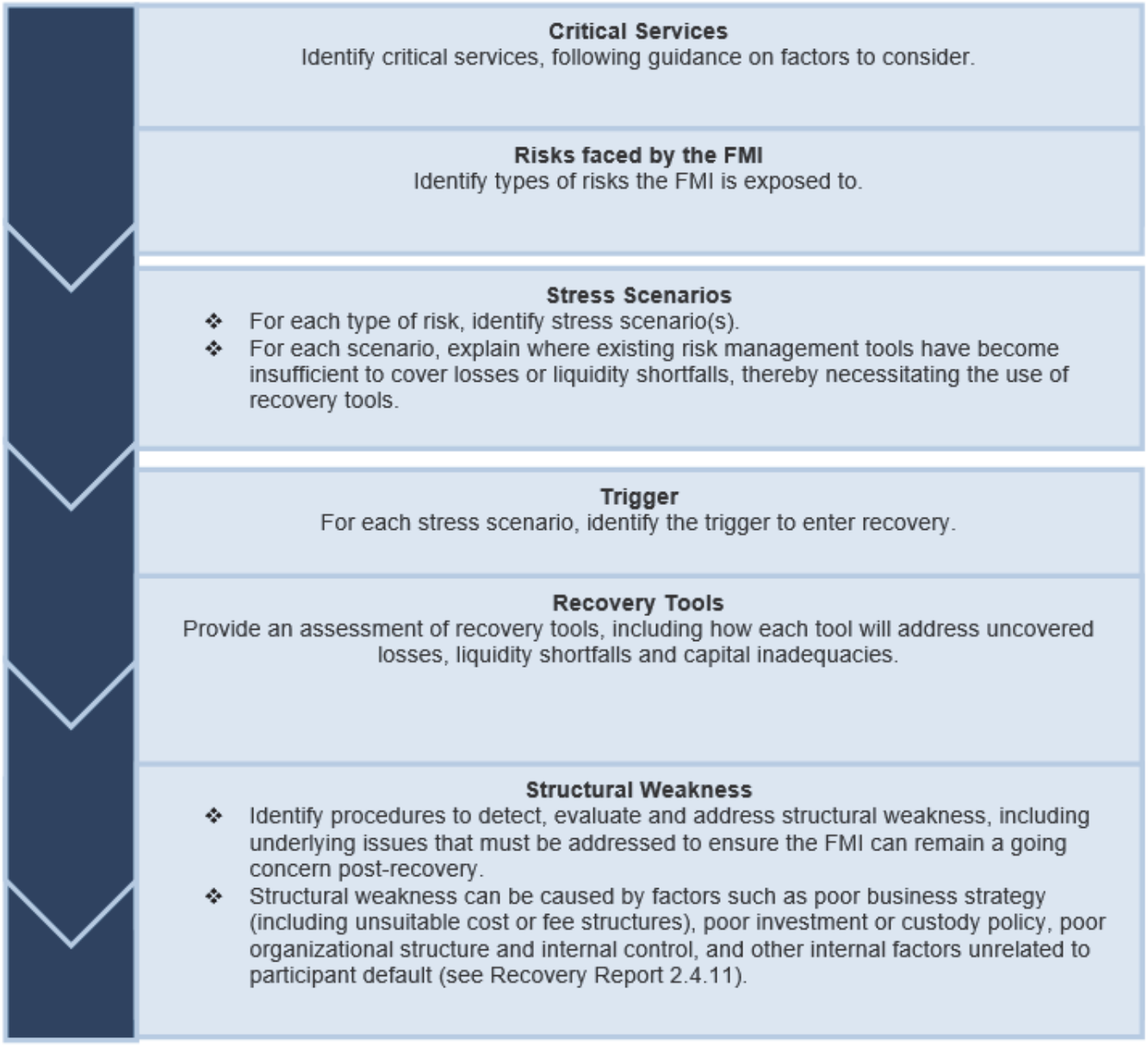
29 Recovery Report, Paragraph 2.2.2.

shortfalls and (ii) any measures the CCP would take to re-establish a matched book. In terms of disclosing the degree of discretion an FMI has in applying recovery tools, an FMI should make it clear to FMI participants and all other stakeholders ahead of time that all recovery tools and orderly wind-down actions that an FMI can apply will only be employed after consulting with the relevant Canadian authorities.

Note that recovery and orderly wind-down plans need not be two separate documents; the orderly wind-down of critical services may be a part or subset of the recovery plan. Furthermore, Canadian FMIs may consider developing orderly wind-down plans for non-critical services in the context of recovery if winding down non-critical services could assist in or benefit the recovery of the FMI.

Appendix: Guidelines on the Practical Aspects of FMI Recovery Plans

The following example provides suggestions on how an FMI recovery plan could be organized.



25. These changes become effective on June 19, 2020.

ANNEX E

BLACKLINED AMENDMENTS TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

~~Part 1~~

PART 1
DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions

~~1.1~~ 1.1 In this Instrument

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

"auditing standards" means auditing standards as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"board of directors" means, in the case of a recognized clearing agency that does not have a board of directors, a group of individuals that acts for the clearing agency in a capacity similar to a board of directors;

"central counterparty" means a person or company that interposes itself between the counterparties to securities or derivatives transactions in one or more financial markets, acting functionally as the buyer to every seller and the seller to every buyer or the counterparty to every party;

"central securities depository" means a person or company that provides centralized facilities as a depository of securities, including securities accounts, central safekeeping services and asset services, which may include the administration of corporate actions and redemptions;

"exempt clearing agency" means a clearing agency that has been granted a decision of the securities regulatory authority pursuant to securities legislation exempting it from the requirement in such legislation to be recognized by the securities regulatory authority as a clearing agency;

"link" means, in relation to a clearing agency, contractual and operational arrangements that directly or indirectly through an intermediary connect the clearing agency and one or more other systems for the clearing, settlement or recording of securities or derivatives transactions;

"participant" means a person or company that has entered into an agreement with a clearing agency to access the services of the clearing agency and is bound by the clearing agency's rules and procedures;

"PFMI Disclosure Framework Document" means a disclosure document completed substantially in the form of *Annex A: FMI disclosure template* of the December 2012 report *Principles for financial market infrastructures: Disclosure framework and Assessment methodology* published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, as amended, supplemented or superseded from time to time, or a similar disclosure document required to be completed regularly and disclosed publicly by a clearing agency in accordance with the regulatory requirements of a foreign jurisdiction in which the clearing agency is located;

"PFMI Principle" means a principle, including applicable key considerations, in the April 2012 report *Principles for financial market infrastructures* published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, as amended from time to time;

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

"securities settlement system" means a system that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules.

Interpretation - Affiliated Entity, Controlled Entity and Subsidiary Entity

~~1.2~~1.2 **(1)** In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

~~(2)~~ **(2)** In this Instrument, a person or company is considered to be controlled by a person or company if any of the following apply:

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

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

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

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

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

~~(3)~~ **(3)** In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if either of the following applies:

~~(a)~~ (a) it is a controlled entity of any of the following:

~~(i)~~ (i) that other~~,~~;

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

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

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

Interpretation – ~~Extended Meaning of Affiliated Entity~~meaning of affiliate for the purposes of PFMI Principles

~~1.3~~ **1.3** For the purposes of the PFMI Principles, a person or company is considered to be an affiliate of a participant, the person or company and the participant each being ~~described~~subsequently referred to in this section as a "party", ~~where,~~ if any of the following apply:

~~(a)~~ (a) a party holds, otherwise than by way of a security interest only, voting securities of the other party carrying more than 20 ~~percent~~% of the votes for the election of directors~~, or(b) in the event paragraph (a) is not applicable,~~ of the other party;

(b) ~~(i)~~ a party holds, otherwise than by way of a security interest only, an interest in the other party that allows it to direct the management or operations of the other party; ~~or~~

~~(ii)~~ (c) financial information in respect of both parties is consolidated for financial reporting purposes.

Interpretation – Clearing Agency

~~1.4~~ **1.4** For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house, a central securities depository and a settlement system within the meaning of the Québec *Securities Act* and a clearing house and a settlement system within the meaning of the Québec *Derivatives Act*.

Application

~~1.5~~**1.5** **(1)** Part 3 applies to a recognized clearing agency that operates as any of the following:

~~(a)~~ (a) a central counterparty;

~~(b)~~ (b) a central securities depository;

~~(c)~~ (c) a securities settlement system.

~~(2)~~ **(2)** Unless the context otherwise indicates, Part 4 applies to a recognized clearing agency whether or not it operates as a central counterparty, central securities depository or securities settlement system.

~~(3)~~ **(3)** In Québec, if there is a conflict or an inconsistency between section 2.2 and the provisions of the Québec *Derivatives Act* governing the self-certification process with respect to a clearing agency implementing a significant change or a fee change, the provisions of the Québec *Derivatives Act* prevail.

~~(4)~~ **(4)** The requirements of section 2.2 or 2.5 apply only to the extent that the subject matters of the section are not otherwise governed by the terms and conditions of a decision of the securities regulatory authority that recognizes a clearing agency or that exempts a clearing agency from a recognition requirement.

~~Part 2~~
PART 2
CLEARING AGENCY RECOGNITION OR EXEMPTION FROM RECOGNITION

Application and initial filing of information

~~2.1~~**2.1 (1)** An applicant for recognition as a clearing agency under securities legislation, or for exemption from the requirement to be recognized as a clearing agency under securities legislation, must include in its application all of the following:

~~(a)~~ (a) if applicable, the applicant's most recently completed PFMI Disclosure Framework Document;

~~(b)~~ (b) sufficient information to demonstrate that the applicant is

(i) in compliance with~~(i)~~ applicable provincial and territorial securities legislation, or

~~(ii)~~ (ii) subject to and in compliance with the regulatory ~~regime~~requirements of ~~a~~the foreign jurisdiction in which the applicant's head office or principal place of business is located~~,~~ that are comparable to the applicable requirements under this Instrument;

~~(c)~~ (c) any additional relevant information sufficient to demonstrate that it is in the public interest for the securities regulatory authority to recognize or exempt the applicant, as the case may be.

~~(2)~~ **(2)** In addition to the requirement set out in subsection (1), an applicant that has a head office or principal place of business located in a foreign jurisdiction must

~~(a)~~ (a) certify that it will assist the securities regulatory authority in accessing the applicant's books ~~and~~, records and other documents and in undertaking an onsite inspection and examination at the applicant's premises, and

~~(b)~~ (b) certify that it will provide the securities regulatory authority, if requested by ~~such~~the authority, with an opinion of legal counsel that the applicant has, as a matter of law, the power and authority to

~~(i)~~ (i) provide the securities regulatory authority with prompt access to its books ~~and~~, records and other documents, and

~~(ii)~~ (ii) submit to onsite inspection and examination by the securities regulatory authority.

~~(3)~~ **(3)** In addition to the requirements set out in subsections (1) and (2), an applicant whose head office or principal place of business is located in a foreign jurisdiction must file a completed Form 24-102F1 *Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process*.

~~(4)~~ **(4)** An applicant must inform the securities regulatory authority in writing of any ~~material~~ change to the information provided in its application that is material, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or the applicant becomes aware of any inaccuracy.

Significant changes, fee changes and other changes in information

~~2.2~~**2.2** **(1)** In this section, for greater certainty, a "significant change" includes, in relation to a clearing agency, any of the following:

~~(a)~~ (a) any change to the clearing agency's constating documents or by-laws;

~~(b)~~ (b) any change to the clearing agency's corporate governance or corporate structure, including any change of control of the clearing agency, whether direct or indirect;

~~(c)~~ (c) any material change to an agreement among the clearing agency and participants in connection with the clearing agency's operations and services, including those agreements to which the clearing agency is a party and those agreements among participants to which the clearing agency is not a party, but that are expressly referred to in the clearing agency's rules or procedures and are made available by participants to the clearing agency;

~~(d)~~ (d) any material change to the clearing agency's rules, operating procedures, user guides, manuals, or other documentation governing or establishing the rights, obligations and relationships among the clearing agency and participants in connection with the clearing agency's operations and services;

~~(e)~~ (e) any material change to the design, operation or functionality of any of the clearing agency's operations and services;

~~(f)~~ (f) the establishment or removal of a link or any material change to an existing link;

~~(g)~~ (g) commencing to engage in a new type of business activity or ceasing to engage in a business activity in which the clearing agency is then engaged;

~~(h)~~ (h) any other matter identified as a significant change in the ~~recognition~~ terms and conditions of a decision to recognize the clearing agency under securities law.

~~(2)~~ **(2)** Subject to subsection (4), a recognized clearing agency must not implement a significant change unless it has filed a written notice of the significant change with the securities regulatory authority at least 45 days before implementing the change.

~~(3) If a proposed significant change referred to in subsection (2) would affect the information set out in its PFMI Disclosure Framework Document filed with the securities regulatory authority, a~~**(3)** The written notice referred to in subsection (2) must include an assessment of how the significant change is consistent with the PFMI Principles applicable to the recognized clearing agency ~~must complete and file with the securities regulatory authority, concurrently with providing the written notice referred to in subsection (2), an appropriate amendment to its PFMI Disclosure Framework Document~~.

~~(4)~~ **(4)** If a recognized clearing agency proposes to modify a fee or introduce a new fee for any of its clearing, settlement or depository services, the clearing agency must notify in writing the securities regulatory authority of such fee change before implementing the fee change within a period stipulated by the terms and conditions of a decision of the securities regulatory authority that recognizes the clearing agency.

~~(5)~~ **(5)** An exempt clearing agency must notify in writing the securities regulatory authority of any material change to the information provided to the securities regulatory authority in its PFMI Disclosure Framework Document and related application materials, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or the exempt clearing agency becomes aware of any inaccuracy.

Ceasing to carry on business

~~2.3~~**2.3** **(1)** A recognized clearing agency or exempt clearing agency that intends to cease carrying on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority

~~(a) at least 180 days before ceasing to carry on business if a significant reason for ceasing to carry on business relates to the clearing agency's financial viability or any other matter that is preventing, or may potentially prevent, it from being able to provide its operations and services as a going concern, or(b)~~ at least 90 days before ceasing to carry on business ~~for any other reason~~.

~~(2)~~ **(2)** A recognized clearing agency or exempt clearing agency that involuntarily ceases to carry on business in the local jurisdiction as a clearing agency must file a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority as soon as practicable after it ceases to carry on that business.

Filing of initial audited financial statements

~~2.4~~2.4 **(1)** An applicant must file audited financial statements for its most recently completed financial year with the securities regulatory authority as part of its application under section 2.1.

~~(2)~~ **(2)** The financial statements referred to in subsection (1) must

~~(a)~~ (a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, IFRS or the generally accepted accounting principles of the foreign jurisdiction in which the person or company is incorporated, organized or located,

~~(b)~~ (b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,

~~(c)~~ (c) disclose the presentation currency, and

~~(d)~~ (d) be audited in accordance with Canadian GAAS, International Standards on Auditing or the generally accepted auditing standards of the foreign jurisdiction in which the person or company is incorporated, organized or located.

~~(3)~~ **(3)** The financial statements referred to in subsection (1) must be accompanied by an auditor's report that

~~(a)~~ (a) expresses an unmodified or unqualified opinion,

~~(b)~~ (b) identifies all financial periods presented for which the auditor's report applies,

~~(c)~~ (c) identifies the auditing standards used to conduct the audit,

~~(d)~~ (d) identifies the accounting principles used to prepare the financial statements,

~~(e)~~ (e) is prepared in accordance with the same auditing standards used to conduct the audit, and

~~(f)~~ (f) is prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

Filing of annual audited and interim financial statements

~~2.5~~2.5 **(1)** A recognized clearing agency or exempt clearing agency must file annual audited financial statements that comply with the requirements set out in subsections 2.4(2) and (3) with the securities regulatory authority no later than the 90th day after the end of the recognized clearing agency or exempt clearing agency's financial year.

~~(2)~~ **(2)** A recognized clearing agency or exempt clearing agency must file interim financial statements that comply with the requirements set out in paragraphs 2.4(2)(a) and (2)(b) with the securities regulatory authority no later than the 45th day after the end of each interim period of the recognized clearing agency's or exempt clearing agency's financial year.

~~Part 3~~
PART 3
PFMI PRINCIPLES APPLICABLE TO RECOGNIZED CLEARING AGENCIES

PFMI Principles

~~3.1~~ **3.1** A recognized clearing agency must establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds PFMI Principles 1 to 3, 10, ~~13,~~13 and 15 to ~~19, 20~~23, other than key consideration ~~9, 21 to 23~~9 of PFMI Principle 20 and the following:

~~(a)~~ (a) if the clearing agency operates as a central counterparty, PFMI Principles 4 to 9, 12 and 14;

~~(b)~~ (b) if the clearing agency operates as a securities settlement system, PFMI Principles 4, 5, 7 to 9 and12; ~~and~~

~~(c)~~ (c) if the clearing agency operates as a central securities depository, PFMI Principle 11.

~~Part 4~~
PART 4
OTHER REQUIREMENTS OF
RECOGNIZED CLEARING AGENCIES

~~Division 1~~ *Division 1* – ***Governance:***

Board of directors

~~4.1~~4.1 **(1)** A recognized clearing agency must have a board of directors.

~~(2)~~ **(2)** The board of directors must include appropriate representation by individuals who are

~~(a)~~ (a) independent of the clearing agency, and

~~(b) not~~(b) neither employees ~~or executive~~nor officers of a participant ~~or~~nor their immediate family members.

~~(3)~~ **(3)** For the purposes of paragraph (2)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

~~(4)~~ **(4)** For the purposes of subsection (3), a "material relationship" is a relationship that could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.

Documented procedures regarding risk spill-overs

~~4.2~~ **4.2** The board of directors and management of a recognized clearing agency must have documented procedures to manage possible risk spill -over where the clearing agency provides services with a different risk profile than its depository, clearing and settlement services.

Chief Risk Officer and Chief Compliance Officer

~~4.3~~4.3 **(1)** A recognized clearing agency must designate a chief risk officer and a chief compliance officer, who must report directly to the board of directors ~~or, if determined by the board of directors, to the chief executive officer~~ of the clearing agency.

~~(2)~~ **(2)** The chief risk officer must

~~(a)~~ (a) have ~~full~~ responsibility and authority to ~~maintain,~~ implement, maintain and enforce the risk management framework established by the clearing agency,

~~(b)~~ (b) make recommendations to the clearing agency's board of directors regarding the clearing agency's risk management framework,

~~(c)~~ (c) monitor the effectiveness of the clearing agency's risk management framework, and

~~(d)~~ (d) report to the clearing agency's board of directors on a timely basis upon becoming aware of any significant deficiency with the risk management framework.

~~(3)~~ **(3)** The chief compliance officer must

~~(a)~~ (a) establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and ensure that the clearing agency complies with securities legislation,

~~(b)~~ (b) monitor compliance with the policies and procedures described in paragraph (a),

~~(c)~~ (c) report to the board of directors of the clearing agency as soon as practicable upon becoming aware of any circumstance indicating that the clearing agency, or any individual acting on its behalf, is not in compliance with securities legislation and one or more of the following apply:

~~(i)~~ (i) the non-compliance creates a risk of harm to a participant~~,~~;

~~(ii)~~ (ii) the non-compliance creates a risk of harm to the broader financial system~~,~~;

~~(iii)~~ (iii) the non-compliance is part of a pattern of non-compliance~~, or~~;

~~(iv)~~ (iv) the non-compliance may have an impact on the ability of the clearing agency to carry on business in compliance with securities legislation,

~~(d)~~ (d) prepare and certify an annual report assessing compliance by the clearing agency, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors,

~~(e)~~ (e) report to the clearing agency's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a participant or to the capital markets, and

~~(f)~~ (f) concurrently with submitting a report under paragraphs (c), (d) or (e), file a copy of ~~such~~the report with the securities regulatory authority.

Board or advisory committees

~~4.4~~ **4.4** **(1)** The board of directors of a recognized clearing agency must, at a minimum, establish and maintain committees on risk management, finance and audit.

~~(2)~~ **(2)** If a committee is a board committee, it must be chaired by a sufficiently knowledgeable individual who is independent of the clearing agency.

~~(3)~~ **(3)** Subject to subsection (4), a committee must have an appropriate representation by individuals who are independent of the clearing agency.

~~(4)~~ **(4)** An audit or risk committee must have an appropriate representation by individuals who are

~~(a)~~ (a) independent of the clearing agency, and

~~(b) not~~(b) neither employees ~~or executive~~nor officers of a participant ~~or~~nor their immediate family members.

(5) . For the purpose of this section, an individual is independent of a clearing agency if the individual has no relationship with the agency that could, in the reasonable opinion of the clearing agency's board of directors, be expected to interfere with the exercise of the individual's independent judgment.

~~Division 2~~ ***Division 2*** **– *Default management:***

Use of own capital

~~4.5~~ **4.5** A recognized clearing agency that operates as a central counterparty must dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults.

~~Division 3~~ ***Division 3*** **– *Operational risk:***

Systems requirements

~~4.6~~ **4.6** For each system operated by or on behalf of a recognized clearing agency that supports the clearing agency's clearing, settlement and depository functions, the clearing agency must

~~(a)~~ (a) develop and maintain

~~(i) an~~ (i) adequate ~~system of~~ internal controls over that system, and

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

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

~~(i)~~ (i) make reasonable current and future capacity estimates, and

~~(ii)~~ (ii) conduct capacity stress tests to determine the ~~ability~~processing capability of that system to ~~process transactions~~perform in an accurate, timely and efficient manner, ~~and~~

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material, and provide timely updates to the regulator or, in Québec, the securities regulatory authority -regarding the following:

(i) any change in the status of the failure, malfunction, delay or security incident;

(ii) the resumption of service, if applicable;

(iii) the results of any internal review, by the clearing agency, of the failure, malfunction, delay or security incident; and

(d) keep a record of any systems failure, malfunction, delay or security incident and whether or not it is material.

Auxiliary systems

4.6.1 (1) In this section "**auxiliary system**" means a system, other than a system referred to in section 4.6, operated by or on behalf of a recognized clearing agency that, if breached, poses a security threat to another system operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement or depository functions.

(2) For each auxiliary system, a recognized clearing agency must

(a) develop and maintain adequate information security controls that address the security threats posed by the auxiliary system to the system that supports the clearing, settlement or depository functions,

~~(b)~~ ~~(c)~~ promptly notify the regulator or, in Québec, the securities regulatory authority of any ~~material systems failure, malfunction, delay or~~ security ~~breach,~~incident that is material and provide timely updates to the regulator or, in Québec, the securities regulatory authority on

(i) any change in the status of the ~~failure, malfunction, delay or security breach,~~ incident,

(ii) the resumption of service, if applicable, and

(iii) the results of any internal review, by the clearing agency~~'s internal review~~, of the ~~failure, malfunction, delay or~~ security ~~breach.~~incident, and

(c) keep a record of any security incident and whether or not it is material.

Systems reviews

~~4.7~~**4.7 (1)** A recognized clearing agency must

(a) on a reasonably frequent basis and, in any event, at least annually, engage a qualified ~~party~~external auditor to conduct an independent systems review and ~~vulnerability assessment and~~ prepare a report, in accordance with established audit standards and best industry practices ~~to ensure~~, that assesses the clearing agency ~~is in~~'s compliance with ~~paragraph~~paragraphs 4.6(a) and 4.6.1(2)(a) and section ~~4.9.~~4.9, and

(b) on a reasonably frequent basis and, in any event, at least annually, engage a qualified party to perform assessments and testing to identify any security vulnerability and measure the effectiveness of information security controls that assess the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a).

~~(2)~~ **(2)** The clearing agency must provide the report resulting from the review conducted under ~~subsection~~paragraph (1)(a) to

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

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

Clearing agency technology requirements and testing facilities

~~4.8~~4.8 **(1)** A recognized clearing agency must make available to participants, in their final form, all technology requirements regarding interfacing with or accessing the clearing agency

~~(a)~~ (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

~~(b)~~ (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

~~(2)~~ **(2)** After complying with subsection (1), the clearing agency must make available testing facilities for interfacing with or accessing the clearing agency

~~(a)~~ (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

~~(b)~~ (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

~~(3)~~ **(3)** The clearing agency must not begin operations before

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

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

~~(4)~~ **(4)** The clearing agency must not implement a material change to the systems referred to in section 4.6 before

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

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

~~(5)~~ **(5)** Subsection (4) does not apply to the clearing agency if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if

~~(a)~~ (a) the clearing agency immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and

~~(b)~~ (b) the clearing agency discloses to its participants the changed technology requirements as soon as practicable.

Testing of business continuity plans

~~4.9~~ **4.9** A recognized clearing agency must

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

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

Outsourcing

~~4.10~~ **4.10** If a recognized clearing agency outsources a critical service or system to a service provider, including to an affiliated entity of the clearing agency, the clearing agency must do all of the following:

~~(a)~~ (a) establish, implement, maintain and enforce written policies and procedures to conduct suitable due diligence for selecting service providers to which a critical service and system may be outsourced and for the evaluation and approval of those outsourcing arrangements;

~~(b)~~ (b) identify any conflicts of interest between the clearing agency and the service provider to which a critical service and system is outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest;

~~(c)~~ (c) enter into a written contract with the service provider to which a critical service or system is outsourced that

~~(i)~~ (i) is appropriate for the materiality and nature of the outsourced activities,

~~(ii)~~ (ii) includes service level provisions, and

~~(iii)~~ (iii) provides for adequate termination procedures;

~~(d)~~ (d) maintain access to the books and records of the service provider relating to the outsourced activities;

~~(e)~~ (e) ensure that the securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the clearing agency that it would have absent the outsourcing arrangements;

~~(f)~~ (f) ensure that all persons conducting audits or independent reviews of the clearing agency under this Instrument have appropriate access to all data, information and systems maintained by the service provider on behalf of the clearing agency that such persons would have absent the outsourcing arrangements;

~~(g)~~ (g) take appropriate measures to determine that the service provider to which a critical service or system is outsourced establishes, maintains and periodically tests ~~an appropriate~~a reasonable business continuity plan, including a disaster recovery plan;

~~(h)~~ (h) take appropriate measures to ensure that the service provider protects the clearing agency's proprietary information and participants' confidential information, including taking measures to protect information from loss, thefts, vulnerabilities, threats, unauthorized access, copying, use and modification, and discloses it only in circumstances where legislation or an order of a court or tribunal of competent jurisdiction requires the disclosure of such information;

~~(i)~~ (i) establish, implement, maintain and enforce written policies and procedures to monitor the ongoing performance of the service provider's contractual obligations under the outsourcing arrangements.

~~Division 4~~ ***Division 4*** **– *Participation requirements:***

Access requirements and due process

~~4.11~~**4.11** **(1)** A recognized clearing agency must not

~~(a)~~ (a) unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency,

~~(b)~~ (b) unreasonably discriminate among its participants or indirect participants,

~~(c)~~ (c) impose any burden on competition that is not reasonably necessary and appropriate,

~~(d)~~ (d) unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency's services offered by it, and

~~(e)~~ (e) impose fees or other material costs on its participants that are unfairly or inequitably allocated among the participants.

~~(2)~~ **(2)** For any decision made by the clearing agency that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant, the clearing agency must ensure that

~~(a)~~ (a) the participant or applicant is given an opportunity to be heard or make representations, and

~~(b)~~ (b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting access or for denying or limiting access to the applicant, as the case may be.

~~(3)~~ **(3)** Nothing in subsection (2) limits or prevents the clearing agency from taking timely action in accordance with its rules and procedures to manage the default of one or more participants or in connection with the clearing agency's recovery or orderly wind-down, whether or not such action adversely affects a participant.

~~Part 5~~

PART 5
BOOKS AND RECORDS AND LEGAL ENTITY IDENTIFIER

Books and records

~~5.1~~**5.1** **(1)** A recognized clearing agency or exempt clearing agency must keep books, records and other documents as are necessary to account for the conduct of its clearing, settlement and depository activities, business transactions and financial affairs ~~and must keep those other books, records and documents as may otherwise be required under securities legislation~~.

~~(2)~~ **(2)** The clearing agency must retain the books and records maintained under this section

~~(a)~~ (a) for a period of seven years from the date the record was made or received, whichever is later,

~~(b)~~ (b) in a safe location and a durable form, and

~~(c)~~ (c) in a manner that permits them to be provided promptly to the securities regulatory authority.

Legal Entity Identifier

~~5.2~~**5.2** **(1)** In this section,

"**Global Legal Entity Identifier System**" means the system for unique identification of parties to financial transactions ~~developed by the LEI Regulatory Oversight Committee, and~~.

~~"LEI Regulatory Oversight Committee" means the international working group established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012.~~

~~(2)~~ **(2)** For the purposes of any recordkeeping and reporting requirements required under securities legislation, a recognized clearing agency or exempt clearing agency must identify itself by means of ~~a single~~the legal entity identifier assigned to the clearing agency in accordance with the standards set by the Global Legal Entity Identifier System.

~~(3) If the Global Legal Entity Identifier System is unavailable to the clearing agency, all of the following apply:~~

~~(a) the clearing agency must obtain a substitute legal entity identifier that complies with the standards established by the LEI Regulatory Oversight Committee for pre-legal entity identifiers;~~

~~(b) the clearing agency must use the substitute legal entity identifier until a legal entity identifier is assigned to the clearing agency in accordance with the standards set by the Global Legal Entity Identifier System;~~

~~(c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System, the clearing agency must ensure that it is identified only by the assigned identifier~~

(2.1) During the period that a clearing agency is a recognized clearing agency or is exempt from the requirement to be recognized as a clearing agency, the clearing agency must maintain and renew the legal entity identifier referred to in subsection (2).

(3) LAPSED.

~~Part 6~~

PART 6
EXEMPTIONS

Exemption

~~6.1~~**6.1** **(1)** The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

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

~~(3)~~ **(3)** Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

~~Part 7~~
PART 7
EFFECTIVE DATE ~~AND TRANSITION~~

Effective date ~~and transition~~

~~7.1 (1) This Instrument comes into force on February 17, 2016.~~**7.1 (1)** This Instrument comes into force on February 17, 2016.

~~(2) Despite section 3.1, until December 31, 2016, a recognized clearing agency is not required to implement rules, procedures, policies or operations designed to ensure that a recognized clearing agency meets or exceeds the following:~~

~~(a) PFMI Principle 14;~~

~~(b) key consideration 4 of PFMI Principle 3 and key consideration 3 of PFMI Principle 15 with respect to a clearing agency's recovery and orderly wind-down plans; and~~

~~(c) PFMI Principle 19.~~

~~(3) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after February 17, 2016, these regulations come into force on the day on which they are filed with the Registrar of Regulations.~~

(2) LAPSED.

(3) LAPSED.

FORM 24-102F1
CLEARING AGENCY SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of clearing agency (the "Clearing Agency"):

_____

2. Jurisdiction of incorporation, or equivalent, of Clearing Agency:

_____

3. Address of principal place of business of Clearing Agency:

_____

4. Name of the agent for service of process (the "Agent") for the Clearing Agency:

_____

5. Address of the Agent in _____ [name of local jurisdiction]:

_____

6. The _____ [name of securities regulatory authority] ("securities regulatory authority") issued an order recognizing the Clearing Agency as a clearing agency pursuant to securities legislation, or the securities regulatory authority issued an order exempting the Clearing Agency from the requirement to be recognized as a clearing agency pursuant to such legislation, on _____.

7. The Clearing Agency designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Clearing Agency in _____ [name of local jurisdiction]. The Clearing Agency hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Clearing Agency.

8. The Clearing Agency agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of _____ [name of local jurisdiction] and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Clearing Agency in _____ [name of local jurisdiction].

9. The Clearing Agency must file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Clearing Agency ceases to be recognized or exempted by the securities regulatory authority, to be in effect for six years from the date it ceases to be recognized or exempted unless otherwise amended in accordance with section 10.

10. Until six years after it has ceased to be recognized or exempted by the securities regulatory authority, the Clearing Agency must file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

11. The Clearing Agency agrees that this submission to jurisdiction and appointment of agent for service of process is to be governed by and construed in accordance with the laws of _____ [name of local jurisdiction].

DATED: _____

_____
SIGNATURE OF THE CLEARING AGENCY

_____
PRINT NAME AND TITLE OF SIGNING OFFICER OF THE CLEARING AGENCY

AGENT
CONSENT TO ACT AS AGENT FOR SERVICE

I, _____ [name of Agent in full; if a corporation, full corporate name] of _____ [business address], hereby accept the appointment as agent for service of process of _____ [name of Clearing Agency] and hereby consent to act as agent for service pursuant to the terms of the appointment executed by _____ [name of Clearing Agency] on _____ [date].

DATED: _____

_____
SIGNATURE OF AGENT

_____
PRINT NAME OF PERSON SIGNING AND, IF AGENT IS NOT AN INDIVIDUAL, THE TITLE OF THE PERSON

FORM 24-102F2
CESSATION OF OPERATIONS REPORT FOR CLEARING AGENCY

1. Identification:

A. Full name of the recognized or exempted clearing agency:

B. Name(s) under which business is conducted, if different from item 1A:

2. Date clearing agency proposes to cease carrying on business as a clearing agency:

3. If cessation of business was involuntary, date clearing agency has ceased to carry on business as a clearing agency:

Exhibits

File all exhibits with the Cessation of Operations Report. For each exhibit, include the name of the clearing agency, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any exhibit required is inapplicable, a statement to that effect must be provided instead of the exhibit.

Exhibit A

The reasons for the clearing agency ceasing to carry on business as a clearing agency.

Exhibit B

A list of all participants in Canada during the last 30 days prior to ceasing to carry on business as a clearing agency.

Exhibit C

A description of the alternative arrangements available to participants in respect of the services offered by the clearing agency immediately before ceasing to carry on business as a clearing agency.

Exhibit D

A description of all links the clearing agency had immediately before ceasing to carry on business as a clearing agency with other clearing agencies or trade repositories.

CERTIFICATE OF CLEARING AGENCY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20_____

_____
Name of clearing agency

_____
Name of director, officer or partner (please type or print)

_____
Signature of director, officer or partner

_____
Official capacity (please type or print)

ANNEX F

BLACKLINED CHANGES TO COMPANION POLICY 24-102CP
TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

~~**Companion Policy 24-102CP**~~

COMPANION POLICY 24-102CP
TO
NATIONAL INSTRUMENT 24-102
CLEARING AGENCY REQUIREMENTS

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****

COMPANION POLICY 24-102CP
TO
NATIONAL INSTRUMENT 24-102

Part 1
GENERAL COMMENTS
Part 1
GENERAL COMMENTS

Introduction

1.1 (1) This Companion Policy (CP) sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply provisions of National Instrument 24-102 *Clearing Agency Requirements* (the Instrument) and related securities legislation.

(2) **(2)** Except for this Part 1 of the CP, section 3.2, sections 1.2 and 3.3 of Part 31.3 of this CP, and the *text boxes* in Annex IAnnexes I and II to this CP, the numbering of Parts, sections and subsections in this CP generally corresponds to the numbering in the Instrument. Any general guidance or introductory comments for a Part appears immediately after the Part's name. Specific guidance on a section or subsection in the Instrument follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this CP will skip to the next provision that does have guidance.

(3) **(3)** Unless otherwise stated, any reference in this CP to a Part, section, subsection, paragraph or defined term is a reference to the corresponding Part, section, subsection, paragraph or defined term of the Instrument. The CP also makes references to certain paragraphs in the April 2012 report *Principles for financial market infrastructures* (the PFMIs or PFMI Report, as the context requires) and the PFMI Principles set out therein. A reference to a PFMI Principle may include a reference to an applicable key consideration (see definition of "PFMI Principle" in section 1.1).

Background and overview

1.2 (1) Securities legislation in certain jurisdictions of Canada requires an entity seeking to carry on business as a clearing agency in the jurisdiction to be (i) recognized by the securities regulatory authority in that jurisdiction, or (ii) exempted from the

recognition requirement.[1] Accordingly, Part 2 sets out certain requirements in connection with the application process for recognition as a clearing agency or exemption from the recognition requirement. Guidance on the CSA's regulatory approach to such an application is set out in this CP.

~~(2)~~ **(2)** Parts 3 and 4 set out on-going requirements applicable to a recognized clearing agency. Part 3 adopts the PFMI Principles generally but does restrict their application only to a clearing agency that operates as a central counterparty (CCP), securities settlement system (SSS) or central securities depository (CSD), as relevant. Part 4 applies to a clearing agency whether or not it operates as a CCP, SSS or CSD. The PFMI Principles were developed jointly by the Committee on Payments and Market Infrastructures (CPMI)[2] and the International Organization of Securities Commissions (IOSCO).[3] The PFMI Principles harmonize and strengthen previous international standards for financial market infrastructures (FMIs).[4]

~~(3) Annex~~**(3)** Annexes I and II to this CP ~~includes~~include supplementary guidance ~~in *text boxes*~~ that applies to recognized domestic clearing agencies that are also overseen by the Bank of Canada (BOC). The supplementary guidance (Joint Supplementary Guidance) was prepared jointly by the CSA and BOC to provide additional clarity on certain aspects of the PFMI Principles within the Canadian context.

Definitions, interpretation and application

1.3 (1) Unless defined in the Instrument or this CP, defined terms used in the Instrument and this CP have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*.

~~(2)~~ **(2)** The terms "clearing agency" and "recognized clearing agency" are generally defined in securities legislation. For the purposes of the Instrument, a clearing agency includes, in Quebec, a clearing house, central securities depository and settlement system within the meaning of the Québec *Securities Act* and a clearing house and settlement system within the meaning of the Québec *Derivatives Act*. See section 1.4. The CSA notes that, while Part 3 applies only to a recognized clearing agency that operates as a CCP, CSD or SSS, the term "clearing agency" may incorporate certain other centralized post-trade functions that are not necessarily limited to those of a CCP, CSD or SSS, e.g., an entity that provides centralized facilities for comparing data respecting the terms of settlement of a trade or transaction may be considered a clearing agency, but would not be considered a CCP, CSD or SSS. Except in Québec, such an entity would be required to apply either for recognition as a clearing agency or an exemption from the requirement to be recognized.[5] The CSA considers that a recognized clearing agency, which is not a CCP, CSD or SSS, should not be subject to the application of Part 3. Such a clearing agency is, however, subject to provisions in Part 2 and all of Parts 4 and 5.

~~(3)~~ **(3)** A clearing agency may serve either or both the securities and derivatives markets. A clearing agency serving the securities markets can be a CCP, CSD or SSS. A clearing agency serving the derivatives markets is typically only a CCP.

~~(4)~~ **(4)** In this CP, FMI means a financial market infrastructure, which the PFMI Report describes as follows: payment systems, CSDs, SSSs, CCPs and trade repositories.

1.5 Section 1.5 provides clarity on the application of the different parts of the Instrument to a clearing agency that has been recognized by a securities regulatory authority, or exempted from recognition, as is further described in section 2.0 of this CP. Unless otherwise specified, Parts 1, 2, and 5 to 7 generally apply to both a recognized clearing agency and one that is exempted from recognition.

1 The entity is prohibited from carrying on business as a clearing agency unless recognized or exempted.

2 Prior to September 1, 2014, CPMI was known as the Committee on Payment and Settlement Systems (CPSS).

3 See the CPMI-IOSCO *Principles for Financial Market Infrastructures* Report, published in April 2012, available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

4 See (i) 2001 CPMI report *Core principles for systemically important payment systems*, (ii) 2001 CPMI-IOSCO report *Recommendations for securities settlement systems* (together with the 2002 CPMI-IOSCO report *Assessment methodology for Recommendations for securities settlement systems*); and (iii) 2004 CPMI-IOSCO report *Recommendations for central counterparties*. All of these reports are available on the Bank for International Settlements' website (www.bis.org). The CPMI-IOSCO reports are also available on IOSCO website (www.iosco.org).

5 In Québec, an entity that provides such centralized facilities for comparing data would be required to apply either for recognition as a matching service utility or for an exemption from the recognition requirement, in application of the *Securities Act* or the *Derivatives Act*.

~~Part 2~~
PART 2
CLEARING AGENCY RECOGNITION OR EXEMPTION FROM RECOGNITION

Recognition and exemption

2.0 (1) An entity seeking to carry on business as a clearing agency in certain jurisdictions in Canada is required under the securities legislation of such jurisdictions to apply for recognition or an exemption from the recognition requirement. For greater clarity, a foreign-based clearing agency that provides, or will provide, its services or facilities to a person or company resident in a jurisdiction would be considered to be carrying on business in that jurisdiction.

Recognition of a clearing agency

~~(2)~~ **(2)** The CSA takes the view that a clearing agency that is systemically important to a jurisdiction's capital markets, or that is not subject to comparable regulation by another regulatory body, ~~will~~would generally need to be recognized by a securities regulatory authority.[6] A securities regulatory authority may consider the systemic importance of a clearing agency to its capital markets based on the following list of guiding factors: value and volume of transactions processed, cleared and settled by the clearing agency;[7] risk exposures (particularly credit and liquidity) of the clearing agency to its participants; complexity of the clearing agency;[8] and centrality of the clearing agency with respect to its role in the market, including its substitutability, relationships, interdependencies and interactions.[9] The list of guiding factors is non-exhaustive, and no single factor described above will be determinative in an assessment of systemic importance. A securities regulatory authority retains the ability to consider additional quantitative and qualitative factors as may be relevant and appropriate.[10]

~~(3)~~ **(3)** Because of the approach described in subsection 2.0(2) of this CP, a securities regulatory authority may require a foreign-based clearing agency to be recognized if the clearing agency's proposed business activities in the local jurisdiction are systemically important to the jurisdiction's capital markets, even if it is already subject to comparable regulation in its home jurisdiction. In such circumstances, the recognition decision would focus on key areas that pose material risks to the jurisdiction's market and rely, where appropriate, on the current regulatory requirements and processes to which the entity is already subject in its home jurisdiction. Terms and conditions of a recognition decision that require a foreign clearing agency to report information to a Canadian securities regulatory authority may vary among foreign clearing agencies. Among other factors, they will depend on whether Canadian securities regulatory authorities have entered into an agreement or memorandum of understanding with the home regulator for sharing information and cooperation.

Exemption from recognition

~~(4)~~ **(4)** Depending on the circumstances, a clearing agency may be granted an exemption from recognition pursuant to securities legislation and subject to appropriate terms and conditions, where it is not considered systemically important or where it does not otherwise pose significant risk to the capital markets. For example, such an approach may be considered for an entity that provides limited services or facilities, thereby not warranting full regulation, such as a clearing agency that does not perform the functions of a CCP, CSD or SSS. However, in such cases, terms and conditions may be imposed. In addition, a foreign-based clearing agency that is already subject to a comparable regulatory regime in its home jurisdiction may be granted an exemption from the recognition requirement as full regulation may be duplicative and inefficient when imposed in addition to the regulation of the home jurisdiction. The exemption may be subject to certain terms and conditions, including reporting requirements and prior notification of certain ~~material~~ changes to information provided to the securities regulatory authority~~.~~ that are material.

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6 We would consider comparable regulation by another regulatory body to be regulation that generally results in similar outcomes in substance to the requirements of Part 3 and 4.

7 We would consider, for example, the current aggregate monetary values and volumes of such transactions, as well as the entity's potential for growth.

8 We would look, for example, to the nature and complexity of the clearing agency, taking into account an analysis of the various products it processes, clears or settles.

9 We would consider, for example, the centrality or importance of the clearing agency to the particular market or markets it serves, based on the degree to which it critically supports, or that its failure or disruption would affect, such markets or the entire Canadian financial infrastructure.

10 Additional factors may be based on the characteristics of the clearing agency under review, such as the nature of its operations, its corporate structure, or its business model.

Application and initial filing of information

~~2.1~~ **2.1** The application process for both recognition and exemption from recognition as a clearing agency is similar in both substance and process, though its oversight program may differ. The entity that applies will typically be the entity that operates the facility or performs the functions of a clearing agency. The application for recognition or exemption will require completion of comprehensive and appropriate documentation. This will include the items listed in subsection 2.1(1). Together, the application materials for either recognition or exemption should present a detailed description of the history, regulatory structure, and business operations of the clearing agency. A clearing agency that operates as a CCP, CSD or SSS will need to describe how it meets or will meet the requirements of Parts 3 and 4. An applicant based in a foreign jurisdiction should also provide a detailed description of the regulatory regime of its home jurisdiction and the requirements imposed on the clearing agency, including how such requirements are similar to the requirements in Parts 3 and 4.

Where specific information items of the PFMI Disclosure Framework Document are not relevant to an applicant because of the nature or scope of its clearing agency activities, its structure, the products it clears or settles, or its regulatory environment, the application should explain in reasonable detail why the information items are not relevant.

The application filed by an applicant will generally be published for public comment for a 30-day period. Other materials filed with the application, which the applicant wishes to maintain confidential, will generally be kept confidential in accordance with securities and privacy legislation. However, the clearing agency will be required to publicly disclose its PFMI Disclosure Framework Document. See PFMI Principle 23, key consideration 5.

Significant changes, fee changes, and other changes in information

~~2.2~~ **2.2** Section 2.2 is subject to the application provisions of subsections 1.5(3) and (4). For example, where the terms and conditions of a recognition decision made by a securities regulatory authority require a recognized clearing agency to obtain the approval of the authority before implementing a new fee for a service, the process to seek such approval set forth in the terms and conditions will apply instead of the prior notification requirement in subsection 2.2(4).

~~(2)~~ **(2)** The written notice should provide a reasonably detailed description of the significant change (as defined in subsection 2.2(1)) ~~and~~, the expected date of the implementation of the change, and an assessment of how the significant change is consistent with the PFMI Principles applicable to the clearing agency (see subsection 2.2(3)). It should enclose or attach updated relevant documentation, including clean and blacklined versions of the documentation that show how the significant change will be implemented. If the notice is being filed by a foreign-based clearing agency, the notice should also describe the approval process or other involvement by the primary or home-jurisdiction regulator for implementing the significant change. ~~The clearing agency is required to file concurrently with the notice any changes required to be made to the clearing agency's PFMI Disclosure Framework Document as a result of implementing the significant change, in accordance with subsection 2.2(3).~~

Ceasing to carry on business

~~2.3~~ **2.3** A recognized or exempt clearing agency that ceases to carry on business in a local jurisdiction as a clearing agency, either voluntarily or involuntarily, must file a completed Form 24-102F2 *Cessation of Operations Report for Clearing Agency* ~~within the appropriate timelines~~. In certain jurisdictions, the clearing agency intending to cease carrying on business must also make an application to voluntarily surrender its recognition to the securities regulatory authority pursuant to securities legislation. The securities regulatory authority may accept the voluntary surrender subject to terms and conditions.[11]

Financial statements

2.4 Financial statements filed under sections 2.4 and 2.5 must disclose the accounting principles used to prepare them. For clarity, financial statements prepared either in accordance with Canadian GAAP applicable to publicly accountable enterprises or in accordance with IFRS should include:

(a) in the case of annual financial statements, an unreserved statement of compliance with IFRS;
(b) in the case of interim financial statements, an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*.

Filing of interim financial statements

2.5 The term "interim period" in subsection 2.5(2) means a period commencing on the first day of the recognized or exempt clearing agency's financial year and ending nine, six or three months before the end of the same financial year, or otherwise in

[11] See, for example, section 21.4 of the *Securities Act* (Ontario).

accordance with the regulatory requirements of the jurisdiction in which the clearing agency's head office or principal place of business is located.

~~Part 3~~
PART 3
PFMI PRINCIPLES APPLICABLE TO RECOGNIZED CLEARING AGENCIES

Introduction

3.0 (1) Section 3.1 adopts the PFMI Principles generally but excludes the application of specific PFMI Principles for certain types of clearing agencies. We have adopted only those PFMI Principles that are relevant to clearing agencies operating as a CCP, CSD or SSS.[12]

~~(2)~~ **(2)** Part 3, together with the PFMI Principles, is intended to be consistent with a flexible and principles-based approach to regulation. In this regard, Part 3 anticipates that a clearing agency's rules, procedures, policies and operations will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its participants and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a clearing agency serves.

PFMI Principles

~~3.1~~ **3.1** The definition of PFMI Principles in the Instrument includes the applicable key considerations for each principle. Annex E to the PFMI Report provides additional guidance on how each key consideration will apply to the specified types of clearing agencies. In interpreting and implementing the PFMI Principles, regard is to be given to the explanatory notes in the PFMI Report and other reports or explanatory material published by CPMI and IOSCO that provide supplementary guidance to FMIs on the application of the PFMI Principles, as appropriate, unless otherwise indicated in section 3.1 or this Part 3 of the CP.[13] As discussed in subsection 1.2(3) of this CP, the CSA and BOC have together developed Joint Supplementary Guidance to provide additional clarity on certain aspects of some PFMI Principles within the Canadian context. The Joint Supplementary Guidance is directed at recognized domestic clearing agencies that are also overseen by the BOC. The Joint Supplementary Guidance is included ~~in separate *text boxes*~~ in Annex I to this CP under the relevant headings of the PFMI Principles. Except as otherwise indicated in this Part 3 of the CP, other recognized domestic clearing agencies should assess the applicability of the Joint Supplementary Guidance to their respective entity as well.

PFMI Principle 5: Collateral

~~3.2~~ Notwithstanding section 3.1 of the CP and the Joint Supplementary Guidance relating to PFMI Principle 5: *Collateral* ~~(see Box 5.1 in Annex I to this CP)~~, we are of the view that letters of credit may be permitted as collateral by a recognized domestic clearing agency operating as a CCP serving derivatives markets that is not also overseen by the BOC, provided that the collateral and the clearing agency's collateral policies and procedures otherwise meet the requirements of PFMI Principle 5: *Collateral*. However, the recognized clearing agency must first obtain regulatory approval of its rules and procedures that govern the use of letters of credit as collateral before accepting letters of credit.

PFMI Principle 14: Segregation and portability for CCPs serving cash markets

~~3.3~~ PFMI Principle 14: *Segregation and portability* requires, pursuant to section 3.1, that a CCP have rules and procedures that enable the segregation and portability[14] of positions and related collateral of a CCP participant's customers, particularly to protect the customers from the default or insolvency of the participant. The explanatory notes in the PFMI Report offer an "alternate approach" to meeting PFMI Principle 14. The report notes that, in certain jurisdictions, cash market CCPs operate in legal regimes that facilitate segregation and portability to achieve the protection of customer assets by alternate means that offer the same degree of protection as the approach in PFMI Principle 14.[15] The features of the alternate approach are described in the PFMI Report.[16]

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12 PFMI Principles that are relevant to payment systems and trade repositories, but not CCPs, SSSs and CSDs, are not adopted in Part 3.

13 For example, the Instrument uses specialized terminology related to the clearing and settlement area. Not all such terminology is defined in the Instrument, but instead may be defined or explained in the PFMI Report. Regard should be given to the PFMI Report in understanding such terminology, as appropriate, including Annex H: *Glossary*.

14 Portability refers to the operational aspects of the transfer of contractual positions, funds, or securities from one party to another party. See paragraph 3.14.3 of the PFMI Report.

15 See paragraph 3.14.6 of the PFMI Report, at p. 83.

16 Features of such regimes are that, if a participant fails, (a) the customer positions can be identified in a timely manner, (b) customers will be protected by an investor protection scheme designed to move customer accounts from the failed or failing participant to another participant

Customers of IIROC dealer members

Currently, most participants of domestic cash market CCPs that clear for customers are investment dealers.[17] They are required to be members of the Investment Industry Regulatory Organization of Canada (IIROC)[18] and to contribute to the Canadian Investor Protection Fund (CIPF).[19] The CSA is of the view that the customer asset protection regime applicable to investment dealers (IIROC-CIPF regime) is an appropriate alternative framework for customers of investment dealers that are direct participants of a cash-market CCP. The IIROC-CIPF regime meets the criteria for the alternate approach for CCPs serving certain domestic cash markets because:

- IIROC's requirements governing, among other things, an investment dealer's books and records, capital adequacy, internal controls, client account margining, and segregation of client securities and cash help ensure that customer positions and collateral can be identified timely,
- customers of an investment dealer are protected by CIPF, and
- through a combination of IIROC's member rules and oversight powers, CIPF's role in the administration of the bankruptcy of a dealer, and the overarching policy objectives of Part XII of the federal Bankruptcy and Insolvency Act (BIA) (discussed below), customer accounts can be moved from a failing dealer to another dealer in a timely manner and customers' assets can be restored.

Part XII of the BIA sets out a special bankruptcy regime for administering the insolvency of a securities firm. The regime generally provides for all cash and securities of a bankrupt securities firm, whether held for its own account and for its customers, to vest in the appointed trustee in bankruptcy. The trustee, in turn, is directed to pool such assets into a "customer pool fund" for the benefit of the customers, which are entitled to a *pro rata* share of the customer pool fund according to their respective "net equity" claims as a priority claim before the general creditors are paid. To the extent there is a shortfall in customer recovery from the customer pool fund and any remaining assets in the insolvent estate, the assets are allocated among the customers on a *pro rata* basis. CIPF, which works in conjunction with IIROC and the bankruptcy trustee,[20] provides protection to eligible customers for losses up to $1 million per account.[21]

Customers of other types of participants

A recognized clearing agency operating as a cash market CCP for participants that are not IIROC investment dealers will need to have segregation and portability arrangements at the CCP level that meet PFMI Principle 14. Where the clearing agency is proposing to rely on an alternate approach for the purposes of protecting the customers of such participants, the clearing agency will need to demonstrate how the applicable legal or regulatory framework in which it operates achieves the same degree of protection and efficiency for such customers that would otherwise be achieved by segregation and portability arrangements at the CCP level described in PFMI Principle 14. See the PFMI Report, at paragraph 3.14.6.

in a timely manner, and (c) customer assets can be restored. As an example, the PFMIs suggest that domestic law may subject participants to explicit and comprehensive financial responsibility and customer protection requirements that obligate participants to make frequent determinations (for example, daily) that they maintain possession and control of all customers' fully paid and excess margin securities and to segregate their proprietary activities from those of their customers. Under these types of regimes, pending securities purchases do not belong to the customer; thus there is no customer trade or position entered into the CCP. As a result, participants who provide collateral to the CCP do not identify whether the collateral is provided on behalf of their customers regardless of whether they are acting on a principal or agent basis, and the CCP is not able to identify positions or the assets of its participants' customers.

17 Investment dealers are firms registered in the category of "investment dealer" under provincial securities legislation. Investment dealers are required to be members of IIROC. See section 9.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

18 IIROC is the national self-regulatory organization (SRO) which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. It is a recognized SRO in all 10 provinces in Canada and is subject to regulation and oversight by the CSA.

19 CIPF is an investor compensation protection fund that is sponsored by IIROC and approved by the CSA.

20 CIPF is a "customer compensation body" for the purposes of Part XII of the BIA. Where the accounts of a securities firm are protected (in whole or in part) by CIPF, the trustee in bankruptcy is required to consult with CIPF on the administration of the bankruptcy, and CIPF may designate an inspector to act on its behalf. See section 264 of the BIA.

21 The losses must be in respect of a claim for the failure of the dealer to return or account for securities, cash balances, commodities, futures contracts, segregated insurance funds or other property received, acquired or held by the dealer in an account for the customer.

~~Part 4~~
PART 4
OTHER REQUIREMENTS OF RECOGNIZED CLEARING AGENCIES

Introduction

~~4.6~~ **4.0** As discussed in section 1.2(2) of this CP, the provisions of Part 4 are in addition to the requirements of Part 3, and apply to a recognized clearing agency whether or not it operates as a CCP, SSS or CSD.

~~Division 1 –~~ ***Division 1 –*** ***Governance:***

Board of directors

4.1 (4) Consistent with the explanatory notes in the PFMI Report (see paragraph 3.2.10), we are of the view that the following individuals have a relationship with a clearing agency that would ~~reasonably~~, absent exceptional circumstances, be expected to interfere with the exercise of the individual~~'~~'s independent judgment:

~~(a)~~ (a) an individual who is, or has been within the last year, an employee or ~~executive~~ officer of the clearing agency or any of its affiliated entities;

~~(b)~~ (b) an individual whose immediate family member is, or has been within the last year, an ~~executive~~ officer of the clearing agency or any of its affiliated entities;

~~(c)~~ (c) an individual who beneficially owns, directly or indirectly, voting securities carrying more than ~~ten per cent~~10% of the voting rights attached to all voting securities of the clearing agency or any of its affiliated entities for the time being outstanding;

~~(d)~~ (d) an individual whose immediate family member beneficially owns, directly or indirectly, voting securities carrying more than ~~ten per cent~~10% of the voting rights attached to all voting securities of the clearing agency or any of its affiliated entities for the time being outstanding;

~~(e)~~ (e) an individual who is, or has been within the last year, an ~~executive~~ officer of a person or company that beneficially owns, directly or indirectly, voting securities carrying more than ~~ten per cent~~10% of the voting rights attached to all voting securities of the clearing agency or any of its affiliated entities for the time being outstanding; and

~~(f)~~ (f) an individual who accepts or who received within the last year, directly or indirectly, any audit, consulting, advisory or other compensatory fee from the clearing agency or any of its affiliated entities, other than as remuneration for acting in his or her capacity as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee.

For the purposes of paragraph (f) above, compensatory fees would not normally include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the clearing agency if the compensation is not contingent in any way on continued service. Also, the indirect acceptance by an individual of any audit, consulting, advisory or other compensatory fee includes acceptance of a fee by (a) an individual's immediate family member; or (b) an entity in which such individual is a partner, a member, an officer such as a managing director occupying a comparable position or an executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the clearing agency or any of its affiliated entities.

In addition, an individual appointed to the board of directors or board committee of the clearing agency or any of its affiliated entities or of a person or company referred to in paragraph (e) above would not be considered to have a material relationship with the clearing agency solely because the individual acts, or has previously acted, as a chair or vice-chair of the board of directors or a board committee.

~~**Documented procedures regarding risk spill-overs**~~

~~4.2 For guidance on this provision, see the Joint Supplementary Guidance in Box 2.2 in Annex I of this CP.~~

Chief Risk Officer (CRO) and Chief Compliance Officer (CCO)

~~4.3~~ **4.3** Section 4.3 is consistent with PFMI Principle 2, key consideration 5, which requires a clearing agency to have an experienced management with a mix of skills and the integrity necessary to discharge its operations and risk management responsibilities.

Consistent with PFMI Principle 2, Key Consideration 6, subsection 4.3(1) is not intended to prevent the CRO and the CCO from reporting to both management and the board, provided that there are adequate safeguards in place to ensure that the CRO and the CCO have sufficient independence from the other members of management in performing their functions as CRO and CCO, particularly their obligations under subsections 4.3(2) and 4.3(3).

~~(3)~~ **(3)** The reference to "harm to the broader financial system" in subparagraph 4.3(3)(c)(ii) may be in relation to the domestic or international financial system. The CSA is of the view that the role of a CCO (or certain aspects of the role) may, in certain circumstances, be performed by the Chief Legal Officer or General Counsel of the clearing agency, where the individual has sufficient time to properly carry out his or her duties and, provided that there are appropriate safeguards in place to avoid conflicts of interest.

Board or advisory committees

~~4.4~~ **4.4** Section 4.4 is intended to reinforce the clearing agency's obligations to meet the PFMI Principles, particularly PFMI Principles 2 and 3. The CSA is of the view that the mandates of the committees should, at a minimum, include the following:

~~(a)~~ (a) providing advice and recommendations to the board of directors to assist it in fulfilling its risk management responsibilities, including reviewing and assessing the clearing agency's risk management policies and procedures, the adequacy of the implementation of appropriate procedures to mitigate and manage such risks, and the clearing agency's participation standards and collateral requirements;

~~(b)~~ (b) ensuring adequate processes and controls are in place over the models used to quantify, aggregate, and manage the clearing agency's risks;

~~(c)~~ (c) monitoring the financial performance of the clearing agency and providing financial management oversight and direction to the business and affairs of the clearing agency;

~~(d)~~ (d) implementing policies and processes to identify, address, and manage potential conflicts of interest of board members; and

~~(e)~~ (e) regularly reviewing the board of directors' and senior management's performance and the performance of each individual member.

Section 4.4 is a minimum requirement. Consistent with the explanatory notes in the PFMI Principles (see paragraph 3.2.9), a recognized clearing agency should also consider forming other types of board committees, such as a compensation committee. All committees should have clearly assigned responsibilities and procedures. The clearing agency's internal audit function should have sufficient resources and independence from management to provide, among other activities, a rigorous and independent assessment of the effectiveness of its risk-management and control processes. See section 4.1 for the concept of independence. A board will typically establish an audit committee to oversee the internal audit function. In addition to reporting to senior management, the audit function should have regular access to the board through an additional reporting line.

~~Division 2 –~~ ***Division 2 – Default management:***

Use of own capital

~~4.5~~ **4.5** The CSA is of the view that a CCP's own capital contribution should be used in the default waterfall, immediately after a defaulting participant's contributions to margin and default fund resources have been exhausted, and prior to non-defaulting participants' contributions. Such equity should be significant enough to attract senior management's attention, and separately retained and not form part of the CCP's resources for other purposes, such as to cover general business risk.

~~Division 3 –~~ ***Division 3 – Operational risk:***

~~4.6~~ **4.6 to 4.10** Sections 4.6 to 4.10 complement PFMI Principle 17, which requires a clearing agency to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies,

procedures, and controls. PFMI Principle 17 further requires that systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity, and business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

Systems requirements

4.6 (a) The intent of these provisions is to ensure that controls are implemented to support cyber resilience, information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include 'Information Technology Control Guidelines' from the Canadian Institute ofmay include guidance, principles or frameworks published by the Chartered Professional Accountants (CICA) and 'COBIT' from the IT Governance Institute- Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO), or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST). We are of the view that internal controls include controls which support the processing integrity of the models used to quantify, aggregate, and manage the clearing agency's risks.

(b) (b) Capacity management requires that the clearing agency monitor, review, and test (including stress test) the actual capacity and performance of the system on an ongoing basis. Accordingly, under subsectionparagraph 4.6(b), the clearing agency is required to meet certain standards for its estimates and for testing. These standards are consistent with prudent business practice. The activities and tests required in this subsection are to be carried out at least once a yearin each 12-month period. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(c) A failure, malfunction or(c). A security incident is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of an information system or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies. A failure, malfunction, delay or othersecurity incident is considered to be "material" if the clearing agency would, in the normal course of operations, escalate the matter to or inform its senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the clearing agency's operations or on participants, although non-material events may become material if they recur or have a cumulative effect. Any event that requires non-routine measures or resources by the clearing agency would also be considered material and thus reportable to the securities regulatory authority. The onus would be on the clearing agency to document the reasons for any security incident it did not consider material. It is also expected that, as part of thisthe notification required under paragraph 4.6(c), the clearing agency will provide updates on the status of the failureevent and the resumption of service. Further, the clearing agency should have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all operationalsystems failures, malfunctions, delays and security incidents. In this regard, the clearing agency should undertake a "post-incidentmortem" review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the clearing agency's participants. The results of such internal reviews are required to be communicated to the securities regulatory authority as soon as practicable. Subsection 4.6(c) also refers to a material security breach. A material security breach or systems intrusion is considered to be any unauthorized entry into any of the systems that support the functions of the clearing agency or any system that shares resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the securities regulatory authority. The onus would be on the clearing agency to document the reasons for any security breach it did not consider material.[22]

(d) Pursuant to s. 5.1, a recognized clearing agency may be asked to provide the regulator or, in Quebec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a systems failure, malfunction, delay, security incident or any other system or process related data.

Auxiliary systems

4.6.1(2) A recognized clearing agency should also refer to the considerations for paragraph 4.6(c) above with regards to security incidents that arise in connection with auxiliary systems. Pursuant to section 5.1, a recognized clearing agency may be asked to provide the regulator or, in Quebec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a security incident.

[22] Adapted from the NIST definition of "incident". See https://csrc.nist.gov/Glossary/?term=4730#AlphaIndexDiv.

Systems reviews

4.7 (1) ~~A qualified party is~~(a) An independent systems review must be conducted and reported on at least once in each 12-month period by a qualified external auditor in accordance with established audit standards and best industry practices. We consider that best industry practices include the 'Trust Services Criteria' developed by the American Institute of CPAs and CPA Canada. For the purposes of paragraph 4.7(1)(a), we consider a qualified external auditor to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. Before engaging a qualified external auditor to conduct the independent systems review, a clearing agency is expected to discuss its choice of external auditor and the scope of the systems review mandate with the regulator or, in Québec, the securities regulatory authority. We further expect that the report prepared by the external auditor include, to the extent applicable, an audit opinion that (i) the description included in the report fairly presents the systems and controls that were designed and implemented throughout the reporting period, (ii) the controls stated in the description were suitably designed, and (iii) the controls operated effectively throughout the reporting period.

(1)(b) The clearing agency must also establish and perform effective assessment and testing methodologies and practices and would be expected to implement appropriate improvements where necessary. The assessments and testing required in this section, such as vulnerability assessments and penetration tests, are to be carried out by a qualified party on a reasonably frequent basis and, in any event, at least once in each 12-month period. For the purposes of paragraph 4.7(1)(b), we consider a qualified party to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. ~~Qualified persons~~We consider that qualified parties may include external auditors or third party information system consultants, as well as employees of the clearing agency or an affiliated entity of the clearing agency, but may not be persons responsible for the development or operation of the systems or capabilities being tested. ~~Before engaging a qualified party, a clearing agency should discuss its choice with the regulator or, in Québec, the~~The securities regulatory authority may, in accordance with securities legislation, require the clearing agency to provide a copy of any such assessment.

Clearing agency technology requirements and testing facilities

4.8 (1) The technology requirements required to be disclosed under subsection 4.8(1) do not include detailed proprietary information.

~~(5)~~ **(5)** We expect the amended technology requirements to be disclosed as soon as practicable, either while the changes are being made or immediately after.

Testing of business continuity plans

~~4.9~~ **4.9** Business continuity management is a key component of a clearing agency's operational risk-management framework. A recognized clearing agency's business continuity plan and its associated arrangements should be subject to frequent review and testing. At a minimum, under section 4.9, such tests must be conducted ~~annually~~at least once in each 12-month period. Tests should address various scenarios that simulate wide-scale disasters and inter-site switchovers. The clearing agency's employees should be thoroughly trained to execute the business continuity plan and participants, critical service providers, and linked clearing agencies should be regularly involved in the testing and be provided with a general summary of the testing results. The CSA expects that the clearing agency will also facilitate and participate in industry-wide testing of the business continuity plan (domestically-based recognized clearing agencies are required to participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority, pursuant to National Instrument 21-101 *Marketplace Operation*). The clearing agency should make appropriate adjustments to its business continuity plan and associated arrangements based on the results of the testing exercises.

Outsourcing

~~4.10~~ **4.10** Where a recognized clearing agency relies upon or outsources some of its operations to a service provider, it should generally ensure that those operations meet the same requirements they would need to meet if they were provided internally. Under section 4.10, the clearing agency must meet various requirements in respect of the outsourcing of critical services or systems to a service provider. These requirements apply regardless of whether the outsourcing arrangements are with third-party service providers, or with affiliated entities of the clearing agency.

Generally, the clearing agency is required to establish, implement, maintain and enforce policies and procedures to evaluate and approve outsourcing agreements to critical service providers. Such policies and procedures should include assessing the suitability of potential service providers and the ability of the clearing agency to continue to comply with securities legislation in the event of the service provider's bankruptcy, insolvency or termination of business. The clearing agency is also required to monitor and evaluate the on-going performance and compliance of the service provider to which they outsourced critical services, systems or facilities. Accordingly, the clearing agency should define key performance indicators that will measure the

service level. Further, the clearing agency should have robust arrangements for the substitution of such providers, timely access to all necessary information, and the proper controls and monitoring tools.

Under section 4.10, a contractual relationship should be in place between the clearing agency and the critical service provider allowing it and relevant authorities to have full access to necessary information. The contract should ensure that the clearing agency's approval is mandatory before the critical service provider can itself outsource material elements of the service provided to the clearing agency, and that in the event of such an arrangement, full access to the necessary information is preserved. Clear lines of communication should be established between the outsourcing clearing agency and the critical service provider to facilitate the flow of functions and information between parties in both ordinary and exceptional circumstances.

Where the clearing agency outsources operations to critical service providers, it should disclose the nature and scope of this dependency to its participants. It should also identify the risks from its outsourcing and take appropriate actions to manage these dependencies through appropriate contractual and organisational arrangements. The clearing agency should inform the securities regulatory authority about any such dependencies and the performance of these critical service providers. To that end, the clearing agency can contractually provide for direct contacts between the critical service provider and the securities regulatory authority, contractually ensure that the securities regulatory authority can obtain specific reports from the critical service provider, or the clearing agency may provide full information to the securities regulatory authority.~~Division 4 –~~

Division 4 – Participation requirements:

Access requirements and due process

~~4.11~~ **4.11** Section 4.11 complements PFMI Principle 18, which requires a clearing agency to have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

(1)(b) We consider an indirect participant to be an entity that relies on the services provided by other entities (participants) to use a clearing agency's clearing and settlement facilities. As defined in the Instrument, a participant (sometimes also referred to as a "direct participant") is an entity that has entered into an agreement with a clearing agency to access the services of the clearing agency and is bound by the clearing agency's rules and procedures. While indirect participants are generally not bound by the rules of the clearing agency, their transactions are cleared and settled through the clearing agency in accordance with the clearing agency's rules and procedures. The concept of indirect participant is discussed in the PFMI Report, at paragraph 3.19.1.

(1)(d) We are of the view that a requirement on participants of a clearing agency serving the derivatives markets to use a trade repository that is an affiliated entity to report derivatives trades would be unreasonable.

~~Part 5~~
PART 5
BOOKS AND RECORDS AND LEGAL ENTITY IDENTIFIER

Legal Entity Identifiers

5.2 (1) The Global Legal Entity Identifier System defined in subsection 5.2(1~~) and referred to in subsections 5.2(2) and 5.2(3~~) is a G20 endorsed system[~~22~~23] that ~~will~~is intended to serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers (LEIs) globally ~~to counterparties that enter into transactions~~ in order to uniquely identify parties to transactions. It ~~is currently being~~was designed and implemented under the direction of the LEI Regulatory Oversight Committee ~~(ROC)~~, a governance body endorsed by the G20.

~~(3) If the Global LEI System is not available at the time a clearing agency is required to fulfill their recordkeeping or reporting requirements under securities legislation, they must use a substitute LEI. The substitute LEI must be in accordance with the standards established by the LEI ROC for pre-LEI identifiers. At the time the Global LEI System is operational, a clearing agency or its affiliated entities must cease using their substitute LEI and commence using their LEI. It is conceivable that the two identifiers could be identical.~~

[~~22~~23] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

~~Part 6~~
PART 6
EXEMPTIONS

Exemptions

~~6.1~~ 6.1 As Part 3 adopts a principles-based approach to incorporating the PFMI Principles into the Instrument, the CSA has sought to minimize any substantive duplication or material inefficiency due to cross-border regulation. Where a recognized foreign-based clearing agency does face some conflict or inconsistency between the requirements of sections 2.2 and 2.5 and Part 4 and the requirements of the regulatory regime in its home jurisdiction, the clearing agency is expected to comply with the Instrument. However, where such a conflict or inconsistency causes a hardship for the clearing agency, and provided that the entity is subject to requirements in its home jurisdiction resulting in similar outcomes in substance to the requirements of sections 2.2 and 2.5 and Part 4, an exemption from a provision of the Instrument may be considered by a securities regulatory authority. The exemption may be subject to appropriate terms or conditions.

~~Annex~~
ANNEX I
~~to Companion Policy 24-102 Clearing Agency Requirements~~

~~Joint Supplementary Guidance~~
~~Developed by the Bank of Canada and Canadian Securities Administrators~~

TO COMPANION POLICY 24-102CP

~~- *PFMI Principle 2: Governance*~~

~~Box 2.1:~~
~~Joint Supplementary Guidance – Governance~~
JOINT SUPPLEMENTARY GUIDANCE DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS ON THE PFMI PRINCIPLES

~~*Context*~~
Joint Supplementary Guidance has been developed by the BOC and the securities regulatory authorities to provide additional clarity on certain aspects of selected PFMI Principles within the Canadian context. It is found on the BOC website and in annexes to the Companion Policy (to the CSA National Instrument 24-102 *Clearing Agency Requirements*).

The ~~PFMIs define governance as the set of relationships between an FMI's owners, board of directors (or equivalent), management, and other relevant parties, including participants, authorities, and other stakeholders (such as participants' customers, other interdependent FMIs, and the broader market). Governance provides the processes through which an organization sets its objectives, determines the means for achieving those objectives, and monitors performance against those objectives.~~ Joint Supplementary Guidance applies in respect of recognized domestic clearing agencies that are designated as systemically important by the BOC and jointly overseen by the BOC and one or more securities regulatory authorities (referred to in this Joint Supplementary Guidance as an "FMI").

~~This note provides supplementary regulatory guidance for Canadian FMIs that either belong to an integrated entity or are considering consolidating with another entity to form one. It also provides additional context and clarity for Canadian FMIs on certain aspects of the PFMIs expectations pertaining to how their governance arrangements are expected to support relevant public interest considerations.~~

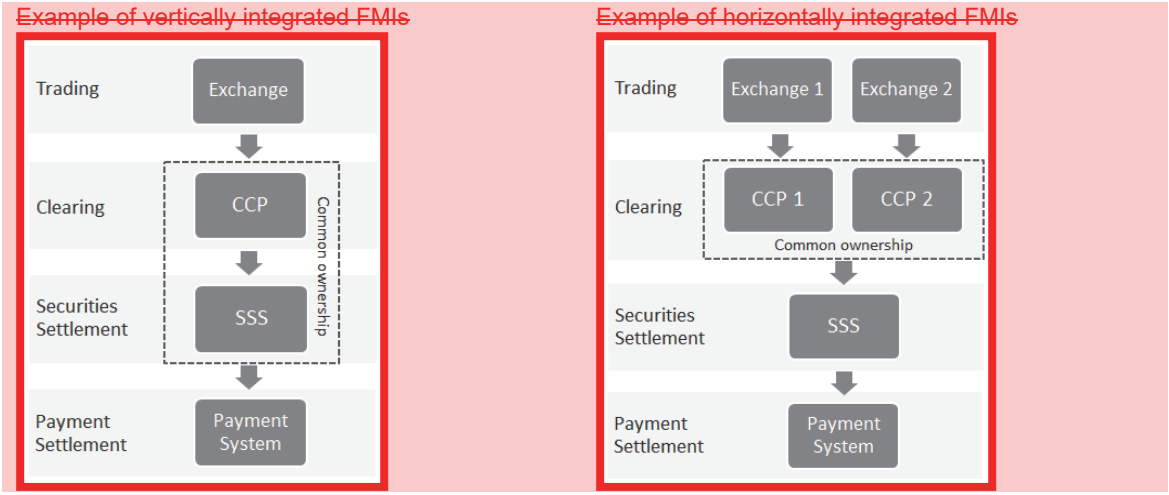
~~*(i) Vertical and horizontal integration in the context of FMIs*~~
Beyond observation of the PFMI Principles, an FMI is expected to take into account the "Explanatory Notes" for each applicable PFMI Principle, other reports and explanatory materials published by CPMI and IOSCO that supplement the PFMI Report and that provide guidance to FMIs on the application of the PFMI Principles, as well as this Joint Supplementary Guidance or any future guidance published jointly by the BOC and the securities regulatory authorities.

The ~~PFMIs define a vertically integrated FMI group as one that brings together post-trade infrastructure providers under common ownership with providers of other parts of the value chain (for example, one entity owning and operating an exchange, CCP and SSS) and a horizontally integrated group as one that provides the same post trade service offerings across a number of different products (for example, one entity offering CCP services for derivatives and cash markets).[1] Examples are shown in~~

[1] ~~Committee on Payments and Market Infrastructure (CPMI) and International Organization of Securities Commissions (IOSCO) 2010. "Market structure developments in the clearing industry: implications for financial stability." CPMI-IOSCO Paper No 92. Available at: http://www.bis.org/cpmi/publ/d92.htm~~

~~Figure 1.~~Joint Supplementary Guidance below appears under the relevant headings for each applicable PFMI Principle (referred to by the BOC as its "Risk-Management Standards for Designated FMIs").

~~(a) Figure 1: Examples of FMI integration in the value chain~~



~~Consolidation, or integration, of FMI services may bring about benefits for merging FMIs; however it may also create new governance challenges. The PFMIs contain some general guidance regarding how FMIs should manage governance issues that arise in integrated entities.~~

~~(b) Guidance within the PFMIs~~

~~The following text has been extracted directly from the PFMIs. The pertinent information is in bold.~~

~~PFMI paragraph 3.2.5:~~

> ~~*Depending on its ownership structure and organisational form, an FMI may need to focus particular attention on certain aspects of its governance arrangements.* **An FMI that is part of a larger organisation, for example, should place particular emphasis on the clarity of its governance arrangements, including in relation to any conflicts of interests and outsourcing issues that may arise because of the parent or other affiliated organisation's structure. The FMI's governance arrangements should also be adequate to ensure that decisions of affiliated organisations are not detrimental to the FMI.**[2] *An FMI that is, or is part of, a for-profit entity may need to place particular emphasis on managing any conflicts between income generation and safety.***~~

~~PFMI paragraph 3.2.6:~~

~~*An FMI may also need to focus particular attention on certain aspects of its risk-management arrangements as a result of its ownership structure or organisational form.* **If an FMI provides services that present a distinct risk profile from, and potentially pose significant additional risks to, its payment, clearing, settlement, or recording function, the FMI needs to manage those additional risks adequately. This may include separating the additional services that the FMI provides from its payment, clearing, settlement, and recording function legally, or taking equivalent action.** *The ownership structure and organisational form may also need to be considered in the preparation and implementation of the FMI's recovery or wind-down plans or in assessments of the FMI's resolvability.*~~

~~(c) Supplementary guidance for designated Canadian FMIs~~

~~An FMI that is part of a larger entity faces additional risk considerations compared to stand-alone FMIs. While there are potential benefits from integrating services into one large entity, including potential risk reduction benefits, integrated entities could face additional risks such as a greater degree of general business risk. Examples of how this could occur include the following:~~

~~[2] If an FMI is wholly owned or controlled by another entity, authorities should also review the governance arrangements of that entity to see that they do not have adverse effects on the FMI's observance of this principle.~~

- losses in one function may spill-over to the entity's other functions;
- the consolidated entity may face high combined exposures across its functions; and
- the consolidated entity may face exposures to the same participants across its functions.

For a more extensive discussion of potentially heightened risks that integrated FMIs may face, see CPMI-IOSCO, "Market structure developments in the clearing industry: implications for financial stability" (2010).

If an FMI belongs to a larger entity, or is considering consolidating with another entity, it should consider how its risk profile differs as part of the consolidated entity, and take appropriate measures to mitigate these risks.

In addition, FMIs that either belong to an integrated entity or are considering merging to form one should meet the following conditions.

Measures to protect critical FMI functions

FMIs may be part of a larger consolidated entity. These FMIs must either:

- legally separate FMI-related functions[3] from non-FMI-related functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI-related functions; or
- have satisfactory policies and procedures in place to manage additional risks resulting from the non-FMI-related functions appropriately to ensure the FMI's financial and operational viability.

If an FMI performs multiple FMI-related functions with distinct risk profiles within the same entity, the operator should effectively manage the additional risks that may result. The FMI should hold sufficient financial resources to manage the risks in all services it offers, including the combined or compounded risks that would be associated with offering the services through a single legal entity. If the FMI provides multiple services, it should disclose information about the risks of the combined services to existing and prospective participants to give an accurate understanding of the risks they incur by participating in the FMI. The FMI should carefully consider the benefits of offering critical services with distinct risk profiles through separate legal entities.

If an FMI offers CCP services as part of its FMI related functions, further conditions apply. CCPs take on more risk than other FMIs, and are inherently at higher risk of failure. Therefore, the FMI must either legally separate its CCP functions from other critical (non-CCP) FMI-related functions, or have satisfactory policies and procedures in place to manage additional risks appropriately to ensure the FMI's financial and operational viability.

Legal separation of critical functions is intended to maximize their bankruptcy remoteness and would not necessarily preclude integration of common organizational management activities such as IT and legal services across functions as long as any related risks are appropriately identified and mitigated.

Independence of governance and risk management

FMIs and non FMIs may have different corporate objectives and risk management appetites which could conflict at the parent level. For example, non-FMI-related functions, such as trading venues, are generally more focused on profit generation than risk management and do not have the same risk profile as FMI-related functions. A trading venue in a vertically integrated entity may benefit from increased participation in its service if its associated clearing function lessens its participation requirements.

To mitigate potential conflicts, in particular the ability of other functions to negatively influence the FMI's risk controls, each FMI subsidiary should have a governance structure and risk management decision-making process that is separate and independent from the other functions and should maintain an appropriate level of autonomy from the parent and other functions to ensure efficient decision making and effective management of any potential conflicts of interest. In addition, the consolidated entity's broad governance arrangements should be reviewed to ensure they do not impede the FMI-related function's observance of the PFMI Principle on governance.

Comprehensive management of risks

[3] FMI-related functions are CCP, SSS, and CSD functions, including other core aspects of clearing and settlement necessary to perform the CCP, SSS, and CDS functions (see the CPMI-IOSCO glossary definitions of "clearing" and "settlement", available at http://www.bis.org/cpmi/publ/d00b.pdf).

Although risk management governance and decision-making should remain independent, it is nonetheless necessary that the consolidated entity is able to manage risk appropriately across the entity. At a consolidated level, the entity should have an appropriate risk management framework that considers the risks of each subsidiary and the additional risks related to their interdependencies.

An FMI should identify and manage the risks it bears from and poses to other entities as a result of interdependencies. Consolidated FMIs should also identify and manage the risks they pose to one another as a result of their interdependencies. Consolidated FMIs may have exposures to the same participants, liquidity providers, and other critical service providers across products, markets and/or functions. This may increase the entity's dependence on these providers and may heighten the systemic risk associated with the consolidated entity compared to a stand-alone FMI. Where possible, the consolidated entity and its FMIs should consider ways to mitigate risks arising from shared dependencies. The consolidated entity and its FMIs should also consider conducting entity-wide operational risk testing related to identifying and mitigating these risks.

Sufficient capital to cover potential losses

Consolidated entities face the risk that a single participant defaults in more than one subsidiary simultaneously. This could result in substantial losses for the consolidated entity which will then also need to replenish resources for the FMIs to continue to operate. FMIs should consider such risks in developing their resource replenishment plan.

Consolidated entities may face higher or lower business risk than individual FMIs depending on size, complexity and diversification across affiliates. Consolidated entities should consider these impacts in their general business risk profiles and in determining the appropriate level of liquid assets needed to cover their potential general business losses.[4]

(ii) Public interest considerations in the context of the PFMIs

The PFMIs indicate that FMIs should "explicitly support financial stability and other relevant public interests." However, there may be circumstances where providing explicit support of relevant public interests conflict with other FMI objectives and therefore require appropriate prioritization and balancing. For example, addressing the potential trade-offs between protecting the participants and the FMI while ensuring the financial stability interests are upheld.

(a) Guidance within the PFMIs

The following text has been extracted directly from the PFMIs. The pertinent information is in bold.

PFMI paragraph 3.2.2:

> ***Given the importance of FMIs and the fact that their decisions can have widespread impact, affecting multiple financial institutions, markets, and jurisdictions, it is essential for each FMI to place a high priority on the safety and efficiency of its operations and explicitly support financial stability and other relevant public interests. Supporting the public interest is a broad concept that includes, for example, fostering fair and efficient markets.*** *For example, in certain over the counter derivatives markets, industry standards and market protocols have been developed to increase certainty, transparency, and stability in the market. If a CCP in such markets were to diverge from these practices, it could, in some cases, undermine the market's efforts to develop common processes to help reduce uncertainty. An FMI's governance arrangements should also include appropriate consideration of the interests of participants, participants' customers, relevant authorities, and other stakeholders. (...) For all types of FMIs, governance arrangements should provide for fair and open access (see Principle 18 on access and participation requirements) and for effective implementation of recovery or wind-down plans, or resolution.*

PFMI paragraph 3.2.8:

> ***An FMI's board has multiple roles and responsibilities that should be clearly specified. These roles and responsibilities should include*** *(a) establishing clear strategic aims for the entity; (b) ensuring effective monitoring of senior management (including selecting its senior managers, setting their objectives, evaluating their performance, and, where appropriate, removing them); (c) establishing appropriate compensation policies (which should be consistent with best practices and based on long-term achievements, in particular, the safety and efficiency of the FMI); (d) establishing and overseeing the risk-management function and material risk decisions; (e) overseeing internal control functions (including ensuring independence and adequate resources); (f) ensuring compliance with all supervisory and oversight requirements;* ***(g) ensuring consideration of financial stability and other relevant public interests****; and (h) providing accountability to the owners, participants, and other relevant*

[4] Liquid assets held for general business losses must be funded by equity (such as common stock, disclosed reserves, or retained earnings) rather than debt

~~*stakeholders.*~~

~~The CPMI-IOSCO PFMI Disclosure framework and Assessment methodology provides questions to guide the assessment of the FMI against the PFMIs. Questions related to public interest considerations are focused on ensuring that the FMI's objectives are clearly defined, giving a high priority to safety, financial stability and efficiency while also ensuring all other public interest considerations are identified and reflected in the FMI's objectives.~~

~~**(b) Supplementary Guidance for designated Canadian FMIs**~~

~~By definition the PFMIs apply to systemically important FMIs, so safety and financial stability objectives should be given a high priority.~~

~~Efficiency is also a high priority that should contribute to (but not supersede) the safety and financial stability objectives.~~

~~Other public interest considerations such as competition and fair and open access should also be considered in the broader safety and financial stability context.~~

~~A framework (objectives, policies and procedures) should be in place for default and other emergency situations. The framework should articulate explicit principles to ensure financial stability and other relevant public interests are considered as part of the decision making process. For example, it should provide guidance on discretionary management decisions, consider the trade-offs between protecting the participants and the FMI while also ensuring the financial stability interests are upheld, and articulate a communication protocol with the board and regulators.~~

~~Practical questions/approaches to assessing the appropriateness of the framework include:~~

- ~~Does the enabling legislation, articles of incorporation, corporate by-laws, corporate mission, vision statements, corporate risk statements/frameworks/methodology clearly articulate the objectives and are they appropriately aligned and communicated (transparent)?~~
- ~~Do the objectives give appropriate priority to safety, financial stability, efficiency and other public interest considerations?~~
- ~~Does the Board structure ensure the right mix of skills/experience and interests are in place to ensure the objectives are clear, appropriately prioritized, achieved and measured?~~
- ~~What is the training provided to the Board and management to support the objectives?~~
- ~~Do the service offerings and business plans support the objectives?~~
- ~~Do the system design, rules, procedures support the objectives?~~
- ~~Are the inter-dependencies and key dependencies considered and managed in the context of the broader financial stability objectives? For instance, do problem and default management policies and procedures appropriately provide for consideration of the broader financial stability interests and do they engage the key stakeholders and regulators?~~
- ~~Are there procedures in place to get timely engagement of the Board to discuss emerging/current issues, consider scenarios, provide guidance and make decision?~~
- ~~Does the framework ensure that the broader financial stability issues are considered in any actions relating to a participant suspension?~~

PFMI Principle 3: Framework for the comprehensive management of risks

~~**Box 3.1:**~~

a. Joint Supplementary Guidance ~~-~~for PFMI Principle 3 has been developed by the BOC and CSA pertaining to FMI recovery planning. This guidance can be found separately on the BOC website and in Annex II to the Companion Policy.

~~**Recovery Plans**~~

PFMI Principle 5: Collateral

a. An FMI should not rely solely on external opinions to determine collateral eligibility.

b. In general, most of the FMI's collateral pools should be composed of cash and debt securities issued or guaranteed by the Government of Canada, a provincial government or the U.S. Treasury.

c. Additional asset classes may be acceptable as collateral if they are subject to conservative haircuts and concentration limits. An FMI should limit such assets to a maximum of 40% of the total collateral posted from each participant. It should also limit securities issued by a single issuer to a maximum of 5% of total collateral from each participant. Such assets are:

- Securities issued by a municipal government;
- Bankers' acceptances;
- Commercial paper;
- Corporate bonds;
- Asset-backed securities that meet the following criteria:
  1) sponsored by a deposit-taking financial institution that is prudentially-regulated at either the federal or provincial level;
  2) part of a securitization program supported by a liquidity facility; and
  3) backed by assets of an acceptable credit quality;
- Equity securities traded on marketplaces regulated by a member of the CSA; and
- Other securities issued or guaranteed by a government, central bank or supranational institution classified as Level 1 high-quality assets by the Basel Committee on Banking Supervision.

d. Since it is highly likely that the value of debt and equity securities issued by companies operating in the financial sector would be adversely affected by the default of an FMI participant – introducing wrong-way risk for an FMI that has accepted such securities as collateral – an FMI should:

- Limit the collateral from financial sector issuers to a maximum of 10% of total collateral pledged from each participant; and
- Not allow a participant to pledge as collateral securities issued by itself or an affiliate.

PFMI Principle 7: Liquidity risk

a. Liquidity facilities should include at least three independent liquidity providers to ensure the FMI has access to sufficient liquid resources even in the event one of its liquidity providers defaults.

b. Uncommitted liquidity facilities are considered qualifying liquid resources for liquidity exposure in Canadian dollars if they meet all of the following additional criteria:

- The liquidity provider has access to the Bank of Canada's Standing Liquidity Facility (SLF);
- The facility is fully-collateralized with SLF-eligible collateral; and
- The facility is denominated in Canadian dollars.

PFMI Principle 15: General business risk

a. Liquid net assets funded by equity must be held at the level of the FMI legal entity to ensure they are unencumbered and can be accessed quickly.

PFMI Principle 16: Custody and investment risks

a. It is paramount that an FMI have prompt access to assets held for risk-management purposes with minimal price impact. For the purposes of PFMI Principle 16, financial instruments can be considered to have minimal credit, market and liquidity risk if they are debt instruments that are:

- Securities issued or guaranteed by the Government of Canada;
- Marketable securities issued by the U.S. Treasury;
- Securities issued or guaranteed by a provincial government;

- Securities issued by a municipal government;
- Bankers' acceptances;
- Commercial paper;
- Corporate bonds; and
- Asset-backed securities that are:
  1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level;
  2) part of a securitization program supported by a liquidity facility; and
  3) backed by assets of an acceptable credit quality.

b. Investments should also, at a minimum, observe the following:

- To reduce concentration risk, no more than 20% of total investments should be invested in any combination of municipal and private sector securities. Investment in a single private sector or municipal issuer should be no more than 5% of total investments.
- To mitigate specific wrong-way risk, investments should, as much as possible, be inversely related to market events that increase the likelihood of those assets being required. Investment in financial sector securities should be no more than 10% of total investments. An FMI should not invest assets in the securities of its own affiliates.
- For investments that are subject to counterparty credit risk, an FMI should set clear criteria for choosing investment counterparties and setting exposure limits.

ANNEX II
TO COMPANION POLICY 24-102CP

JOINT SUPPLEMENTARY GUIDANCE
DEVELOPED BY THE BANK OF CANADA AND CANADIAN SECURITIES ADMINISTRATORS
ON RECOVERY PLANS

Context

In 2012, to enhance the safety and efficiency of payment, clearing and settlement systems, ~~the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO)~~CPMI and IOSCO released a set of international risk-management standards for FMIs, known as the ~~Principles for Financial Market Infrastructures (PFMIs)~~PFMIs.[1] The PFMIs provide standards regarding FMI recovery planning and orderly wind-down, which were adopted by the Bank of Canada as Standard 24 of the Bank's *Risk-Management Standards for Systemic FMIs*[2] and by the CSA as part of ~~National~~the Instrument ~~24-102. (NI 24-102)~~.[3] In the context of recovery planning~~.~~,

> *An FMI is expected to identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. This entails preparing appropriate plans for its recovery or orderly wind-down based on the results of that assessment.*

In October 2014, ~~the~~ CPMI~~-~~ and IOSCO released its report, "Recovery of Financial Market Infrastructures" (the Recovery Report), providing additional guidance specific to the recovery of FMIs.[4] The Recovery Report explains the required structure and components of an FMI recovery plan and provides guidance on FMI critical services and recovery tools at a level sufficient to accommodate possible differences in the legal and institutional environments of each jurisdiction.

For the purpose of this guidance, FMI recovery is defined as the set of actions that an FMI can take, consistent with its rules, procedures and other ex ante contractual agreements, to address any uncovered loss, liquidity shortfall or capital inadequacy, whether arising from participant default or other causes (such as business, operational or other structural weakness), including

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1 Available at ~~http://www.bis.org/cpmi/publ/d101a.pdf.~~http://www.bis.org/cpmi/publ/d101a.pdf.

2 See key consideration 4 of PFMI Principle 3 and key consideration 3 of PFMI Principle 15 which are adopted in the ~~Canadian Securities Administrators' (CSA) National~~ Instrument ~~24-102 *Clearing Agency Requirements*~~, section 3.1.

3 The Bank of Canada's *Risk-Management Standards for Systemic FMIs* is available at http://www.bankofcanada.ca/core-functions/financial-system/bank-canada-risk-management-standards-systemic-fmis/.

4 Available at ~~http://www.bis.org/cpmi/publ/d121.pdf.~~http://www.bis.org/cpmi/publ/d121.pdf.

actions to replenish any depleted pre-funded financial resources and liquidity arrangements, as necessary, to maintain the FMI's viability as a going concern and the continued provision of critical services.[5,6]

Recovery planning is not intended as a substitute for robust day-to-day risk management or for business continuity planning. Rather, it serves to extend and strengthen an FMI's risk-management framework, enhancing the resilience of the FMI against financial risks and bolstering confidence in the FMI's ability to function effectively even under extreme but plausible market conditions and operating environments~~.~~.

Key Components of Recovery Plans

Overview of existing risk-management and legal structures

As part of their recovery plans, FMIs should include overviews of their legal entity structure and capital structure to provide context for stress scenarios and recovery activities.

FMIs should also include an overview of their existing risk-management frameworks~~—~~ – i.e., their **pre-recovery** risk-management frameworks and activities. As part of this overview, and to determine the relevant point(s) where standard pre-recovery risk-management frameworks are exhausted, FMIs should identify all the material risks they are exposed to and explain how they use their existing pre-recovery risk-management tools to manage these risks to a high degree of confidence.

Critical services[7]

In their recovery plans, FMIs should identify, in consultation with Canadian authorities and stakeholders, the services they provide that are critical to the smooth functioning of the markets that they serve and to the maintenance of financial stability. FMIs may find it useful to consider the degree of **substitutability** and **interconnectedness** of each of these critical services, specifically

- ~~□ □he~~the degree of criticality of an FMI's service is likely to be high if there are no, or only a small number of, alternative service providers. Factors related to the substitutability of a service could include (i) the size of a service's market share, (ii) the existence of alternative providers that have the capacity to absorb the number of customers and transactions the FMI maintains, and (iii) the FMI participants' capability to transfer positions to the alternative provider(s)~~;~~.

- ~~□ Tho~~the degree of criticality of an FMI's service may be high if the service is significantly interconnected with other market participants, both in terms of breadth and depth, thereby increasing the likelihood of contagion if the service were to be discontinued. Potential factors to consider when determining an FMI's interconnectedness are (i) what services it provides to other entities and (ii) which of those services are critical for other entities to function~~.~~

~~□ the extent to which an FMI's existing pre-recovery risk-management tools are insufficient to withstand the impacts of realized risks in a recovery stress scenario and the value of the loss and/or of the negative shock required to generate a gap between existing risk-management tools and the losses associated with the realized risks.~~

Stress scenarios[8]

In their recovery plans, FMIs should identify scenarios that may prevent them from being able to provide their critical services as a going concern. Stress scenarios should be focused on the risks an FMI faces from its payment, clearing and settlement activity. An FMI should then consider stress scenarios that cause financial stress in excess of the capacity of its existing pre-recovery risk controls, thereby placing the FMI into recovery. An FMI should organize stress scenarios by the types of risk it faces; for each stress scenario, the FMI should clearly explain the following:

- ~~□ ~~the assumptions regarding market conditions and the state of the FMI within the stress scenario, accounting for the differences that may exist depending on whether the stress scenario is systemic or idiosyncratic;

- ~~□□~~the estimated impact of a stress scenario on the FMI, its participants, participants' clients and other stakeholders; and

- ~~□ ~~the extent to which an FMI's existing pre-recovery risk-management tools are insufficient to withstand the

5 Recovery Report, Paragraph ~~1.1.1~~1.1.1.

6 For a precise definition of orderly wind-down, see the Recovery Report, Paragraph 2.2.2.

7 Recovery Report, Paragraphs 2.4.2~~–2.4.4~~–2.4.4.

8 Recovery Report, Paragraph ~~2.4.5~~2.4.5.

impacts of realized risks in a recovery stress scenario and the value of the loss and/or of the negative shock required to generate a gap between existing risk-management tools and the losses associated with the realized risks.

Triggers for recovery

For each stress scenario, FMIs should identify the triggers that would move them from their pre-recovery risk-management activities (e.g., those found in a CCP's default waterfall) to recovery. These triggers should be both qualified (i.e., outlined) and, where relevant, quantified to demonstrate a point at which recovery plans will be implemented without ambiguity or delay.
While the boundary between pre-recovery risk-management activities and recovery can be clear (for example, when pre-funded resources are fully depleted), judgment may be needed in some cases. When this boundary is not clear, FMIs should lay out in their recovery plans how they will make decisions.[9] This includes detailing in advance their communication plans, as well as the escalation process associated with their decision-making procedures. They should also specify the decision-makers responsible for each step of the escalation process to ensure that there is adequate time for recovery tools to be implemented if required.

More generally, it is important to identify and place the triggers for recovery early enough in a stress scenario to allow for sufficient time to implement recovery tools described in the recovery plan. Triggers placed too late in a scenario will impede the effective rollout of these tools and hamper recovery efforts. Overall, in determining the moment when recovery should commence, and especially where there is uncertainty around this juncture, an FMI should be prudent in its actions and err on the side of caution.

Selection and Application of Recovery Tools[10]

A comprehensive plan for recovery

The success of a recovery plan relies on a comprehensive set of tools that can be effectively applied during recovery. The applicability of these tools and their contribution to recovery varies by system, stress event and the order in which they are applied.

A robust recovery plan relies on a range of tools to form an adequate response to realized risks. Canadian authorities will provide feedback on the comprehensiveness of selected recovery tools when reviewing an FMI's complete recovery plan.

Characteristics of recovery tools

In providing this guidance, Canadian authorities used a broad set of criteria (described below), including those from the Recovery Report, to determine the characteristics of effective recovery tools.[11] FMIs should aim for consistency with these criteria in the selection and application of tools. In this context, recovery tools should be:

- Reliable and timely in their application and have a strong legal and regulatory basis. This includes the need for FMIs to mitigate the risk that a participant may be unable or unwilling to meet a call for financial resources in a timely manner, or at all (i.e., performance risk), and to ensure that all recovery activities have a strong legal and regulatory basis.

- Measurable, manageable and controllable to ensure that they can be applied effectively while keeping in mind the objective of minimizing their negative effects on participants and the broader financial system. To this end, using tools in a manner that results in participant exposures that are determinable and fixed provides better certainty of the tools' impacts on FMI participants and their contribution to recovery. Fairness in the allocation of uncovered losses and shortfalls, and the capacity to manage the associated costs, should also be considered.

- Transparent to participants: this should include a predefined description of each recovery tool, its purpose and the responsibilities and procedures of participants and the FMIs subject to the recovery tool's application to effectively manage participants' expectations. Transparency also mitigates performance risk by detailing the obligations and procedures of FMIs and participants beforehand to support the timely and effective rollout of recovery tools.

- Designed to create appropriate incentives for sound risk management and encourage voluntary participation in recovery to the greatest extent possible. This may include distributing post-recovery proceeds to participants that supported the FMI through the recovery process.

9 Recovery Report, Paragraph ~~2.4.8~~2.4.8.

10 Recovery Report, Paragraph 2.3.6 – 2.3.7 and 2.5.6 and Paragraphs 3.4.1 – ~~3.4.7~~– 3.4.7.

11 Recovery Report, Paragraph ~~3.3.1~~3.3.1.

Systemic stability

Certain tools may have serious consequences for participants and for the stability of financial markets more generally. FMIs should use prudence and judgment in the selection of appropriate tools. Canadian authorities are of the view that FMIs should be cautious in using tools that can create uncapped, unpredictable or ill-defined participant exposures, and which could create uncertainty and disincentives to participate in an FMI. Any such use would need to be carefully justified. Participants' ability to predict and manage their exposures to recovery tools is important, both for their own stability and for the stability of the indirect participants of an FMI.

In assessing FMI recovery plans, Canadian authorities are concerned with the possibility of systemic disruptions from the use of certain tools or tools that pose unquantifiable risks to participants. When determining which recovery tools should be included in a recovery plan, and selecting and applying such tools during the recovery phase, FMIs should keep in mind the objective of minimizing their negative impacts on participants, the FMI and the broader financial system.

Recommended recovery tools

This section outlines recommended recovery tools for use in FMI recovery plans. Not all tools are applicable for the different types of FMIs (e.g., a payment system versus a central counterparty), nor is this an exhaustive list of tools that may be available for recovery. Each FMI should use discretion when determining the most appropriate tools for inclusion in its recovery plan, consistent with the considerations discussed above.

Cash calls

Cash calls are recommended for recovery plans to the extent that the exposures they generate are fixed and determinable; for example, capped and limited to a maximum number of rounds over a specified period, established in advance. In this context, participant exposures should be linked to each participant's risk-weighted level of FMI activity.

By providing predictable exposures pro-rated to a participant's risk-weighted level of activity, FMIs create incentives for better risk management on the part of participants, while giving the FMI greater certainty over the amount of resources that can be made available during recovery.

Since cash calls rely on contingent resources held by FMI participants, there is a risk that they may not be honoured, reducing their effectiveness as a recovery tool. The management of participants' expectations, especially through the placement of clear limits on participant exposure, can mitigate this concern.

Cash calls can be designed in multiple ways to structure incentives, vary their impacts on participants and respond to different stress scenarios. When designing cash calls, FMIs should, to the greatest extent possible, seek to minimize the negative consequences of the tool's use.

Variation margin gains haircutting (VMGH)

VMGH is recommended for recovery plans because participant exposure under this tool can be measured with reasonable confidence, as it is tied to the level of risk held in the variation margin (VM) fund and the potential for gains. Where recovery plans allow for multiple rounds of VMGH, Canadian authorities will consider the impact of each successive round of haircutting with increasing focus on systemic stability.

VMGH relies on participant resources posted at the FMI as variation margin (VM). Where the price movements of underlying instruments create sufficient VM gains for use in recovery, VMGH provides an FMI with a reliable and timely source of financial resources without the performance risk that is associated with tools reliant on resources held by participants.

VMGH assigns losses and shortfalls only to participants with net position gains; as a result, the pro rata financial burden is higher for these participants. The negative effects of VMGH can also be compounded for participants who rely on variation margin gains to honour obligations outside the FMI. FMIs should seek to minimize these negative effects to the greatest extent possible.

Voluntary contract allocation

To recover from an unmatched book caused by a participant default, a CCP can use its powers to allocate unmatched contracts.[12] In the context of recovery, contract allocation is encouraged on a voluntary basis –for example, by auction. Voluntary contract allocation addresses unmatched positions while taking participant welfare into account, since only participants who are willing to take on positions will participate.

The reliance on a voluntary process, such as an auction, introduces the risk that not all positions will be matched or that the auction process is not carried out in a timely manner. Defining the responsibilities and procedures for voluntary contract allocation (e.g., the auction rules) in advance will mitigate this risk and increase the reliability of the tool. To ensure that there is adequate participation in an auction process, FMIs should create incentives for participants to take on unmatched positions. FMIs may also wish to consider expanding the auction beyond direct participants to increase the chances that all positions will be matched.

Voluntary contract tear-up

Since eliminating positions can help re-establish a matched book, Canadian authorities view voluntary contract tear-up as a potentially effective tool for FMI recovery. To this end, FMIs may want to consider using incentives to encourage voluntary tear-up during recovery.[13] While contract tear-up undertaken on a voluntary basis is a recommended tool, the forced termination of an incomplete trade may represent a disruption of a critical FMI service, and can be intrusive to apply (see the section "Tools requiring further justification" for a discussion of forced contract tear-up).

To the extent that voluntary contract tear-up may disrupt critical FMI services, it can produce disincentives to participate in an FMI. There should be a strong legal basis for the relevant processes and procedures when ~~a~~ voluntary contract tear-up is included in a recovery plan. This will help to manage participant expectations for this tool and ensure that confidence in the FMI is maintained.

Other tools available for FMI recovery include standing third-party liquidity lines, contractual liquidity arrangements with participants, insurance against financial loss, increased contributions to pre-funded resources, and use of an FMI's own capital beyond the default waterfall. These and other tools are often already found in the pre-recovery risk-management frameworks of FMIs. Canadian authorities encourage their use for recovery as well, provided they are in keeping with the criteria for effective recovery tools as found in the Recovery Report and in this guidance.[14] Where system-specific recovery needs necessitate, FMIs can also design recovery tools not explicitly listed in this guidance. The applicability of such tools will be examined by the Canadian authorities when they review the proposed recovery plan.

To the extent that the costs of recovery are shared less equally under some tools (e.g., VMGH), if it is financially feasible, FMIs could consider post-recovery actions to restore fairness where participants have been disproportionately affected. Such actions may include the repayment of participant contributions used to address liquidity shortfalls and other instruments that aim to redistribute the burden of losses allocated during recovery. It is important to note that these actions in the post-recovery period should not impair the financial viability of the FMI as a going concern.

Tools requiring further justification

Due to their uncertain and potentially negative effects on the broader financial system, tools that are more intrusive or result in participant exposures that are difficult to measure, manage or control, must be carefully considered and justified with strong rationale by the FMI when they are included in a recovery plan. Canadian authorities will provide their views on the suitability of any such tools as part of their review of recovery plans.

For example, uncapped and unlimited cash calls and unlimited rounds of VMGH can create ambiguous participant exposures, the negative effects of which must be prudently considered when including them in a recovery plan. In addition, when applied during the recovery process, Canadian authorities will monitor the application of each successive round of cash calls and VMGH with increased focus on systemic stability.

Tools such as involuntary (forced) contract allocation and involuntary (forced) contract tear-up create exposures that are difficult to manage, measure and control. To the extent that these tools are even more intrusive, they have the ability to pose greater risk to systemic stability. Canadian authorities acknowledge that such tools have potential utility when other recovery options are

[12] A CCP "matched book" occurs when a position taken on by the CCP with one clearing member is offset by an opposite position taken on with a second clearing member. A matched book must be maintained for the CCP to complete a trade. An unmatched book occurs when one participant defaults on its position in the trade, leaving the CCP unable to complete the transaction.

[13] Recovery Report, Paragraph ~~4.5.3~~4.5.3.

[14] Recovery Report, Paragraph ~~3.3.1~~3.3.1.

ineffective, and could possibly be used by a resolution authority, but expect FMIs to carefully assess the potential impact of such tools on participants and the stability of the broader financial system.

Canadian authorities do not encourage the use of non-defaulting participants' initial margin in FMI recovery plans considering the potential for significant negative impacts.[15] Similarly, a recovery plan should not assume any extraordinary form of public or central bank support.[16]

Recovery from non-default-related losses and structural weaknesses

Consistent with a defaulter-pays principle, an FMI should rely on FMI-funded resources to address recovery from non-default-related losses (i.e., operational and business losses on the part of an FMI), including losses arising from structural weakness.[17] To this end, FMIs should examine ways to increase the loss absorbency between the FMI's pre-recovery risk-management activities and participant-funded resources (e.g., by using FMI-funded insurance against operational risks).
Structural weakness can be an impediment to the effective rollout of recovery tools and may itself result in non-default-related losses that are a trigger for recovery. An FMI recovery plan should identify procedures detailing how to promptly detect, evaluate and address the sources of underlying structural weakness on a continuous basis (e.g., unprofitable business lines, investment losses).

The use of participant-funded resources to recover from non-default-related losses can lessen incentives for robust risk management within an FMI and provide disincentives to participate. If, despite these concerns, participants consider it in their interest to keep the FMI as a going concern, an FMI and its participants may agree to include a certain amount of participant-funded recovery tools to address some non-default-related losses. Under these circumstances, the FMI should clearly explain under what conditions participant resources would be used and how costs would be distributed.

Defining full allocation of uncovered losses and liquidity shortfalls

Principles 4 (credit risk)[18] and 7 (liquidity risk)[19] of the PFMIs require that FMIs should specify rules and procedures to fully allocate both uncovered losses and liquidity shortfalls caused by stress events. To be consistent with this requirement, **Canadian FMIs should consider various stress scenarios and have rules and procedures that allow them to fully allocate any losses or liquidity shortfalls arising from these stress scenarios, in excess of the capacity of existing pre-recovery risk controls.** Tools used to address full allocation should reflect the Recovery Report's characteristics of effective recovery tools, including the need to have them ~~measureable~~measurable, manageable and controllable to those who will bear the losses and liquidity shortfalls in recovery, and for their negative impacts to be minimized to the greatest extent possible.

Legal consideration for full allocation

An FMI's rules for allocating losses and liquidity shortfalls should be supported by relevant laws and regulations. There should be a high level of certainty that rules and procedures to fully allocate all uncovered losses and liquidity shortfalls are enforceable and will not be voided, reversed or stayed.[20] This requires that Canadian FMIs design their recovery tools in compliance with Canadian laws. For example, if the FMI's loss-allocation rules involve a guarantee, Canadian law generally requires that the guaranteed amount be determinable and preferably capped by a fixed amount.[21]

FMIs should consider whether it is appropriate to involve indirect participants in the allocation of losses and shortfalls during recovery. To the extent that it is permitted, such arrangements should have a strong legal and regulatory basis; respect the FMI's frameworks for tiered participation, segregation and portability; and involve consultation with indirect participants to ensure that all relevant concerns are taken into account.

Overall, FMIs are responsible for seeking appropriate legal advice on how their recovery tools can be designed and for ensuring that all recovery tools and activities are in compliance with the relevant laws and regulations.

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15 Recovery Report, Paragraph ~~4.2.26~~4.2.26.

16 Recovery Report, Paragraph ~~2.3.1~~2.3.1.

17 Structural weakness can be caused by factors such as poor business strategy, poor investment and custody policy, poor organizational structure, IM/IT-related obstacles, poor legal or regulatory risk frameworks, and other insufficient internal controls.

18 Under key consideration 7 of PFMI Principle 4, an FMI should establish explicit rules and procedures that fully address any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the FMI.

19 Under key consideration 10 of PFMI Principle 7, FMIs should establish rules and procedures that address unforeseen and potentially uncovered liquidity shortfalls and should aim to avoid unwinding, revoking or delaying the same-day settlement of payment obligations.

20 ~~CPMI-IOSCO Principles for Financial Market Infrastructures~~ PFMI Report, Paragraph ~~3.1.10~~3.1.10.

21 The Bank Act, Section ~~414.1~~414(1) and IIROC Rule 100.14 prohibit banks and securities dealers, respectively, from providing unlimited guarantees to an FMI or a financial institution.

Additional Considerations in Recovery Planning

Transparency and coherence[22]

An FMI should ensure that its recovery plan is coherent and transparent to all relevant levels of management within the FMI, as well as to its regulators and overseers. To do so, a recovery plan should

- contain information at the appropriate level and detail; and
- be sufficiently coherent to relevant parties within the FMI, as well as to the regulators and overseers of the FMI, to effectively support the application of the recovery tools.

An FMI should ensure that the assumptions, preconditions, key dependencies and decision-making processes in a recovery plan are transparent and clearly identified.

Relevance and flexibility[23]

An FMI's recovery plan should thoroughly cover the information and actions relevant to extreme but plausible market conditions and other situations that would call for the use of recovery tools. An FMI should take into account the following elements when developing its recovery plan:

- the nature, size and complexity of its operations;
- its interconnectedness with other entities;
- operational functions, processes and/or infrastructure that may affect the FMI's ability to implement its recovery plan; and
- any upcoming regulatory reforms that may have the potential to affect the recovery plan.

Recovery plans should be sufficiently flexible to address a range of FMI-specific and market-wide stress events. Recovery plans should also be structured and written at a level that enables the FMI's management to assess the recovery scenario and initiate appropriate recovery procedures. As part of this expectation, the recovery plan should demonstrate that senior management has assessed the potential two-way interaction between recovery tools and the FMI's business model, legal entity structure, and business and risk-management practices.

Implementation of Recovery Plan[24]

An FMI should have credible and operationally feasible approaches to recovery planning in place and be able to act upon them in a timely manner, under both idiosyncratic and market-wide stress scenarios. To this end, recovery plans should describe

- potential impediments to applying recovery tools effectively and strategies to address them; and
- the impact of a major operational disruption.[25]

This information is important to strengthen a recovery plan's resilience to shocks and ensure that the recovery tools are actionable.

A recovery plan should also include an escalation process and the associated communication procedures that an FMI would take in a recovery situation. Such a process should define the associated timelines, objectives and key messages of each communication step, as well as the decision-makers who are responsible for it.

Consulting Canadian authorities when taking recovery actions

While the responsibility for implementing the recovery plan rests with the FMI, Canadian authorities consider it critical to be informed when an FMI triggers its recovery plan and before the application of recovery tools and other recovery actions. To the

22 Recovery Report, Section ~~2.3.~~2.3

23 Recovery Report, Section 2.3.

24 Recovery Report, Paragraph ~~2.3.9~~2.3.9.

25 This is also related to the FMI's backup and contingency planning, which are distinct from recovery plans.

extent an FMI intends to use a tool or take a recovery action that might have significant impact on its participants (e.g. tools requiring further justification), the FMI should consult Canadian authorities before using such tools or taking such actions to demonstrate how it has taken into account potential financial stability implications and other relevant public interest considerations. Authorities include those responsible for the regulation, supervision and oversight of the FMI, as well as any authorities who would be responsible for the FMI if it were to be put into resolution.

Relevant Canadian authorities should be informed (or consulted as appropriate) early on and interaction with authorities should be explicitly identified in the escalation process of a recovery plan. Acknowledging the speed at which an FMI may enter recovery, FMIs are encouraged to develop formal communications protocols with authorities in the event that recovery is triggered and immediate action is required.

Review of Recovery Plan[26]

An FMI should include in its recovery plan a robust assessment of the recovery tools presented and detail the key factors that may affect their application. It should recognize that, while some recovery tools may be effective in returning the FMI to viability, these tools may not have a desirable effect on its participants or the broader financial system.

A framework for testing the recovery plan (for example, through scenario exercises, periodic simulations, back-testing and other mechanisms) should be presented either in the plan itself or linked to a separate document. This impact assessment should include an analysis of the effect of applying recovery tools on financial stability and other relevant public interest considerations.[27] Furthermore, an FMI should demonstrate that the appropriate business units and levels of management have assessed the potential consequences of recovery tools on FMI participants and entities linked to the FMI.

Annual review of recovery plan

An FMI should review and, if necessary, update its recovery plan on an annual basis. The recovery plan should be subject to approval by the FMI's Board of Directors.[28] Under the following circumstances, an FMI is expected to review its recovery plan more frequently:

- ~~□~~ if there is a significant change to market conditions or to an FMI's business model, corporate structure, services provided, risk exposures or any other element of the firm that could have a relevant impact on the recovery plan;
- ~~□~~ if an FMI encounters a severe stress situation that requires appropriate updates to the recovery plan to address the changes in the FMI's environment or lessons learned through the stress period; and
- ~~□~~ if the Canadian authorities request that the FMI update the recovery plan to address specific concerns or for additional clarity.

Canadian authorities will also review and provide their views on an FMI's recovery plan before it comes into effect. This is to ensure that the plan is in line with the expectations of Canadian authorities.

Orderly Wind-Down Plan as Part of a Recovery Plan[29]

Canadian authorities expect FMIs to prepare, as part of their recovery plans, for the possibility of an orderly wind-down. However, developing an orderly wind-down plan may not be appropriate or operationally feasible for some critical services. In this instance, FMIs should consult with the relevant authorities on whether they can be exempted from this requirement.

Considerations when developing an orderly wind-down plan

An FMI should ensure that its orderly wind-down plan has a strong legal basis. This includes actions concerning the transfer of contracts and services, the transfer of cash and securities positions of an FMI, or the transfer of all or parts of the rights and obligations provided in a link arrangement to a new entity.

In developing orderly wind-down plans, an FMI should elaborate on

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26 Recovery Report, Paragraph ~~2.3.8~~2.3.8.

27 This is in line with key consideration 1 of PFMI Principle 2 (Governance), which states that an FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.

28 Recovery Report, Paragraph ~~2.3.3~~2.3.3.

29 Recovery Report, Paragraph ~~2.2.2~~2.2.2.

- ~~□~~ the scenarios where an orderly wind-down is initiated, including the services considered for wind-down;
- ~~□~~ the expected wind-down period for each scenario, including the timeline for when the wind-down process for critical services (if applicable) would be complete; and
- ~~□~~ measures in place to port critical services to another FMI that is identified and assessed as operationally capable of continuing the services.

Disclosure of recovery and orderly wind-down plans

An FMI should disclose sufficient information regarding the effects of its recovery and orderly wind-down plans on FMI participants and stakeholders, including how they would be affected by (i) the allocation of uncovered losses and liquidity shortfalls and (ii) any measures the CCP would take to re-establish a matched book. In terms of disclosing the degree of discretion an FMI has in applying recovery tools, an FMI should make it clear to FMI participants and all other stakeholders ahead of time that all recovery tools and orderly wind-down actions that an FMI can apply will only be employed after consulting with the relevant Canadian authorities.

Note that recovery and orderly wind-down plans need not be two separate documents; the orderly wind-down of critical services may be a part or subset of the recovery plan. Furthermore, Canadian FMIs may consider developing orderly wind-down plans for non-critical services in the context of recovery if winding down non-critical services could assist in or benefit the recovery of the FMI.

~~Annex~~Appendix: Guidelines on the Practical Aspects of FMI Recovery Plans

The following example provides suggestions on how an FMI recovery plan could be organized.

~~Critical Services~~

~~Identify critical services, following guidance on factors to consider.~~

~~Risks faced by the FMI~~

~~Identify types of risks the FMI is exposed to.~~

~~Stress Scenarios~~

- ~~For each type of risk, identify stress scenario(s).~~
- ~~For each scenario, explain where existing risk management tools have become insufficient to cover losses or liquidity shortfalls, thereby necessitating the use of recovery tools.~~

~~Trigger~~

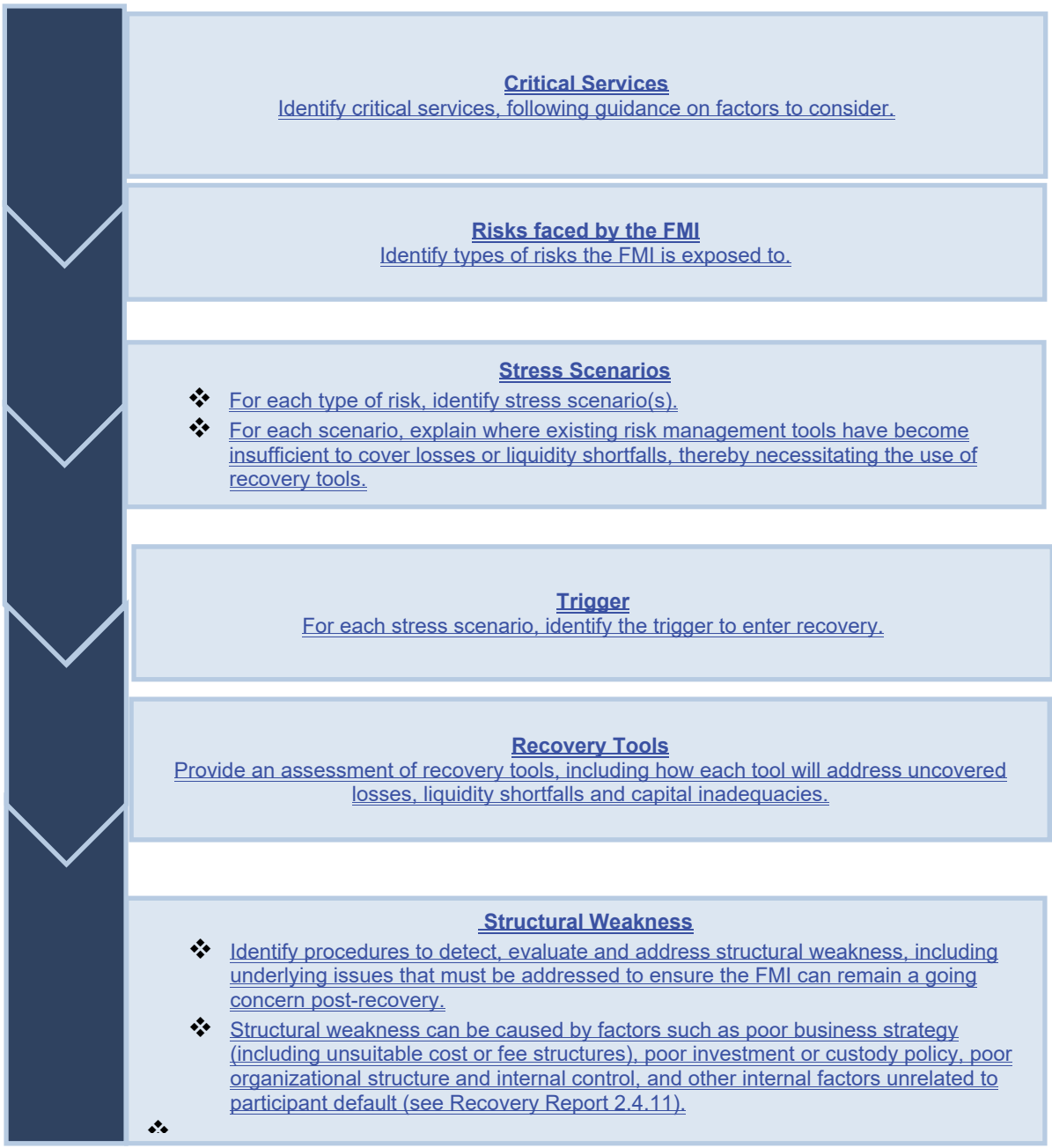
~~For each stress scenario, identify the trigger to enter recovery.~~

~~Recovery Tools~~

~~Provide an assessment of recovery tools, including how each tool will address uncovered losses, liquidity shortfalls and capital inadequacies.~~

~~Structural Weakness~~

- ~~Identify procedures to detect, evaluate and address structural weakness, including underlying issues that must be addressed to ensure the FMI can remain a going concern post recovery.~~
- ~~Structural weakness can be caused by factors such as poor business strategy (including unsuitable cost or fee structures), poor investment or custody policy, poor organizational structure and internal control, and other internal factors unrelated to participant default (see Recovery Report 2.4.11).~~



~~- *PFMI Principle 5: Collateral*~~

~~**Box 5.1:**~~
~~**Joint Supplementary Guidance – Collateral**~~

~~*Context*~~

~~The PFMIs establish the form and attributes of collateral that an FMI holds to manage its own credit exposures or those of its participants. This note provides additional guidance for Canadian FMIs to meet the components of the collateral principle related to: (i) acceptance of collateral with low credit, liquidity and market risk; (ii) concentrated holdings of certain assets; and (iii) calculating haircuts. In certain circumstances, regulators may allow exceptions to the collateral policy on a case-by-case basis if~~

the FMI demonstrates that the risks can be adequately managed.

(i) Acceptable collateral

An FMI should conduct its own assessment of risks when determining collateral eligibility. In general, collateral held to manage the credit exposures of the FMI or those of its participants should have minimal credit, liquidity and market risk, even in stressed market conditions. However, asset categories with additional risk may be accepted when subject to conservative haircuts and adequate concentration limits.[1]

The following clarifies regulators' expectations on what is acceptable collateral.

Minimum requirements for acceptable collateral

An FMI should conduct its own internal assessment of the credit, liquidity and market risk of the assets eligible as collateral. The FMI should review its collateral policy at least annually, and whenever market factors justify a more frequent review. At a minimum, acceptable assets should:

- **be freely transferable without legal, regulatory, contractual or any other constraints that would impair liquidation in a default;**
- **be marketable securities that have an active outright sale market even in stressed market conditions;**
- **have reliable price data published on a regular basis;**
- **be settled over a securities settlement system compliant with the Principles; and**
- **be denominated in the same currency as the credit exposures being managed, or in a currency that the FMI can demonstrate it has the ability to manage.**

An FMI should not rely only on external opinions to determine what acceptable collateral is. The FMI should conduct its own assessment of the riskiness of assets, including differences within a particular asset category, to determine whether the risks are acceptable. Since the primary purpose of accepting collateral is to manage the credit exposures of the FMI and its participants, it is paramount that assets eligible as collateral can be liquidated for fair value within a reasonable time frame to cover credit losses following a default. The annual review of the FMI's collateral policy provides an opportunity to assess whether risks continue to be adequately managed. Owing to the dynamic nature of capital markets, the FMI should monitor changes in the underlying risk of the specific assets accepted as collateral, and should adjust its collateral policy in the interim period between annual reviews, when required.

At a minimum, an asset should have certain characteristics in order to provide sufficient assurance that it can be liquidated for fair value within a reasonable time frame. These characteristics relate primarily to the FMI's ability to reliably sell the asset as required to manage its credit exposures. The asset should be unencumbered, that is, it must be free of legal, regulatory, contractual or other restrictions that would impede the FMI's ability to sell it. The challenges associated with selling or transferring non-marketable assets, or those without an active secondary market, preclude their acceptance as collateral.

Accepted asset categories

Assets generally judged to have minimal credit, liquidity and market risk are the following:

- **cash;**
- **securities issued or guaranteed[2] by the Government of Canada;**
- **securities issued or guaranteed by a provincial government; and**
- **securities issued by the U.S. Treasury.**

In general, the assets judged to have minimal risk are cash and debt securities issued by government entities with unique powers, such as the ability to raise taxes and set laws, and that have a low probability of default. Total Canadian debt outstanding is currently dominated by securities issued or guaranteed by the Government of Canada and by provincial governments. The relatively large supply of securities issued by these entities and their generally high creditworthiness

[1] See PFMI Principle 5, key considerations 1 and 4.

[2] Guarantees include securities issued by federal and provincial Crown corporations or other entities with an explicit statement that debt issued by the entity represents the general obligations of the sovereign.

contribute to the liquidity of these assets in the domestic capital market. Securities issued by the U.S. Treasury are also deemed to be of high quality for the same reasons. The overall riskiness of securities issued by the Government of Canada and the U.S. Treasury is further reduced by their previous record of maintaining value in stressed market conditions, when they tend to benefit from a "flight to safety."

It is essential that an FMI regularly assesses the riskiness of even the specific high quality assets identified in this section to determine their adequacy as eligible collateral. In some cases, only certain assets within the more general asset category may be deemed acceptable.

Additional asset categories

An FMI should consider its own distinct arrangements for allocating credit losses and managing credit exposures when accepting a broader range of assets as collateral. The following asset classes may be acceptable as collateral if they are subject to conservative haircuts and concentration limits:

- **securities issued by a municipal government;**
- **bankers' acceptances;**
- **commercial paper;**
- **corporate bonds;**
- **asset-backed securities that meet the following criteria: (1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level, (2) part of a securitization program supported by a liquidity facility , and (3) backed by assets of an acceptable credit quality;**
- **equity securities traded on marketplaces regulated by a member of the CSA and the Investment Industry Regulatory Organization of Canada; and**
- **other securities issued or guaranteed by a government, central bank or supranational institution classified as Level 1 high-quality assets by the Basel Committee on Banking Supervision.**

An FMI should take into account its specific risk profile when assessing whether accepting certain assets as collateral would be appropriate. The decision to broaden the range of acceptable collateral should also consider the size of collateral holdings to cover the credit exposures of the FMI relative to the size of asset markets. In cases where the total collateral required to cover credit exposures is small compared with the market for high-quality assets, there is less potential strain on participants to meet collateral requirements.

Accepting a broader range of collateral has certain advantages. Most importantly, it provides participants with more flexibility to meet the FMI's collateral requirements, which may be especially important in stressed market conditions. A broader range of collateral diversifies the risk exposures faced by the FMI, since it may be easier to liquidate diversified collateral holdings when liquidity unexpectedly dries up for a particular asset class. It also diversifies market risk by reducing potential exposure to idiosyncratic shocks. Accepting a broader range of assets recognizes the increased cost to market participants of posting only the highest-quality assets, as well as the increasing encumbrance of these assets in order to meet new regulatory standards.[3]

(ii) Concentration Limits

An FMI should avoid concentrated holding of assets where this could potentially introduce credit, market and liquidity risk beyond acceptable levels. In addition, the FMI should mitigate specific wrong-way risk by limiting the acceptance of collateral that would likely lose value in the event of a participant default, and prevent participants from posting assets they or their affiliates have issued. The FMI should measure and monitor the collateral posted by participants on a regular basis, with more frequent analysis required when more flexible collateral policies have been implemented.[4]

The following points clarify regulators' expectations regarding the composition of collateral accepted by an FMI.

Concentration risk limits

An FMI should limit assets from the broader range of acceptable assets identified in the previous section ("Additional asset categories") to a maximum of 40 per cent of the total collateral posted from each participant. Within the broader range of acceptable assets, the FMI should consider implementing more specific concentration limits for different

[3] The encumbrance of high-quality assets is expected to increase through a number of regulatory reforms, including Basel III, over-the-counter derivatives reform and the Principles.

[4] See Principle 5, key considerations 1 and 4.

~~**asset categories.**~~

~~**An FMI should limit securities issued by a single issuer from the broader range of acceptable assets to a maximum of 5 per cent of total collateral from each participant.**~~

~~The guidance limits the acceptance of collateral from the broader range of assets to a maximum of 40 per cent because a higher proportion could potentially create unacceptable risks to FMIs and their participants. This limit is currently applied to the Bank's Standing Liquidity Facility and the Liquidity Coverage Ratio under Basel III. The benefits of expanding collateral—namely, providing participants with more flexibility and achieving greater diversification—are achieved within the limit of 40 per cent, with collateral in excess of this limit increasing the overall risk exposures with less benefit. In some circumstances, regulators may permit an FMI to accept more than 40 per cent of total collateral from the broader range of assets if the risk from a particular participant is low.~~

~~Employing a limit of 5 per cent of total collateral for securities issued by a single issuer is a prudent measure to limit exposures from idiosyncratic shocks. It also reduces the need for procyclical adjustments to collateral requirements following a decline in value.~~

~~An FMI should consider implementing more stringent concentration limits, as well as imposing limits on certain asset categories, depending on the FMI's specific arrangements for managing credit exposures. The considerations described in the previous section ("Additional asset categories") for accepting a broader range of assets as collateral apply equally to the decision over whether more stringent concentration limits should be implemented.~~

~~Specific wrong-way risk limits~~

~~**An FMI should limit the collateral from financial sector issuers to a maximum of 10 per cent of total collateral pledged from each participant. The FMI should not allow participants to post their own securities or those of their affiliates as collateral.**~~

~~An FMI is exposed to specific wrong-way risk when the collateral posted is highly likely to decrease in value following a participant default. It is highly likely that the value of debt and equity securities issued by companies in the financial sector would be adversely affected by the default of an FMI participant, introducing wrong-way risk. This is especially the case for interconnected FMI participants with activities that are concentrated in domestic financial markets. Implementing a limit on financial sector issuers mitigates potential risk exposures from specific wrong-way risk. More stringent limits should be implemented where appropriate.~~

~~Collateral monitoring~~

~~**In cases where only the highest-quality assets are accepted, an FMI is required to measure and monitor the collateral posted by participants during periodic evaluations of participant creditworthiness. The FMI should measure and monitor the correlation between a participant's creditworthiness and the collateral posted more frequently when a broader range of collateral is accepted. The FMI should have the ability to adjust the composition and to increase the collateral required from participants experiencing a reduction in creditworthiness.**~~

~~When only the highest-quality assets are accepted as collateral, there is less risk associated with the composition of collateral posted by a participant; hence, such risk does not need to be monitored as closely. The FMI should monitor the composition of collateral pledged by participants more frequently when riskier assets are eligible, since such assets are more likely to be correlated with the participant's creditworthiness. FMIs should also consider the general credit risk of their participants when deciding how frequently monitoring should be conducted. In all circumstances, the FMI should have the contractual and legal ability to unilaterally require more collateral and to request higher-quality collateral from a participant that is judged to present a greater risk.~~

~~***(iii) Haircuts***~~

~~An FMI should establish stable and conservative haircuts that consider all aspects of the risks associated with the collateral. An FMI should evaluate the performance of haircuts by conducting backtesting and stress testing on a regular basis.[5]~~

~~The following points clarify regulators' expectations regarding the calculation and testing of haircuts.~~

~~Calculating haircuts~~

~~[5] See PFMI Principle 5, key considerations 2 and 3.~~

An FMI should apply stable and conservative haircuts that are calibrated against stressed market conditions. When the same haircut is applied to a group of securities, it should be sufficient to cover the riskiest security within the group. Haircuts should reflect both the specific risks of the collateral accepted and the general risks of an FMI's collateral policy.

Including periods of stressed market conditions in the calibration of haircuts should increase the haircut rate. In addition to representing a conservative approach, this helps to mitigate the risk of a procyclical increase in haircuts during a period of high volatility. Typically, FMIs group similar securities by shared characteristics for the purposes of calculating haircuts (e.g., Government of Canada bonds with similar maturities). An FMI should recognize the different risks associated with each individual security by ensuring that the haircut is sufficient to cover the security with the most risk within each group. Haircuts should always account for all of the specific risks associated with each asset accepted as collateral. However, the FMI should also consider the portfolio risk of the total collateral posted by a participant; the FMI may consider employing deeper haircuts for concentration and wrong-way risk above certain thresholds.

Verifying the adequacy of haircuts and overall collateral accepted

An FMI should perform backtesting of its collateral haircuts on at least a monthly basis, and conduct a more thorough review of haircuts quarterly. The FMI's stress tests should take into account the collateral posted by participants.

FMIs are expected to calculate stable and conservative haircuts by considering stressed market conditions. In general, including stressed market conditions in the calibration of haircuts should provide a high level of coverage that does not require continuous testing and verification. Nonetheless, backtesting on a monthly basis allow the adequacy of haircuts to be evaluated against observed outcomes. A quarterly review of haircuts balances the objective of stable haircuts with the need to adjust haircuts as required. Including changes to collateral values as part of stress testing provides a more accurate assessment of potential losses in a default scenario.

- ***PFMI Principle 7: Liquidity risk***

Box 7.1:
Joint Supplementary Guidance – Liquidity Risk

Context

The PFMIs define liquidity risk as risk that arises when the FMI, its participants or other entities cannot settle their payment obligations when due as part of the clearing or settlement process. This note provides additional guidance for Canadian FMIs to meet the components of the liquidity risk principle related to: (i) maintaining sufficient liquid resources and (ii) qualifying liquid resources.

(i) Maintaining sufficient liquid resources

An FMI should maintain sufficient qualifying liquid resources to cover its liquidity exposures to participants with a high degree of confidence. An FMI should maintain additional liquid resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible conditions. Liquidity stress testing should be performed on a daily basis. An FMI should verify that its liquid resources are sufficient through comprehensive stress testing conducted at least monthly.[1]

The information provided in this section clarifies regulators' expectations of sufficient qualifying liquid resources.

Liquidity exposure coverage

Qualifying liquid resources should meet an established single-tailed confidence level of at least 97 per cent with respect to the estimated distribution of potential liquidity exposures.[2] The FMI should have an appropriate method for estimating potential exposures that accounts for the design of the FMI and other relevant risk factors.

The guidance requires a high threshold for covering liquidity exposures with qualifying liquid resources, while also considering the expense associated with obtaining these resources. A 97 per cent degree of confidence is equivalent to less than one

[1] See PFMI Principle 7, key considerations 3, 5, 6 and 9.

[2] A "potential liquidity exposure" is defined as the estimated maximum daily liquidity needs resulting from the market value of the FMI's payment obligations under normal business conditions. FMIs should consider potential liquidity exposures over a rolling one-year time frame.

observation per month (on average) in which a liquidity exposure is greater than the FMI's qualifying liquid resources. However, if it is to meet the required threshold, the FMI should estimate its potential liquidity exposures accurately. The FMI should account for all relevant predictive factors when estimating potential exposures. While historical exposures are expected to form the basis of estimated potential exposures, the FMI should account for the impact of new products, additional participants, changes in the way transactions settle or other relevant market- risk factors.

Total liquid resources

An FMI should maintain additional liquid resources that are sufficient to cover a wide range of potential stress scenarios. Total liquid resources should cover the FMI's largest potential exposure under a variety of extreme but plausible conditions. The FMI should have a liquidity plan that justifies the use of other liquid resources and provides the supporting rationale for the total liquid resources that it maintains.

The guidance requires that total liquid resources be determined by the largest potential exposure in extreme but plausible conditions. This implies maintaining total liquid resources sufficient to cover at least the FMI's largest observed liquidity exposures, but the liquidity resources would likely be larger, based on an assessment of potential liquidity exposures in extreme but plausible conditions. The FMI's liquidity plan should explain why the FMI's estimated largest potential exposure is an accurate assessment of the FMI's liquidity needs in extreme but plausible conditions, thereby demonstrating the adequacy of the FMI's total liquid resources.

It is permissible for an FMI to manage this risk in part with other liquid resources because it may be prohibitively expensive, or even impossible, for the FMI to obtain sufficient qualifying liquid resources. FMIs face increased risk from liquid resources that do not meet the strict definition of "qualifying," and thus an FMI should include in its liquidity plan a clear explanation of how these resources could be used to satisfy a liquidity obligation. This additional explanation is warranted in all cases, even when the FMI's dependence on other liquid resources is minimal.

When applicable, the possibility that a defaulting participant is also a liquidity provider should be taken into account.

Generally, the liquidity providers for Canadian FMIs are also participants in the FMI. When a defaulting participant is also a liquidity provider, it is important that the FMI's liquidity facilities are arranged in such a way that it has sufficient liquidity. To do so, the FMI should either have additional liquid resources or negotiate a backup liquidity provider, so that the FMI has sufficient liquidity (as specified in this guidance) in the event that one of its liquidity providers defaults.

Verifying sufficiency of liquid resources

FMIs should perform liquidity stress testing on a daily basis to assess their liquidity needs. At least monthly, FMIs should conduct comprehensive stress tests to verify the adequacy of their total liquid resources and to serve as a tool for informing risk management. Stress-testing results should be reviewed by the FMI's risk-management committee and reported to regulators on a regular basis.

FMIs should have clear procedures to determine whether their liquid resources are sufficient and to adjust their available liquid resources when necessary. A full review and potential resizing of liquid resources should be completed at least annually.

The annual validation of an FMI's model for managing liquidity risk should determine whether its stress testing follows best practices and captures the potential risks faced by the FMI.

FMIs should assess their liquidity needs through stress testing that includes the measurement of the largest daily liquidity exposure that they face. FMIs should also conduct stress testing to verify whether their liquid resources are sufficient to cover potential liquidity exposures under a wide range of stress scenarios. An annual full review and potential resizing of liquid resources provides adequate time to negotiate with liquidity providers. While it may be impractical for FMIs to frequently obtain additional liquid resources, it is important that FMIs clearly define the circumstances requiring prompt adjustment of their available liquid resources, and have a reliable plan for doing so. Establishing clear procedures provides transparency regarding an FMI's decision making process and prevents the FMI from delaying required increases in liquid resources beyond what is reasonably acceptable. The review of stress- testing results by the FMI's risk-management committee provides additional assurance that liquid resources are sufficient, and whether an interim resizing is necessary. Reporting results to regulators on a monthly basis allows for timely intervention if liquid resources have been deemed inadequate.

Comprehensive stress testing should also encompass a broad range of stress scenarios, not just to verify whether the FMI's liquid resources are sufficient, but also to identify potential risk factors. Reverse stress testing, more extreme stress scenarios, valuation of liquid assets and focusing on individual risk factors (e.g., available collateral) all help to inform the FMI of potential risks. The annual validation of the FMI's risk management model enables it to fully assess the appropriateness of the stress scenarios conducted and the procedures for adjusting liquid resources.

(ii) Qualifying liquid resources

Qualifying liquid resources should be highly reliable and have same-day availability. Liquid resources are reliable when the FMI has near certainty that the resources it expects will be available when required. Qualifying liquid resources should be available on the same day that they are needed by the FMI to meet any immediate liquidity obligation (e.g., a participant's default). Qualifying liquid resources that are denominated in the same currency as the FMI's exposures count toward its minimum liquid resource requirement.[3]

The following section clarifies regulators' expectations as to what is considered a qualifying liquid resource.

Assets in the possession, custody or control of the FMI

Cash and treasury bills[4] in the possession, custody or control of an FMI are qualifying liquid resources for liquidity exposures denominated in the same currency.[5]

Cash held by an FMI does not fluctuate in value and can be used immediately to meet a liquidity obligation, thereby satisfying the criteria for liquid resources to be highly reliable and available on the same day.[6] Treasury bills issued by the Government of Canada or the U.S. Treasury also meet the definition of a qualifying liquid resource. By market convention, sales of treasury bills settle on the same day, allowing funds to be obtained immediately, whereas other bonds can settle as late as three days after the date of the trade. Treasury bills can also be transacted in larger sizes with less market impact than most other bonds. In addition, the shorter term nature of treasury bills makes them more liquid than other securities during a crisis (i.e., they benefit from a "flight to liquidity"). Thus, there is a high degree of certainty that the FMI would obtain liquid resources in the amount expected following the sale of treasury bills.

Liquidity facilities

Committed liquidity facilities are qualifying liquid resources for liquidity exposures denominated in the same currency if the following criteria are met:

- **facilities are pre-arranged and fully collateralized;**
- **there is a minimum of three independent liquidity providers;[7] and**
- **the FMI conducts a level of due diligence that is as stringent as the risk assessment completed for FMI participants.**

For liquidity facilities to be considered reliable, an FMI should have near certainty that the liquidity provider will honour its obligation. Pre-arranged liquidity facilities provide clarity on terms and conditions, allowing greater certainty regarding the obligations and risks of the liquidity providers. Pre-arranged facilities also reduce complications associated with obtaining liquidity, when required. Furthermore, a liquidity provider is most likely to honour its obligations when lending is fully collateralized. Therefore, only the amount that is collateralized will be considered a qualifying liquid resource. A liquidity facility is more reliable when the risk of non-performance is not concentrated in a single institution. By having at least three independent liquidity providers, the FMI would continue to diversify its risks should even a single provider default. To monitor the continued reliability of a liquidity facility, the FMI should assess its liquidity providers on an ongoing basis. In this respect, an FMI's risk exposures to its liquidity providers are similar to the risks posed to it by its participants. Therefore, it is appropriate for the FMI to conduct comparable evaluations of the financial health of its liquidity providers to ensure that the providers have the capacity to perform as expected.

Uncommitted liquidity facilities are considered qualifying liquid resources for liquidity exposures in Canadian dollars if they meet the following additional criteria:

- **the liquidity provider has access to the Bank of Canada's Standing Liquidity Facility (SLF);**
- **the facility is fully collateralized with SLF-eligible collateral; and**

[3] See PFMI Principle 7, key considerations 4, 5 and 6

[4] "Treasury bills" refers to bonds issued by the Government of Canada and the U.S. Treasury with a maturity of one year or less.

[5] This section refers to unencumbered assets free of legal, regulatory, contractual or other restrictions on the ability of the FMI to liquidate, sell, transfer or assign the asset.

[6] "Cash" refers to currency deposits held at the issuing central bank and at creditworthy commercial banks. "Value" in this context refers to the nominal value of the currency.

[7] The Liquidity providers should not be affiliates to be considered independent.

- the facility is denominated in Canadian dollars.

More stringent standards are warranted for uncommitted facilities because a liquidity provider's incentives to honour its obligations are weaker. However, the risk that the liquidity provider will be unwilling or unable to provide liquidity is reduced by the requirement that it needs to be a direct participant in the Large Value Transfer System and that the collateral be eligible for the Standing Liquidity Facility (SLF). This is because the collateral obtained from the FMI in exchange for liquidity can be pledged to the Bank of Canada under the SLF. This option significantly reduces the liquidity pressures faced by the liquidity provider that could interfere with its ability to perform on its obligations. A facility in a foreign currency would not qualify because the Bank does not lend in currencies other than the Canadian dollar. The increased reliability of liquidity providers with access to routine credit from the central bank is recognized explicitly within the PFMIs.

- ***PFMI Principle 15: General business risk***

Box 15.1:
Joint Supplementary Guidance – General Business Risk

Context

The PFMIs define general business risk as any potential impairment of the financial condition (as a business concern) of an FMI owing to declines in its revenue or growth in its expenses, resulting in expenses exceeding revenues and a loss that must be charged against capital. These risks arise from an FMI's administration and operation as a business enterprise. They are not related to participant default and are not covered separately by financial resources under the Credit or Liquidity Risk PFMI Principles. To manage these risks, the PFMIs state that FMIs should identify, monitor and manage their general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses. This note provides additional guidance for Canadian FMIs to meet the components of the general business risk principle related to: (i) governing general business risk; (ii) determining sufficient liquid net assets; and (iii) identifying qualifying liquid net assets. It also establishes the associated timelines and disclosure requirements.

(i) Governance of general business risk

Principle 15, key consideration 1 of the PFMIs states:

> *An FMI should have robust management and control systems to identify, monitor, and manage general business risk.*

The following points clarify the authorities' expectations on how an FMI's governance arrangements should address general business risk.

An FMI's Board of Directors should be involved in the process of identifying and managing business risks.

Management of business risks should be integrated within an FMI's risk-management framework, and the Board of Directors should be responsible for determining risk tolerances related to business risk and for assigning responsibility for the identification and management of these risks. These risk tolerances and the process for the identification and management of business risk should be the foundation for the FMI's business risk-management policy. Based on the PFMIs, the policies and procedures governing the identification and management of business risk should meet the standards outlined below.

- The FMI's business risk-management policy should be approved by the Board of Directors and reviewed at least annually. The policy should be consistent with the Board's overall risk tolerance and risk management strategy.
- The Board's Risk Committee should have a role in advising the Board on whether the business risk-management policy is consistent with the FMI's general risk management strategy and risk tolerance.
- The business risk-management policy should provide clear responsibilities for decision making by the Board, and assign responsibility for the identification, management and reporting of business risks to management.

(ii) Determining sufficient liquid net assets

Principle 15, key consideration 2 of the PFMIs states:

> *An FMI should hold liquid net assets funded by equity […] so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity an FMI should hold should be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.*

Principle 15, key consideration 3 of the PFMIs states:

> *An FMI should maintain a viable recovery or orderly wind-down plan and should hold sufficient liquid net assets funded by equity to implement this plan. At a minimum, an FMI should hold liquid net assets funded by equity equal to at least six months of current operating expenses.*

The following points clarify the authorities' expectations on how FMIs should calculate their sufficient liquid net assets:

FMIs are required to hold liquid net assets to cover a minimum of six months of current operating expenses.

In calculating current operating expenses, FMIs will need to:

- **Assess and understand the various general business risks they face** to allow them to estimate as accurately as possible the required amount of liquid net assets. These estimates should be based on financial projections, which take into consideration, for example, past loss events, anticipated projects and increased operating expenses.
- **Restrict the calculation to ongoing expenses.** FMIs will need to adjust their operating costs such that any extraordinary expenses (i.e., unessential, infrequent or one-off costs) are excluded. Typically, operating costs include both fixed costs (e.g., premises, IT infrastructure, etc.) and variable costs (e.g., salaries, benefits, research and development, etc.).
- **Assess the portion of staff from each corporate department required to ensure the smooth functioning of the FMI during the six-month period.** The calculation of operating expenses would include some indirect costs. FMIs would require not only dedicated operational staff, but also various supporting staff. These could include (but are not limited to) staff from the FMI's Legal, IT and HR departments or staff required to ensure the continued functioning of other FMIs that could be necessary to support the FMI.

To fully observe PFMI Principle 15, FMIs must hold sufficient liquid assets to cover the greater of (i) funds required for FMIs to implement their recovery or wind down; or (ii) six months of current operating expenses. In the interim, until recovery planning guidance is published, only the latter amount will apply.

The amount of liquid net assets required to implement an FMI's recovery or wind-down plans will depend on the scenarios or tools available to the FMI. The acceptable recovery and orderly wind down plans for Canadian FMIs will be articulated by the authorities in forthcoming guidance. Once this guidance on recovery planning has been developed, the guidance on general business risk will be updated to provide FMIs with additional clarity on how to calculate the costs associated with these plans and determine the amount of liquid net assets required.

(iii) Qualifying liquid net assets

Explanatory note 3.15.5 of the PFMIs states:

> *An FMI should hold liquid net assets funded by equity (such as common stock, disclosed reserves or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. Equity allows an FMI to absorb losses on an ongoing basis and should be permanently available for this purpose.*

Principle 15, key consideration 4 of the PFMIs states:

> *Assets held to cover general business risk should be of high quality and sufficiently liquid to allow the FMI to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.*

Principle 15, key consideration 3 of the PFMIs states:

> *These assets are in addition to resources held to cover participant defaults or other risks covered under the financial resources principles.*

The following points clarify the authorities' expectations on which assets qualify to be held against general business risk, and how these assets should be held to ensure that they are permanently available to absorb general business losses.

Assets held against general business risk should be of high quality and sufficiently liquid, such as cash, cash equivalents and liquid securities.

Authorities have developed regulatory guidance related to managing liquidity and investment risks, which provides additional clarity on the definition of cash equivalents and liquid securities, respectively.

- **Cash equivalents** – are considered to be treasury bills[1] issued by either the Canadian or U.S. federal governments. As noted in the liquidity guidance, by market convention, sales of treasuries settle on the same day, allowing funds to be obtained immediately, whereas other bonds can settle as late as three days after the trade date.

- **Liquid securities** – for the purposes of general business risk, liquid securities are defined by the financial instruments criteria listed in the guidance on the Investment Risk Principle. These criteria outline financial instruments considered to have minimal credit, market, and liquidity risk.

Liquid net assets must be held at the level of the FMI legal entity to ensure that they are unencumbered and can be accessed quickly. Liquid net assets may be pooled with assets held for other purposes, but must be clearly identified as held against general business risk.

FMIs may need to accumulate liquid net assets for purposes other than to meet the General Business Risk PFMI Principle. However, assets held against general business risk cannot be used to cover participant default risk or any other risks covered by the financial resources principles.

Liquid net assets can be pooled with assets held for other purposes, but must be clearly identified as held against general business risk in the FMI's reports to its regulators.

(iv) Timelines for assessing and reporting the level of liquid net assets

Explanatory note 3.15.8 of the PFMIs states:

> *To ensure the adequacy of its own resources, an FMI should regularly assess and report its liquid net assets funded by equity relative to its potential business risks to its regulators.*

The following clarifies the authorities' expectations of the frequency with which FMIs should assess and report their required level of liquid net assets.

FMIs should report to authorities the amount of liquid net assets held against business risk annually, at a minimum.

An FMI should report to the authorities the amount of liquid net assets funded by equity held exclusively against business risk and quantify its business risks as major developments arise, or at least on an annual basis. This report should include an explanation of the methodology used to assess the FMI's business risks and to calculate its requirements for liquid net assets.

FMIs should recalculate the required amount of liquid net assets annually, at a minimum.

Once FMI operators have established the amount of liquid net assets required to cover six months of operating expenses, FMIs should recalculate the required amount of liquid net assets as major developments occur, or annually, at a minimum. Once the authorities have provided further guidance on recovery and FMIs have developed recovery plans, FMIs should also evaluate the need to increase the amount of liquid net assets they should hold to meet the General Business Risk Principle.

To establish clear procedures that improve transparency regarding an FMI's decision-making process and to prevent the FMI from delaying required increases in liquid resources beyond what is reasonably acceptable, FMIs should maintain a viable capital plan for raising additional acceptable resources should these resources fall close to or below the amount needed. This plan should be approved by the Board of Directors and updated annually, or as major developments occur.

FMIs should review their methodology for calculating the required level of liquid net assets at least once every five years, or as major developments occur.[2]

The methodology for calculating the amount of required liquid net assets should be reviewed at least every five years to ensure that the calculation remains relevant over time.

- ***PFMI Principle 16: Custody and investment risks***

[1] Treasury bills refer to short term (i.e. maturity of one year or less) debt instruments issued by the Canadian or U.S. federal government.

[2] In the context of this specific guidance item, "major developments" refers to the major changes to operations, product and service offerings, or classes of participation.

Box 16.1:

Joint Supplementary Guidance –
Custody and Investment Risks

Context

The PFMIs define investment risk as the risk faced by an FMI when it invests its own assets or those of its participants.

- An FMI holds assets for a variety of purposes, some of which are referred to specifically in the PFMIs: to cover its business risk (Principle 15), to cover credit losses (Principle 4) and to cover credit exposures (Principle 6) using the collateral pledged by participants.
- An FMI may also hold financial assets for purposes not directly related to the risk management issues addressed within the PFMIs (e.g., employee pensions, general investment assets).

An FMI's strategy for investing assets should be consistent with its overall risk-management strategy (Principle 16). The purpose of this note is to provide further guidance on regulators' expectations regarding the management of investment risk. This guidance helps to ensure that an FMI's investments are managed in a way that protects the financial soundness of the FMI and its participants.[1]

(i) Governance

The PFMIs state that the Board of Directors is responsible for overseeing the risk-management function and approving material risk decisions. An FMI should develop an investment policy to manage the risk arising from the investment of its own assets and those of its participants.

- The FMI's investment policy should be approved by the Board and reviewed at least annually. The policy should be consistent with the Board's overall risk tolerance and considered part of the FMI's risk-management framework.
- The Risk Committee should advise the Board on whether the investment policy is consistent with the FMI's general risk-management strategy and risk tolerance.
- The Board should assess the advantages and disadvantages of managing assets internally or outsourcing them to an external manager. The FMI retains full responsibility for any actions taken by its external manager.
- The FMI should establish criteria for the selection of an external manager.[2]

The FMI's investment policy should clearly identify those who are accountable for investment performance. The investment policy should also:

- Provide a clear explanation of the Board's delegated responsibility for investment decision making.
- Specify clear responsibilities for monitoring investment performance (against established benchmarks) and risk exposures (against limits or constraints). Procedures should be established to ensure that appropriate actions are taken when breaches occur, including possible reporting to the Board.
- Investment performance and key risk metrics should be reported to the Board at least quarterly.[3]

(ii) Investment strategy

The investment strategy chosen by an FMI should not allow the pursuit of profit to compromise its financial soundness. As outlined below, additional consideration should be given to the investment strategy governing assets held specifically for risk-management purposes (i.e. Principle 4-7 and Principle 15).

[1] This guidance on investment risk is based on aspects of Principle 2 – Governance, Principle 3 – Comprehensive Framework for the Management of Risk, and Principle 16 – Custody and Investment Risk.

[2] At a minimum, external managers should have demonstrated past performance and expertise, as well as strong risk-management practices such as an internal audit function and processes to protect and segregate the FMI's assets.

[3] Investment performance may also be reported to a Board committee with special expertise to which the Board has delegated the authority to review investment performance (e.g., an Investment Committee).

Investment objectives

The investment policy should include appropriate investment objectives for the various assets held for risk-management purposes. The stated expected return and risk tolerance of the investment objectives should reflect the:

- specific purpose of the assets;
- relative importance of the assets in the overall risk management of the FMI; and
- requirement within the PFMIs for FMIs to invest in instruments with minimal credit, market and liquidity risk (see the Appendix for the minimum standards of acceptable instruments).

The investment objectives should also help to determine the appropriate benchmarks for measuring investment performance.

Investment constraints

The importance of assets held for risk-management purposes warrants the use of investment constraints. It is paramount that an FMI have prompt access to these assets with minimal price impact to avoid interference with their primary use for risk management. Investment of these assets should, at a minimum, observe the following:

- To reduce concentration risk, no more than 20 per cent of total investments should be invested in municipal and private sector securities. Investment in a single private sector or municipal issuer should be no more than 5 per cent of total investments.
- To mitigate specific wrong way risk, investments should, as much as possible, be inversely related to market events that increase the likelihood of those assets being required. Investment in financial sector securities should be no more than 10 per cent of total investments. An FMI should not invest assets in the securities of its own affiliates. An FMI is not permitted to reinvest participant assets in a participant's own securities or those of its affiliates, as specified in Principle 16.
- For investments that are subject to counterparty credit risk, an FMI should set clear criteria for choosing investment counterparties and setting exposure limits.

The investment constraints should be clearly stated in the investment policy in order to provide clear guidance for those responsible for investment decision making.[4]

Link to risk management

FMIs should account for the implications of investing assets on their broader risk-management practices. The following issues should be considered when investing assets held for risk management purposes:

- An FMI's process for determining whether sufficient assets are available for risk management should account for potential investment losses. For example, investing the assets available to a CCP to cover losses from a participant default could lose value in a default scenario, resulting in less credit-risk protection. An FMI should hold additional assets to cover potential losses from its investments held for risk-management purposes.
- An FMI should account for the implications of investing assets on its ability to effectively manage liquidity risk. In particular, identification of the FMI's available liquid resources should account for the investment of its own and participants' assets. For example, cash held at a creditworthy commercial bank would no longer be considered a qualifying liquid resource under Principle 7 if it were invested in the debt instrument of a private sector issuer.
- The investment of an FMI's own assets and those of its participants should not circumvent related risk management requirements. For example, the reinvestment of participants' collateral should still respect the FMI's collateral concentration limits applicable to those assets.

Appendix

For the purposes of Principle 16, financial instruments can be considered to have minimal credit, market and liquidity risk if they meet *each* of the following conditions:

1. Investments are debt instruments that are:

[4] The use of investment vehicles where investments are held indirectly (e.g. mutual funds and exchange-traded funds) should not result in breaches to the investment constraints listed.

a. securities issued by the Government of Canada;

b. securities guaranteed by the Government of Canada;

c. marketable securities issued by the United States Treasury;

d. securities issued or guaranteed by a provincial government;

e. securities issued by a municipal government;

f. bankers' acceptances;

g. commercial paper;

h. corporate bonds; and

i. asset backed securities that meet the following criteria: (1) sponsored by a deposit taking financial institution that is prudentially regulated at either the federal or provincial level, (2) part of a securitization program supported by a liquidity facility, and (3) backed by assets of an acceptable credit quality.

2. The FMI employs a defined methodology to demonstrate that debt instruments have low credit risk. This methodology should involve more than just mechanistic reliance on credit-risk assessments by an external party.

3. The FMI employs limits on the average time to maturity of the portfolio based on relevant stress scenarios in order to mitigate interest rate risk exposures.

4. Instruments have an active market for outright sales or repurchase agreements, including in stressed conditions.

5. Reliable price data on debt instruments are available on a regular basis.

6. Instruments are freely transferable and settled over a securities settlement system compliant with the PFMIs.

- ***PFMI Principle 23: Disclosure of rules, key procedures, and market data***

Box 23.1:
Joint Supplementary Guidance –
Disclosure of Rules, Key Procedures and Market Data

Context

The PFMIs state that FMIs should provide sufficient information to their participants and prospective participants to enable them to clearly understand the risks and responsibilities of participating in the system. This note provides additional guidance for Canadian FMIs to meet the components of the disclosure principle related to: (i) public qualitative disclosure and (ii) public quantitative disclosure.

(i) Requirements included in the PFMIs

Principle 23 outlines requirements for disclosure to participants as well as the general public. In addition, specific disclosure requirements are listed in the principles to which they pertain.

The following text has been extracted directly from the PFMIs, PFMI Principle 23, key consideration 5:

> *An FMI should complete regularly and disclose publicly responses to the CPMI-IOSCO Disclosure framework for financial market infrastructures. An FMI also should, at a minimum, disclose basic data on transaction volumes and values.*

To supplement key consideration 5, CPMI-IOSCO published two documents: the Disclosure framework for financial market infrastructures (the Disclosure Framework),[1] and the Public quantitative disclosure standards for central counterparties (the Quantitative Disclosure Standards).[2] This note will refer to the disclosures that result from completing the templates provided in these documents as the Qualitative Disclosure and the Quantitative Disclosure, respectively.

[1] Committee on Payments and Market Infrastructures and Technical Committee of the International Organization of Securities Commissions (CPMI-IOSCO), "Principles for financial market infrastructures: disclosure framework and assessment methodology" (December 2012)
[2] Committee on Payments and Market Infrastructures and Technical Committee of the International Organization of Securities Commissions (CPMI-IOSCO), "Public quantitative disclosure standards for central counterparties" (February 2015)

(ii) Supplementary guidance for Canadian FMIs designated by the Bank of Canada

On its public website, an FMI should publish its Qualitative Disclosure and Quantitative Disclosure, as well as any other public disclosure requirements specified in Principle 23 or in other principles. Any public disclosure should be written for an audience with general knowledge of the financial sector.

(a) Qualitative disclosure (*Applies to all types of FMIs*)

A Qualitative Disclosure should provide the public with a high level understanding of an FMI's governance, operation and risk-management framework.

Summary narrative disclosure

In part four of the Disclosure Framework, FMIs are required to provide a summary narrative of their observance of the Principles. FMIs should provide these narratives at the principle level, and are not required to address key considerations or to provide answers to the detailed questions listed in Section 5 of the Disclosure Framework report. Instead, the narrative disclosure should focus on providing a broad audience with an understanding of how each Principle applies to the FMI, and what the FMI has done or plans to do to ensure its observance.

Timing

FMIs should update and publish their Qualitative Disclosures following significant changes[3] to the system or its environment, or at least every two years. Only the most current Qualitative Disclosure needs to be maintained on the FMI's website.

(b) Quantitative disclosure (*Applies only to CCPs*)

Quantitative Disclosures specify the set of key quantitative information required in the Disclosure Framework. They should follow the format provided by CPMI-IOSCO, allowing stakeholders, including the general public, to easily evaluate and compare FMIs.

Currently, CPMI-IOSCO has developed public quantitative disclosure standards only for CCPs. The following guidance applies only to CCPs; Canadian authorities will provide further guidance on the quantitative disclosure requirements of FMIs other than CCPs when such standards have been developed.

Context

Where a general audience may need additional context to properly interpret the data, it should be provided in explanatory notes or addressed in the CCP's Qualitative Disclosure. CCPs are encouraged to provide charts, background information and additional documentation where it may aid the reader's understanding.

Comparability

Regulators recognize that, given the different structures and arrangements among CCPs, an overly homogenized presentation format could lead to inaccurate comparability. Subject to regulatory approval, a CCP may provide analogous data in place of a disclosure requirement that is not applicable to its business or representative of the risks it faces. The CCP must justify to authorities the necessity and selection of the alternative metric.[4] If granted approval, the CCP must provide the original data to authorities with the frequency specified in the Quantitative Disclosure Standards, and must explain in each public disclosure why an alternative metric was chosen.

Confidentiality

A CCP's public disclosure obligation does not release it from its confidentiality duties. Where a required disclosure item could reveal (or allow knowledgeable parties to deduce) commercially sensitive information about individual clearing members, clients, third-party contractors or other relevant stakeholders, or where disclosure may amount to a breach of laws or regulations for

[3] Updated Qualitative Disclosures should be published subsequent to regulatory approval, and prior to the effective date of the significant change. Significant changes can include, but are not limited to: (i) any changes to the FMI's constating documents, bylaws, corporate governance or corporate structure; (ii) any material change to an agreement between the FMI and its participants or to the FMI's rules, operating procedures, user guides, or manuals or the design, operation or functionality of its operations and services; and (iii) the establishment of, or removal or material change to, a link, or commencing or ceasing to engage in a business activity.

[4] If the authorities are satisfied with the justification, the CCP need not resubmit the substitution unless the CCP's structure or arrangements change the applicability of the original disclosure requirement, or the CCP wishes to change its substituted metric. CCPs are responsible for informing authorities of any changes that could affect the applicability of the originally required or substituted data.

maintaining market integrity, the data must be omitted. In this case, the CCP must justify the omission to authorities.[5] If granted approval, the CCP must provide the confidential data to authorities with the frequency specified in the Quantitative Disclosure Standards, and must explain the reason for the omission in each public disclosure.

Timing

Quantitative Disclosures should be reported quarterly, and updated with the frequency specified in the Quantitative Disclosure Standards.[6] Even though some required data may already be publicly disclosed in other reports, or may not have changed from the previous quarter, the data should still be included in the disclosure matrix for completeness and consistency. Data should be publicly disclosed no later than 60 days after the end of each fiscal quarter, and should remain available on its website for at least three years so that trends can be examined.

[5] If the authorities are satisfied with the justification, the CCP need not resubmit the omission unless the circumstances change the confidentiality of the disclosure. CCPs are responsible for informing the authorities of any changes that could affect the confidentiality of such data.

[6] According to the Quantitative Disclosure Standards, items under general business risk should be updated annually, and all other items should be updated on a quarterly basis.

ANNEX G

ADOPTION OF THE INSTRUMENT

The Amendments will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest
- Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon
- a regulation in Québec
- a commission regulation in Saskatchewan

In Ontario, the Amendments, as well as other required materials, were delivered to the Minister of Finance on March 17, 2020. The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action, the Amendments will come into force on June 19, 2020.

In Québec, the Amendments are adopted as a regulation made under section 331.1 of the *Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The regulation will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, some of these changes, specifically changes that do not have a legal effect, have been made by way of revision instead of amendment. Despite this, the intended effect of the changes in the Instrument is consistent across all jurisdictions.

In Saskatchewan, the implementation of the Amendments is subject to ministerial approval. If all necessary approvals are obtained, the Amendments will come into force on June 19, 2020 or, if after June 19, 2020, on the day on which they are filed with the Registrar of Regulations.

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam – ss. 127, 127.1

FILE NO.: 2020-6

IN THE MATTER OF
KUBER MORTGAGE INVESTMENT CORPORATION and
SUTHARSAN KUNARATNAM

NOTICE OF HEARING
Section 127 and Section 127.1 of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: March 18, 2020 at 10:00 a.m.

LOCATION: 20 Queen Street West, 17th Floor, Toronto, Ontario

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated March 6, 2020, between Staff of the Commission and Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam in respect of the Statement of Allegations filed by Staff of the Commission dated March 13, 2020.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 13th day of March, 2020

"Robert Blair"
For Grace Knakowski
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

IN THE MATTER OF
KUBER MORTGAGE INVESTMENT CORPORATION and
SUTHARSAN KUNARATNAM

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

A. OVERVIEW

1. Beginning in June 2016, Kuber Mortgage Investment Corporation ("**Kuber**") and Sutharsan Kunaratnam ("**Kunaratnam**") (collectively, the "**Respondents**") sold approximately $26 million worth of preferred shares in Kuber to approximately 200 investors in the exempt market. The Respondents engaged in the business of trading in securities without being registered as a dealer, contrary to subsection 25(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**").

2. Registration is a cornerstone of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only properly qualified and suitable persons are permitted to trade with or on behalf of the public. Issuers in the exempt market that are in the business of trading their own securities, including mortgage investment entities ("**MIEs**") such as Kuber, must comply with the registration requirements under Ontario securities law.

B. FACTS

Staff of the Enforcement Branch of the Commission ("**Enforcement Staff**") make the following allegations of fact:

(i) THE RESPONDENTS

3. Kuber is an Ontario corporation based in Toronto. As a MIE, Kuber's primary business is mortgage origination and lending. In order to fund its mortgages, Kuber primarily raises capital from investors in the exempt market and has also obtained debt financing.

4. Kunaratnam is one of the founding directors of Kuber and its Chief Executive Officer. Kunaratnam also provides various mortgage brokerage, management and administrative services to Kuber through his company, Square Capital Management Inc. ("**Square Capital**").

5. Neither Kuber nor Kunaratnam have been registered with the Commission in any capacity.

(ii) UNREGISTERED TRADING

6. During the period between June 2016 and January 2019, Kuber raised approximately $26 million through distributions of its preferred shares to approximately 200 investors. Almost all of the distributions were made pursuant to the accredited investor exemption to the prospectus requirement.

7. Beginning in November 2018, Kuber had used a registered exempt market dealer ("**EMD**") from time to time to sell its securities. However, most of the investors in Kuber purchased the preferred shares without the involvement of any registered dealer.

8. Kunaratnam was the individual at Kuber primarily responsible for selling its preferred shares to investors. He engaged in activities in furtherance of the sale of the preferred shares, including by preparing and disseminating promotional materials, soliciting investors, and performing "know your client" procedures.

9. The Respondents engaged in the business of trading in securities without being registered as a dealer under Ontario securities law.

10. In response to a request from Staff, Kuber voluntarily agreed in January 2019 to cease trading in securities, except trades of its own securities that were distributed through a registered EMD, including by removing solicitations for investment on its website.

(iii) OFFERING MEMORANDA

Statements Regarding the Dealer Registration Requirement

11. Kuber disseminated three offering memoranda to prospective investors which contained the following statement concerning its registration status:

> Neither the Corporation nor the Manager is registered with the Ontario Securities Commission ("OSC") as an adviser, dealer or as an investment fund manager and is operating in reliance on the blanket order issued by

the OSC on August 17, 2010 that provides relief from these registration requirements and the Corporation's interpretation of Staff Notice 31-323 *Guidance Relating to Registration Obligations of Mortgage Investment Entities* ("Staff Notice 31-323"). If the Corporation's interpretation of Staff Notice 31-323 is incorrect or the OSC otherwise requires registration for MICs or MIC managers/administrators, the Corporation will comply with the requirements or seek further relief if appropriate.

12. The Commission's blanket order dated August 17, 2010[1] ("**Blanket Order**") did not provide any relief to the requirement to be registered as a dealer. Furthermore, any relief provided by the Blanket Order (and a subsequent order extending the relief[2]) expired on March 31, 2011.

Information Regarding Related Party Loan Facility

13. Between January 2018 and November 2018, Kuber disseminated an offering memorandum which disclosed in multiple sections that Kuber may obtain debt financing. The offering memorandum did not disclose an unsecured loan between Kuber and a limited partnership ("**Zephyr LP**") which was controlled by Kunaratnam's company, Square Capital. A subsequent offering memorandum disclosed the loan and certain aspects of Square Capital's relationship with Zephyr LP but did not detail Square Capital's control over Zephyr LP.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest:

14. The Respondents engaged in or held themselves as engaging in the business of trading in securities without being registered in accordance with Ontario securities law as a dealer, where no exemption to the registration requirement was available, contrary to subsection 25(1) of the Act. In doing so, the Respondents acted in a manner contrary to the public interest.

D. ORDER SOUGHT

15. Enforcement Staff request that the Commission make an order pursuant to subsection 127(1) and section 127.1 of the Act to approve the settlement agreement dated March 6, 2020 between the Respondents and Enforcement Staff.

16. Enforcement Staff reserve the right to amend these allegations and to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

DATED this 13th day of March, 2020.

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

Alvin Qian
Email: aqian@osc.gov.on.ca
Tel: (416) 263-3784
Staff of the Enforcement Branch

[1] *In the Matter of the Securities Legislation of Ontario and In the Matter of Trez Capital Corporation (The Lead Filer) and Other Persons and Companies Conducting Investment Fund Management Activities or Advising in Respect of Mortgage Investment Entities* (2010), 33 OSCB 7355.
[2] See 33 OSCB 11155.

1.4 Notices from the Office of the Secretary

1.4.1 Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam

FOR IMMEDIATE RELEASE
March 13, 2020

IN THE MATTER OF
KUBER MORTGAGE INVESTMENT CORPORATION
AND
SUTHARSAN KUNARATNAM

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION,
KUBER MORTGAGE INVESTMENT CORPORATION and
SUTHARSAN KUNARATNAM,
File No. 2020-6

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam in the above named matter.

The hearing will be held on March 18, 2020 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing and the Statement of Allegations dated March 13, 2020 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

1.4.2 Paramount Equity Financial Corporation et al.

FOR IMMEDIATE RELEASE
March 13, 2020

PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
PARAMOUNT ALTERNATIVE CAPITAL CORPORATION,
PACC AINSLIE CORPORATION,
PACC COSTIGAN CORPORATION,
PACC CRYSTALLINA CORPORATION,
PACC DACEY CORPORATION,
PACC GOULAIS CORPORATION,
PACC HARRIET CORPORATION,
PACC MAJOR MACK CORPORATION,
PACC MAPLE CORPORATION,
PACC MULCASTER CORPORATION,
PACC REGENT CORPORATION,
PACC SCUGOG CORPORATION,
PACC SECHELT CORPORATION,
PACC SHAVER CORPORATION,
PACC SIMCOE CORPORATION,
PACC THOROLD CORPORATION,
PACC WILSON CORPORATION,
TRILOGY MORTGAGE GROUP INC.,
TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP,
MARC RUTTENBERG,
RONALD BRADLEY BURDON and
MATTHEW LAVERTY,
File No. 2019-12

TORONTO – Staff of the Commission filed a Notice of Withdrawal dated March 9, 2020. The Commission issued an Order in the above named matter.

A copy of the Notice of Withdrawal dated March 9, 2020 and the Order dated March 13, 2020 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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

1.4.3 Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam

FOR IMMEDIATE RELEASE
March 16, 2020

IN THE MATTER OF
KUBER MORTGAGE INVESTMENT CORPORATION and
SUTHARSAN KUNARATNAM,
File No. 2020-6

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

A copy of the Order dated March 16, 2020 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Central 1 Credit Union

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to a central credit union from the dealer and adviser registration requirements and the prospectus requirement in respect of the issuance of evidences of deposit and shares to its members – the filer is a central credit union incorporated under the laws of British Columbia and subject to regulation and supervision by the Financial Institutions Commission of British Columbia – the filer cannot rely on the available exclusions and exemptions under securities legislation in jurisdictions outside of British Columbia because it is not the type of enumerated credit unions – relief granted on terms and conditions and a five-year sunset clause.

Applicable Legislative Provisions

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

March 13, 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
CENTRAL 1 CREDIT UNION
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the dealer registration requirement, the adviser registration requirement and the prospectus requirement contained in the Legislation in respect of the issuance by the Filer of evidences of deposit and shares of the Filer to its members and auxiliary members (as such terms are defined below) in the ordinary course of the Filer's business as a central credit union (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 Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Yukon Territory and the Northwest Territories (collectively with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

For the purposes of this decision, the following terms have the following meanings:

(a) **auxiliary member** has the meaning set out in the first sentence of paragraph 12 of this decision.

(b) **CCAA** means the *Cooperative Credit Associations Act* (Canada).

(c) **central credit union** means a credit union in which membership is restricted to credit unions, other corporations, public bodies or the Crown in right of Canada or British Columbia or in any other right, or the equivalent organizations under the laws of the Jurisdictions.

(d) **CUCPA** means the *Credit Unions and Caisses Populaires Act, 1994* (Ontario).

(e) **CUIA** means the *Credit Union Incorporation Act* (British Columbia).

(f) **FIA** means the *Financial Institutions Act* (British Columbia).

(g) **FICOM** means the Financial Institutions Commission of British Columbia.

(h) **member** means an organization that:

(i) is a credit union, cooperative association or other incorporated organization,

(ii) is permitted to be a member of the Filer under the Filer's Constitution and Rules and the CUIA,

(iii) has been admitted to membership of the Filer, and

(iv) has had its name entered in the Filer's register of members,

but does not include a person who is an auxiliary member.

(i) **OSFI** means the federal Office of the Superintendent of Financial Institutions.

Representations

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

1. The Filer is a central credit union incorporated under the CUIA. The Filer's principal and head office is located in Vancouver, British Columbia.

2. The Filer provides a range of services including wholesale financial products, trust services, payment processing solutions and direct banking technologies and services primarily to credit unions, cooperative associations (and similar organizations) and other incorporated organizations located in any Canadian jurisdiction. The Filer is also the primary liquidity manager, payments provider and trade association for its member credit unions located in British Columbia and Ontario.

3. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario. None of the Filer's securities are posted or traded on any marketplace as defined in National Instrument 21-101 *Marketplace Operation*. The Filer is not in default of securities legislation in any jurisdiction of Canada, except in relation to the matters described below in paragraphs 16 and 19.

4. The primary regulator for the Filer for non-securities-related matters is FICOM. The principal regulator of the Filer for securities-related matters is ordinarily the British Columbia Securities Commission. However, for the purposes of this application, the Filer has determined that it does not require the Exemption Sought in British Columbia and has therefore selected the Ontario Securities Commission as its principal regulator on the grounds that Ontario is the jurisdiction in respect of which it has the most significant connection after British Columbia.

5. Until January 15, 2017, the Filer was also regulated by OSFI as an "association" governed by the CCAA. As a result of amendments to the CCAA effective January 15, 2017, the CCAA no longer applies to the Filer and the Filer ceased to be regulated by OSFI. The Filer's business and activities have not changed as a result of these amendments to the CCAA effective January 15, 2017.

6. The Filer is not registered as an extra-provincial credit union under the CUCPA and is not subject to the direct oversight of the Financial Services Commission of Ontario. The Filer has entered into an undertaking to share information with the Superintendent of Financial Services, Ontario and the Deposit Insurance Corporation of Ontario. The Filer has entered into a memorandum of understanding with the Deposit Insurance Corporation of Ontario with respect to, among other things, information sharing.

7. As a central credit union incorporated under the CUIA and subject to the oversight of FICOM, the Filer is subject to a comprehensive scheme of prudential regulation and supervision that the Filer believes is comparable to the regulatory framework governing central credit unions or equivalent organizations organized under applicable legislation in other Canadian jurisdictions and the supervision provided by applicable regulators in such jurisdictions. In particular:

   (a) The Filer is subject to regulation pursuant to the CUIA and FIA, and applicable regulations under such legislation, all of which are administered by FICOM.

   (b) The CUIA sets forth a scheme of corporate law requirements applicable to credit unions incorporated under it, such as the Filer, as well as requirements relating to various matters, including membership, governance, business authorization, filings, auditors and audit committees, and hearings and appeals before FICOM. Pursuant to the CUIA, FICOM has various powers of supervision including the right to consent to various transactions, the right to require certain transactions under certain circumstances and the right to consent to changes to a credit union's constitution and rules.

   (c) The FIA and its regulations set forth requirements applicable to credit unions incorporated under the CUIA, such as the Filer, including business authorizations, corporate governance, capital and liquidity requirements and requirements relating to deposits and borrowing.

   (d) FICOM has various powers of supervision under the FIA including for example the power to order financial institutions to acquire additional liquid assets or increase their capital base, powers to supervise the conduct of auditors and generally broad powers of examination, audits and inspection and powers of sanction. The superintendent appointed under the FIA must periodically conduction an examination of the affairs of every financial institution subject to the FIA. The FIA states that for the purposes of administration and enforcement of the FIA, the superintendent appointed under the FIA and its investigators examiners or other persons in accordance with the FIA may act outside of British Columbia as if acting inside it.

   (e) In February 2014, FICOM identified the Filer as a domestic systemically important financial institution (D-SIFI). As a D-SIFI, the Filer is subject to additional regulatory and supervisory requirements determined by FICOM addressing matters such as capital requirements and regulatory reporting.

8. The Constitution and Rules of the Filer (the **Rules**) restrict membership in the Filer to incorporated organizations. The Filer's members are primarily credit unions and other sophisticated institutions. In particular, the Constitution and Rules of the Filer restrict membership in the Filer to incorporated organizations that qualify as Class A members, Class B members or Class C members in accordance with the requirements below:

   (a) Class A members are (i) credit unions incorporated under the CUIA or the former *Credit Unions Act* (British Columbia) or the CUCPA, incorporated under the laws of any other Canadian jurisdiction and licensed or registered under those laws to carry on business as a credit union or caisse populaire in that jurisdiction, or incorporated as a federal credit union under the laws of Canada, or (ii) credit unions incorporated under the laws of another jurisdiction as a central credit union or as a corporation which, in the opinion of the board of directors of the Filer (the **Board of Directors**), conducts its operations in a manner similar to a central credit union incorporated under the CUIA or the former *Credit Unions Act* (British Columbia), and in all cases whose application for membership has been approved as provided in the Rules;

   (b) Class B members are cooperative associations incorporated under the *Cooperative Association Act* (British Columbia) or cooperatives incorporated under other legislation in British Columbia or under the laws of another Canadian jurisdiction which, in the opinion of the Board of Directors, conducts its operations on a cooperative basis and is designated as a cooperative association by the Board of Directors for the purposes of membership in the Filer; and

   (c) Class C members are incorporated organizations whose application for membership has been approved as provided in the Rules, other than a Class A member or a Class B member; in general terms, Class C members consist of organizations that do not qualify as (or do not wish to be, or are otherwise not approved as) Class A members or Class B members but wish to maintain deposits with the Filer or that wish to become members of the Filer for other reasons.

The Filer is not permitted to have members that are individuals. The classes of shares of the Filer are set out in its Rules. Amendments to the Rules must be approved by members and FICOM.

9. The authorized share capital of the Filer consists of six classes of shares (**Shares**), as follows:

   (a) Class A shares with a par value of $1.00 per Class A share, which may only be issued to and held by Class A members;

   (b) Class B shares with a par value of $1.00 per Class B share, which may only be issued to and held by Class B members;

   (c) Class C shares with a par value of $1.00 per Class C share, which may only be issued to and held by Class C members;

   (d) Class D shares with a par value of $1.00 per Class D share, which may be issued to and held by Class A members, Class B members and Class C members;

   (e) Class E shares with a par value of $0.01 per Class E share, which may only be issued to and held by Class A members or entities that are wholly-owned by the Filer; and

   (f) Class F shares with a par value of $1.00 which may be held by those Class A members that have assets on deposit in the Filer's mandatory liquidity pool.

10. A summary of certain rights attributable to the Shares is as follows:

   (a) Unless the Filer's Rules otherwise provide, a Class A member shall be entitled to vote on any matter. Class B members and Class C members have limited voting rights. A Class B member shall be entitled to vote only with respect to matters specified in the Rules and with respect to those matters which the directors in their discretion determine relate to Class B members. The Class C members shall be entitled to vote only with respect to those matters which the directors in their discretion determine relate to Class C members. Except as required by applicable laws, there are no voting rights associated with Class D, E and F shares.

   (b) Except as otherwise provided in the Rules, each delegate representing a Class A member shall be entitled to cast one vote for each Class A share held by that member. A delegate representing a Class B member may cast one vote for each Class B share held by that member on any matter on which a Class B member is entitled to vote. A delegate representing a Class C member may cast one vote for each Class C share held by that member on any matter on which a Class C member is entitled to vote. Notwithstanding the forgoing, if a matter to be voted on relates to the trade associational operations of the Filer, each Class A member shall be entitled to cast one vote for each 100 members of the Class A member. Subject to the Rules, dues to be assessed in accordance with the Rules shall be determined by majority vote of those Class A members entitled to vote on the resolution the basis of one vote for each 100 members of the Class A member, in respect of certain dues resolutions, and on the base of one vote for each 1,000 members of the Class A member, in respect of certain dues resolutions.

   (c) Directors are elected or appointed, in accordance with the Rules, only by Class A members. Certain directors may be nominated by certain large Class A members pursuant to the Rules. Certain matters (including the election of certain directors) are either on the basis of one vote per applicable member or on the basis of one vote per share held by the applicable members or both.

   (d) Subject to certain restrictions contained in the CUIA and the Rules, all Shares of the Filer are redeemable by the Filer, at its option and on the approval of the Board of Directors. Class A, B, C, D, E and F shares may not be redeemed by the holder except with the consent of the Board of Directors.

   (e) The holders of each class of Shares are entitled to receive dividends as declared from time to time.

   (f) Shares are transferable only with the consent of the directors to entities that are permitted to hold such shares under the Rules (being members and/or entities that are wholly-owned by the Filer).

11. A member that holds Shares retains membership in the Filer so long as the membership of that holder is not terminated in accordance with the Rules.

12. If a person ceases to be a member of the Filer, that person may still continue to hold its Shares, but under the Rules and the provisions of the CUIA that person becomes an auxiliary member of the Filer. The Rules provide that until the Filer redeems all of the Shares of an auxiliary member, the auxiliary member retains the rights, privileges and obligations of membership of that class of members to which the auxiliary member belonged immediately prior to becoming an auxiliary member.

13. As of December 31, 2018, the Filer had a total of 233 members, of which approximately 152 were Class A members or Class B members (credit unions and cooperative associations or similar organizations), and 81 were Class C members (other types of incorporated organizations). As of December 31, 2018, the Filer did not have any auxiliary members.

Issuance of evidences of deposits

14. One of the Filer's primary functions is to take deposits from its members for various purposes, including to assist certain of its members that are credit unions in meeting statutory liquidity obligations those members have themselves under applicable law, to provide a vehicle through which members can deposit excess capital they may have from time to time, and in connection with various services provided by the Filer to its members. The Filer accepts deposits from members on a daily basis. Members are or may be located in any Canadian jurisdiction.

15. In British Columbia, evidences of deposit issued by the Filer are excluded from the definition of "security" under the *Securities Act* (British Columbia) as evidence of a deposit of a savings institution within the meaning of the *Securities Act* (British Columbia). Although the definition of "security" under the Legislation and applicable securities legislation in the Jurisdictions specifically excludes from its scope evidences of deposits issued by certain banks, credit unions and other financial institutions, evidences of deposit issued by the Filer generally do not qualify for these exclusions because the exclusions in relation to credit unions (or similar entities) in each local jurisdiction (other than Prince Edward Island, Nunavut, the Yukon and the Northwest Territories) generally apply only to credit unions subject to federal credit union legislation or incorporated under the laws of the applicable local jurisdiction, and are not available to a credit union such as the Filer that is incorporated under the laws of British Columbia.

16. Accordingly, except in British Columbia, any evidence of a deposit issued by the Filer is a "security" and, in the absence of the Exemption Sought, each issuance must comply with the prospectus requirements and dealer registration requirements under the Legislation and applicable securities legislation in each Jurisdiction where the issuance occurs. Through inadvertence, the Filer has not previously taken steps to comply with such requirements.

Issuance of shares to members

17. Generally, the Filer may only accept deposits from its members. Each customer that wishes to deposit money with the Filer (or to become a member for any other reason) receives Shares in connection with becoming a member. As noted, members are or may be located in any Canadian jurisdiction.

18. In British Columbia, the issuance of Shares by the Filer to its members is exempt from the prospectus requirements and dealer registration requirements under the *Securities Act* (British Columbia) pursuant to a blanket exemption contained in BC Instrument 45-531 *Exemptions for shares or deposits of a credit union* which provides a prospectus exemption and a dealer registration exemption for distributions of shares of a credit union authorized to carry on business under the FIA. Although similar exemptions from the prospectus requirements and dealer registration requirements under the Legislation and applicable securities legislation in each of the Jurisdictions (other than Québec and the Yukon) are available for the issuance of securities of certain credit unions to their members, these exemptions are not available to the Filer because these exemptions are generally only available in a local jurisdiction to credit unions subject to federal credit union legislation or incorporated under the laws of the applicable local jurisdiction, and are not available to a credit union such as the Filer that is incorporated under the laws of another jurisdiction.

19. In the absence of the Exemption Sought, each distribution of a Share to a member must comply with the prospectus requirements and dealer registration requirements under the Legislation and applicable securities legislation in each Jurisdiction where members reside. Through inadvertence, the Filer has not previously taken steps to comply with such requirements.

Over-the-counter derivatives activities

20. The Filer carries on certain over-the-counter (**OTC**) derivatives activities primarily as a service to its members to hedge their business risks (including balance sheet and mortgage exposures), and to hedge the Filer's exposure under outstanding derivatives transactions and its own business risk. The Filer's understanding is that its members enter into these OTC derivative transactions for the purposes of hedging their business risks and not for speculative purposes. The Filer also offers OTC derivative services to other entities (primarily financial institutions) who have a need for such OTC derivative services and wish to engage the Filer to provide these services.

21. All OTC derivatives activities that are conducted by the Filer in Ontario are with counterparties that qualify as "permitted clients" as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

22. The Filer participates in these transactions as counterparty and therefore earns profits and losses on these transactions at market levels; however, no separate compensation is received.

23. The OTC derivatives that the Filer enters into include interest rate swaps, interest rate options, FX forwards, FX spot, FX swaps, FX options, bond forwards, and repos (repurchase transactions), and index options.

24. Other than index options where the underlying interest is an equity index, the Filer does not enter into OTC derivatives transactions where the underlying interest or reference asset includes an equity security (i.e. an equity option).

25. As the derivatives entered into between the Filer and its members and other counterparties are OTC derivatives and not listed derivatives; the Legislation and applicable securities legislation in each of the other jurisdictions, including the Québec *Derivatives Act* and NI 31-103, are the applicable legislation.

26. The Filer has not pursued relief from the dealer registration requirement in connection with these activities for the following reasons:

    (a) The Filer believes there is a reasonable argument that, under the current requirements of Ontario securities law, its trading activities in relation to OTC derivatives should not be considered to constitute being in the business of trading in securities.

    (b) The Filer's trading activities in relation to OTC derivatives are generally limited to transactions where the underlying instruments are index options, interest rate swaps, interest rate options, FX forwards, FX spots, FX swaps, FX options, bond forwards and repos (repurchase transactions). The counterparties that are resident in Ontario all qualify as "permitted clients" as defined in NI 31-103.

    (c) The Filer does not enter into OTC derivatives transactions with members or other counterparties where the underlying interest or reference asset includes individual equity securities.

    (d) The guidance in OSC Staff Notice 91-702 *Offering of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* (**OSC Staff Notice 91-702**) expressly states the following under the heading "1. Purpose": "This notice is not intended to address direct or intermediated trading between institutions. We note that Canadian financial institutions are exempt from registration requirements under the *Securities Act* (Ontario)." The Filer and the counterparties domiciled in Ontario are non-individual permitted clients and therefore could reasonably conclude that OSC Staff Notice 91-702 did not apply.

    (e) The Legislation provides for an exemption from registration for (i) an association to which the CCAA applies or a central cooperative credit society for which an order has been made under subsection 473 (1) of the CCAA (which prior to the repeal of Part 16 in 2014 included provincial centrals); and (ii) a credit union that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario. The principle that provincially-based credit unions are exempt from registration is further demonstrated in the exemption proposed by the Ontario Securities Commission in Proposed National Instrument 93-102 *Derivatives: Registration* for "Canadian financial institutions", the definition of which includes a "credit union authorized by an enactment of Canada or a jurisdiction of Canada".

    (f) In each of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Québec (collectively, the **OTC Exemption Jurisdictions**), persons and companies who engage in OTC derivative transactions are generally exempt from registration and certain disclosure 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 British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia, and as "accredited counterparties" in Québec.

    (g) The corresponding OTC Derivative Exemptions are as follows:

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

27. The Filer acknowledges that it may be required to comply with or seek relief from the dealer registration requirement in the Legislation in relation to trading in OTC derivatives upon the coming into force of certain amendments to the Legislation and similar requirements in the legislation of the other Jurisdictions. The Filer acknowledges that the exemption from the dealer registration requirement and adviser registration requirement set out in this decision do not apply to the Filer in connection with the Filer's activities in relation to trading or advising others in relation to OTC derivatives.

28. The Filer is not in default of its obligation to report derivatives data in respect of its transactions in OTC derivatives with a local counterparty under the following:

    (a) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*;

    (b) in Manitoba, MSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

    (c) in Ontario, OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; and

    (d) in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting.*

Application of dealer and adviser registration requirements

29. Although the Filer's principal business is that of a central credit union and the issuance of evidences of deposit and Shares is regarded as incidental to that business, the activities of the Filer in relation to the issuance of evidences of deposit and Shares together with certain of its other activities carried out in conjunction with its business as a credit union, may be sufficient to trigger the application of the dealer and the adviser registration requirements in relation to such activities.

30. In Ontario, the general exemption from the registration requirements that is available under the Legislation to certain credit unions is not available to the Filer because the Filer is not a credit union of the type contemplated by that exemption. Although exemptions from the dealer registration requirements under the Legislation and applicable securities legislation in each of the Jurisdictions (other than Québec and the Yukon) are available for the issuance of evidences of deposits and other securities of certain credit unions to their members, these exemptions are not available to the Filer because these exemptions are generally only available in a local jurisdiction to credit unions subject to federal credit union legislation or incorporated under the laws of the applicable local jurisdiction, and are not available to a credit union such as the Filer that is incorporated under the laws of another jurisdiction.

31. In the absence of the Exemption Sought, the Filer may be subject to the dealer and adviser registration requirements under the Legislation and applicable securities legislation in each Jurisdiction in relation to the issuance of evidences of deposit and Shares and be required to obtain registration as a dealer or to sell its evidences of deposits and Shares through registered dealers.

32. The Filer carries on a similar business to other central credit unions (or equivalent organizations) in the Jurisdictions, is subject to the same or more onerous controls (including capital, liquidity and investor protection measures) as central credit unions or equivalent organizations and other credit unions in the Jurisdictions, and as such, should be afforded the same treatment as other central credit unions (or equivalent organizations) and credit unions in the Jurisdictions in relation to its issuance of evidences of deposits and Shares.

33. British Columbia laws applicable to the Filer do not prohibit it to carry on its business outside of British Columbia.

34. Other than as described in this decision or in compliance with securities laws, the Filer will not trade in any securities or derivatives other than issuances of evidences of deposits and Shares to its members and auxiliary members and the derivatives transactions described above.

Books and Records

35. As a reporting issuer, the Filer is, and, should the Exemption Sought be granted, as a person or company exempted from the requirement to be registered under the Legislation, the Filer will be a "market participant". For the purposes of the Legislation, and as a market participant, the Filer is required 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 the Legislation.

Decision

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

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

(a) at the relevant time activities are engaged in:

(i) the Filer continues to be a central credit union incorporated under the CUIA;

(ii) the Filer continues to be subject to regulation and supervision by FICOM;

(iii) the Filer limits its activities to only those activities not prohibited by its governing legislation;

(iv) the Filer's membership remains restricted to incorporated organizations and the Filer only issues evidences of deposits and shares in reliance on this decision to members and auxiliary members;

(v) other than trades described in this decision or that are otherwise in compliance with securities laws, the Filer does not trade in any securities other than issuances of evidences of deposits and shares to its members and auxiliary members; and

(b) this decision shall terminate on the date that is five years after the date of this decision.

"D. Grant Vingoe"

"Tim Moseley"

2.1.2 CI Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to permit investment funds to invest in underlying ETFs whose securities would meet the definition of index participation unit in NI 81-102, but for the fact that they are traded in the United Kingdom – relief also granted to permit investment funds to invest in other investment funds that hold more than 10% of NAV in securities of one or more of the United Kingdom-traded ETFs to form a three-tier structure – relief is subject to certain conditions and requirements including that the underlying funds are not synthetic exchange-traded mutual funds – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 2.5(2)(a.1), 2.5(2)(b), 2.5(2)(c), and 19.1.

February 28, 2020

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

AND

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the investment funds that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) for which the Filer or its affiliate acts as manager (the **Existing Funds**) and the investment funds that are subject to NI 81-102 for which the Filer or its affiliate will act as manager in the future (the **Future Funds**, and together with the Existing Funds, the **Funds**, and each, a **Fund**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Funds from:

(a) paragraph 2.5(2)(a) of NI 81-102 to permit each Fund that is a mutual fund but not an alternative mutual fund to purchase and/or hold securities of a Dublin iShares ETF (as defined below), even though the Dublin iShares ETF is not subject to NI 81-102;

(b) paragraph 2.5(2)(a.1) of NI 81-102 to permit each Fund that is an alternative mutual fund or a non-redeemable investment fund to purchase and/or hold securities of a Dublin iShares ETF, even though the Dublin iShares ETF is not subject to NI 81-102;

(c) paragraph 2.5(2)(c) of NI 81-102 to permit each Fund to purchase and/or hold securities of a Dublin iShares ETF, even though the Dublin iShares ETF is not a reporting issuer in a Canadian Jurisdiction (as defined below) (together with paragraphs (a) and (b) above, the **Two Tier Relief**); and

(d) paragraph 2.5(2)(b) of NI 81-102 to permit each Fund to purchase and/or hold a security of another Fund that holds more than 10% of its net asset value (**NAV**) in securities of one or more Dublin iShares ETFs (a **Middle Fund**, and collectively, the **Middle Funds**) (the **Three Tier Relief**, and together with the Two Tier Relief, the **Exemption Sought**).

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

(a) the Ontario Securities Commission (the **OSC**) 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 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* 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:

The Filer and the Funds

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

2. The Filer is registered under applicable securities laws as: (a) an investment fund manager in Ontario, Québec, and Newfoundland and Labrador; (b) a portfolio manager in each of the Canadian Jurisdictions; (c) an exempt market dealer in each of the Canadian Jurisdictions; (d) a commodity trading counsel in Ontario; and (e) a commodity trading manager in Ontario.

3. The Filer or its affiliate acts, or will act, as manager of each of the Funds.

4. Each of the Funds is, or will be: (a) an investment fund; (b) structured as a trust or corporation or class thereof that is governed by the laws of the province of Ontario; (c) a reporting issuer in the Canadian Jurisdiction(s) in which its securities are distributed; and (d) governed by the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities of any Canadian Jurisdiction.

5. The securities of each of the Funds are, or will be, qualified for distribution in some or all of the Canadian Jurisdictions under a long form prospectus prepared pursuant to National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**) or a simplified prospectus prepared pursuant to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**), as applicable.

6. Units of each Fund that is an exchange-traded mutual fund (an **ETF**) are, or will be, listed and traded on the Toronto Stock Exchange and may also be listed on one or more other stock exchanges.

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

8. In order to achieve its investment objective, each Fund may, from time to time, wish to invest up to 100% of its NAV in:

   (a) securities of one or more ETFs which are, or will be, listed and traded on the London Stock Exchange (the **LSE**) and managed by BlackRock Asset Management Ireland Limited (**BlackRock Ireland**) or another affiliate of BlackRock Ireland (each, a **Dublin iShares ETF**, and collectively, the **Dublin iShares ETFs**); and/or

   (b) securities of one or more Middle Funds.

The Dublin iShares ETFs

9. Each Dublin iShares ETF is, or will be, a portfolio with segregated liability of an umbrella open-ended investment company with variable capital and incorporated with limited liability in Ireland.

10. Each Dublin iShares ETF is, or will be, authorized by the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003, as amended (the **UCITS Regulations**). Each Dublin iShares ETF therefore is, or will be, a "UCITS" that must comply with all UCITS requirements.

11. The following companies are involved in the management of the Dublin iShares ETFs:

    (a) BlackRock Ireland, which is regulated by the Central Bank of Ireland, is the manager, and has responsibility for the management and administration of the Dublin iShares ETFs, as well as oversight of all service providers or other delegates; and

(b) BlackRock Advisors (UK) Limited (**BlackRock UK**), which is regulated by the Financial Conduct Authority of the United Kingdom (the **FCA**), is the investment manager, and has responsibility for the investment and re-investment of the assets of the Dublin iShares ETFs.

12. The following third parties are involved in the administration of the Dublin iShares ETFs:

(a) State Street Fund Services (Ireland) Limited is the administrator;

(b) Computershare Investor Services (Ireland) Ltd. is the registrar and transfer agent; and

(c) State Street Custodial Services (Ireland) Limited is the custodian.

13. Affiliates of BlackRock UK may be retained by BlackRock UK to act as sub-advisors in respect of certain Dublin iShares ETFs. Blackrock UK's affiliates remain subject to the oversight of BlackRock UK.

14. BlackRock Ireland is subject to substantially equivalent regulatory oversight as the Filer, which is primarily regulated by the OSC.

15. Securities of each Dublin iShares ETF are, or will be, offered in their primary market in a manner similar to the Funds pursuant to a prospectus for each investment company filed with the Central Bank of Ireland.

16. In addition to being listed on the LSE, the securities of a Dublin iShares ETF may also be listed on one or more additional stock exchanges.

17. The LSE is subject to regulatory oversight by the FCA. The LSE is subject to substantially similar regulatory oversight to securities exchanges in Canada, and the requirements to be complied with by the Dublin iShares ETFs in order to be admitted to trading on the LSE are consistent with the listing requirements of the Toronto Stock Exchange.

18. The investment objective of each Dublin iShares ETF is, or will be, to provide investors with a total return, taking into account both capital and income returns, which reflects the returns of the applicable index that it seeks to track.

19. Each Dublin iShares ETF will either: (a) hold securities that are included in a specified widely-quoted market index in substantially the same proportion as those securities are reflected in that index; or (b) invest in a manner that causes the issuer to replicate the performance of that index.

20. Each index tracked by each Dublin iShares ETF is, or will be, transparent, in that the methodology for the selection and weighting of index components is, or will be, publicly available. Details of the components of each index tracked by each Dublin iShares ETF, such as issuer name, ISIN, and weighting of index components, are, or will be, publicly available and updated from time to time.

21. Each index tracked by each Dublin iShares ETF includes sufficient component securities as to be broad-based, and is distributed and referenced sufficiently so as to be broadly utilized.

22. Each Dublin iShares ETF makes, or will make, the NAV of its holdings available to the public through at least one price information system associated with the LSE. In addition, each Dublin iShares ETF makes, or will make, its NAV available to the public on the website of its manager.

23. No Dublin iShares ETF is a "synthetic ETF", meaning that no Dublin iShares ETF will principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index.

24. Each Dublin iShares ETF is, or will be, an "investment fund" and a "mutual fund" within the meaning of applicable Canadian securities legislation.

25. The Dublin iShares ETFs are, or will be, subject to the following regulatory requirements:

(a) each Dublin iShares ETF is subject to a risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets;

(b) each Dublin iShares ETF is restricted to investments permitted by the UCITS Regulations and/or authorized by the Central Bank of Ireland;

(c) each Dublin iShares ETF is subject to investment restrictions limiting its holdings of illiquid securities to no more than 10% of the Dublin iShares ETF's NAV;

(d) each Dublin iShares ETF is subject to investment restrictions limiting its holdings of other investment funds, including other collective investment undertakings, to no more than 10% of the Dublin iShares ETF's NAV;

(e) each Dublin iShares ETF is subject to restrictions concerning the use of derivatives, including the types of derivatives in which it may transact, limits on counterparty risk, and limits on increases to overall market risk resulting from the use of derivatives, which are similar to those contained in NI 81-102, and any use of derivatives is also subject to the oversight of, and requires prior approval from, the Central Bank of Ireland;

(f) each Dublin iShares ETF has procedures in place relating to the use of derivatives and risk modelling of derivative positions;

(g) each Dublin iShares ETF may enter into securities lending, repurchase and/or reverse repurchase agreements for the purposes of efficient portfolio management subject to the conditions and limits set out in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015, as may be amended or replaced, and in accordance with the requirements of the Central Bank of Ireland;

(h) each Dublin iShares ETF is required to prepare a prospectus that discloses material facts, similar to the disclosure requirements under Form 41-101F2 and Form 81-101F1;

(i) each Dublin iShares ETF is required to prepare a key investor information document, which forms part of the prospectus, and a factsheet, which together contain disclosure that is substantially similar to the disclosure required to be included in the ETF facts document required by Form 41-101F4 *Information Required in an ETF Facts Document*;

(j) each Dublin iShares ETF is subject to continuous disclosure obligations which are substantially similar to the disclosure obligations under National Instrument 81-106 *Investment Fund Continuous Disclosure*;

(k) each Dublin iShares ETF is required to update information of material significance in the prospectus, prepare management reports and an unaudited set of financial statements at least semi-annually, and prepare management reports and an audited set of financial statements annually; and

(l) each Dublin iShares ETF has a board of directors and a manager that are subject to a governance framework that sets out the duty of care and standard of care, which require the board of directors of both the manager and the Dublin iShares ETF to act in the best interest of unitholders of the Dublin iShares ETF.

The Two Tier Relief

26. Each Fund may, from time to time, wish to invest up to 100% of its NAV in securities of one or more Dublin iShares ETFs, but will not invest more than, in the case of:

(a) a mutual fund that is not an alternative mutual fund, 10%; and

(b) an alternative mutual fund or a non-redeemable investment fund, 20%;

of its NAV in securities of a single Dublin iShares ETF.

27. The Filer considers that investments in securities of Dublin iShares ETFs provide an efficient and cost-effective way for the Funds to achieve diversification and obtain exposure to the markets and asset classes in which such Dublin iShares ETFs invest. A Fund may also wish to invest in securities of Dublin iShares ETFs in order to gain exposure to certain unique equity and fixed income strategies in global or international markets in circumstances where it would be in the best interests of the Fund to do so through investment in the securities of Dublin iShares ETFs rather than through investments in individual securities, due to costs, difficulty in replicating those strategies or lack of availability of those strategies.

28. In the absence of the Two Tier Relief , the Funds would not be permitted to purchase or hold securities of a Dublin iShares ETF:

(a) since the Dublin iShares ETF is not subject to NI 81-102 as prohibited by paragraphs 2.5(2)(a) and (a.1) of NI 81-102; and

(b) since the Dublin iShares ETF is not a reporting issuer in a Canadian Jurisdiction, as prohibited by paragraph 2.5(2)(c) of NI 81-102.

29. But for the fact that the securities of the Dublin iShares ETFs are traded on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, such securities would otherwise qualify as “index participation units” (**IPUs**) within the meaning of NI 81-102.

30. If the securities of a Dublin iShares ETF were IPUs within the meaning of NI 81-102, a Fund would be permitted to purchase and/or hold securities of one or more Dublin iShares ETFs up to 100% of its NAV, since the Funds would be able to rely on the exception to the prohibitions in paragraphs 2.5(2)(a), (a.1) and (c) of NI 81-102 for investments in IPUs.

31. The Filer wishes to be able to invest assets of the Funds in securities of Dublin iShares ETFs on the same basis as would be permitted under NI 81-102 if the securities of the Dublin iShares ETFs were traded on a stock exchange in Canada or the United States and were therefore IPUs.

32. Each Fund that is relying on the Two Tier Relief will provide the disclosure required by the securities legislation of the Canadian Jurisdictions for investment funds investing in other investment funds.

33. The prospectus of each Fund that is relying on the Two Tier Relief will, no later than the next time that the prospectus of the Fund is renewed after the date of this decision, disclose the fact that the Fund has obtained the Two Tier Relief to permit investments in one or more Dublin iShares ETFs on the terms described in this decision.

34. There will be no duplication of management fees or incentive fees for the same service as a result of an investment by a Fund in a Dublin iShares ETF.

35. The amount of loss that could result from an investment by a Fund in a Dublin iShares ETF will be limited to the amount invested by the Fund in the Dublin iShares ETF.

36. An investment by a Fund in one or more Dublin iShares ETFs will be made in accordance with the fundamental investment objectives of the Fund.

37. An investment by a Fund in a Dublin iShares ETF represents, or will represent, the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

The Three-Tier Relief

38. Each Fund may, from time to time, wish to invest up to 100% of its NAV in securities of one or more Middle Funds.

39. The Filer submits that employing a three-tier fund-of-fund structure in this way achieves efficiencies from both an investment diversification and operational perspective. Such a structure will allow a Fund to obtain exposure to one or more Dublin iShares ETFs on a cost-effective basis, including by allowing a Fund to purchase a currency-hedged Fund that employs a fund-of-fund structure.

40. In the absence of the Three Tier Relief, the Funds would not be permitted to purchase or hold a security of a Middle Fund if the Middle Fund holds more than 10% of its NAV in securities of Dublin iShares ETFs, as prohibited by paragraph 2.5(2)(b) of NI 81-102.

41. But for the fact that the securities of the Dublin iShares ETFs are traded on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, such securities would otherwise qualify as IPUs within the meaning of NI 81-102.

42. If the securities of a Dublin iShares ETF were IPUs within the meaning of NI 81-102, a Fund would be permitted to purchase and/or hold securities of one or more Middle Funds up to 100% of its NAV, since the Funds would be able to rely on the exception to the prohibition in subsection 2.5(2)(b) of NI 81-102 for investments in funds that hold IPUs.

43. The Filer wishes to be able to invest assets of the Funds in securities of Middle Funds on the same basis as would be permitted under NI 81-102 if the securities of the Dublin iShares ETFs were traded on a stock exchange in Canada or the United States and were therefore IPUs.

44. Each Fund that is relying on the Three Tier Relief will provide the disclosure required by the securities legislation of the Canadian Jurisdictions, if any, for investment funds investing in other investment funds that themselves invest in other investment funds.

45. The prospectus of each Fund that is relying on the Three Tier Relief will, no later than the next time that the prospectus of the Fund is renewed after the date of this decision, disclose the fact that the Fund has obtained the Three Tier Relief to permit investments in one or more Middle Funds on the terms described in this decision.

46. There will be no duplication of management fees or incentive fees for the same service as a result of an investment by a Fund in a Middle Fund.

47. The amount of loss that could result from an investment by a Fund in a Middle Fund will be limited to the amount invested by the Fund in the Middle Fund.

48. An investment by a Fund in one or more Middle Funds will be made in accordance with the fundamental investment objectives of the Fund.

49. An investment by a Fund in a Middle Fund represents, or will represent, the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

The Exemption Sought

50. The ETF market continues to develop and evolve in the United Kingdom and Europe, and new Dublin iShares ETFs continue to be launched that provide exposure to different and unique asset classes and markets. The Exemption Sought will enable the Funds to invest directly or indirectly in the expanding suite of Dublin iShares ETFs.

51. In the absence of the Exemption Sought, the Funds would not be permitted to:

    (a) purchase and/or hold securities of one or more Dublin iShares ETFs; or

    (b) purchase and/or hold securities of one or more Middle 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 Exemption Sought is granted provided that:

(a) the investment by a Fund in securities of a Dublin iShares ETF is made in accordance with the fundamental investment objectives of the Fund;

(b) securities of the Dublin iShares ETFs qualify as IPUs within the meaning of NI 81-102 but for the fact that they are traded on a stock exchange in the United Kingdom and not a stock exchange in Canada or the United States;

(c) none of the Dublin iShares ETFs are synthetic ETFs, meaning that they will not principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index;

(d) investments by a Fund, directly or indirectly, in securities of one or more Dublin iShares ETFs comply with NI 81-102 as if securities of the Dublin iShares ETFs were IPUs within the meaning of NI 81-102; and

(e) in the event that there is a significant change to the regulatory regime applicable to the Dublin iShares ETFs that results in a less restrictive regulatory regime compared to the current regime and that has a material impact on the management or operation of the Dublin iShares ETFs in which the Funds are invested, the Funds do not acquire additional securities of such Dublin iShares ETFs, and dispose of any securities of such Dublin iShares ETFs in an orderly and prudent manner.

The Exemption Sought will terminate six months after the coming into force of any amendments to NI 81-102 that restrict or regulate a Fund's ability to invest in Dublin iShares ETFs or Middle Funds.

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

2.1.3 Brookfield Infrastructure Partners L.P. and Brookfield Infrastructure Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – partnership creates corporation to provide investors with alternative way to hold its units – corporation issues exchangeable shares whose terms are structured so that each exchangeable share is functionally and economically equivalent to a partnership unit – each exchangeable share provides an equivalent economic return as a partnership unit – both the partnership and the corporation are reporting issuers – related party transactions between the partnership and the corporation are exempt from the related party transaction requirements, subject to conditions – partnership may include corporation's exchangeable shares when calculating market capitalization for the purposes of using the 25% market capitalization exemption for certain related party transactions, subject to conditions.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Part 5, ss. 5.5(a), 5.7(1)(a) and 9.1.

March 11, 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
BROOKFIELD INFRASTRUCTURE PARTNERS L.P.,
AND
BROOKFIELD INFRASTRUCTURE CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Infrastructure Partners L.P. (**BIP**) and Brookfield Infrastructure Corporation (**BIPC**, and together with BIP, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

BIP be exempt from the requirements of Part 5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**, and such requirements, the **Related Party Transaction Requirements**) in connection with any related party transaction of BIP with BIPC or any of BIPC's subsidiary entities (the **BIP Related Party Relief**);

BIPC be exempt from the Related Party Transaction Requirements in connection with any related party transaction of BIPC with BIP or any of BIP's subsidiary entities (the **BIPC Related Party Relief**); and

BIP be exempt from the requirements of sections 5.4 and 5.6 of MI 61-101 (the **Valuation and Minority Approval Requirements**) in connection with any related party transaction of BIP entered into indirectly through Holding LP (as defined below) or any subsidiary entity of Holding LP, if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the class A exchangeable subordinate voting shares of BIPC (the **Exchangeable Shares**) were included in the calculation of BIP's market capitalization (the **Transaction Size Relief**, collectively with the BIP Related Party Relief and the BIPC Related Party Relief, the **Exemption Sought**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Quebec, and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

BIP

1. BIP is an exempted limited partnership established, registered and in good standing under the laws of Bermuda. BIP's registered and head office is located at 73 Front Street, 5th Floor, Hamilton HM 12, Bermuda.

2. BIP is a reporting issuer in all of the provinces and territories of Canada and is a SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**). BIP satisfies its continuous disclosure obligations by complying with U.S. federal securities laws in accordance with NI 71-102. BIP is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized capital of BIP consists of: (a) non-voting limited partnership units (the **BIP Units**); (b) Class A preferred limited partnership units, issuable in series; and (c) general partnership units.

4. The BIP Units are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (**TSX**) under the symbols "BIP" and "BIP.UN", respectively.

5. BIP's sole asset is its managing general partnership interest and preferred limited partnership interest in Brookfield Infrastructure L.P. (**Holding LP**), a Bermuda exempted limited partnership that was established on August 17, 2007 and is in good standing under the laws of Bermuda.

6. Brookfield Infrastructure Partners Limited, a wholly-owned subsidiary of Brookfield Asset Management Inc. (**Brookfield**), holds the general partner interest in BIP.

Brookfield

7. Brookfield is a corporation existing and in good standing under the *Business Corporations Act* (Ontario). Brookfield's registered and head office is located at Suite 300, Brookfield Place, 181 Bay Street, Toronto, Ontario, M5J 2T3.

8. Brookfield is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

9. The Class A Limited Voting Shares of Brookfield are listed on the NYSE and the TSX under the symbols "BAM" and "BAM.A", respectively.

10. Brookfield indirectly holds an approximate 29.2% economic interest in BIP (on a fully-exchanged basis) through its ownership of redeemable partnership units of Holding LP (the **Redeemable Partnership Units**).

11. Brookfield indirectly holds all of the voting interests in BIP through its ownership of the general partner unit of BIP.

12. BIP, Holding LP and certain of their subsidiaries have retained Brookfield and its related entities to provide management, administrative and advisory services under a master services agreement.

BIPC

13. BIPC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). BIPC was incorporated on August 30, 2019. BIPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. BIPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

14. The authorized share capital of BIPC consists of an unlimited number of common shares (the **BIPC Common Shares**).

15. All of the BIPC Common Shares are held by Brookfield Instructure Holdings (Canada) Inc., a wholly-owned subsidiary of BIP.

16. BIPC's principal investments are expected to initially consist of indirect interests in utilities businesses in Europe and South America.

17. BIPC is not a reporting issuer in any jurisdiction and is not in default of any applicable requirement of securities legislation.

The Special Distribution

18. BIP believes that certain investors in certain jurisdictions may be dissuaded from investing in BIP because of the tax reporting framework that results from investing in units of a Bermuda exempted limited partnership.

19. BIPC was created, in part, to provide investors that would not otherwise invest in BIP with an opportunity to gain access to BIP's portfolio of infrastructure assets, and to provide investors with the flexibility to own, through the ownership of an Exchangeable Share, the economic equivalent of a BIP Unit.

20. BIP will be distributing Exchangeable Shares to holders of BIP Units (the **Special Distribution**). The Special Distribution is, in effect, a stock split of the BIP Units.

21. On November 13, 2019, (i) BIPC filed a preliminary long form prospectus to qualify the distribution of the Exchangeable Shares to be distributed pursuant to the Special Distribution, and (ii) BIP filed a preliminary short form prospectus to qualify the BIP Units issuable or deliverable upon the exchange, redemption or purchase of Exchangeable Shares pursuant to their terms.

22. Upon obtaining a receipt for the final prospectus, BIPC will become a reporting issuer in each of the provinces and territories of Canada.

23. BIPC has applied to have the Exchangeable Shares listed on the NYSE and TSX.

24. BIPC filed a registration statement on Form F-1 with the U.S. Securities and Exchange Commission (the **SEC**), as amended, to register the Exchangeable Shares that will be distributed pursuant to the Special Distribution, and BIP filed a registration statement of Form F-3 with the SEC, as amended, to register the BIP Units issuable or deliverable upon the exchange, redemption or purchase of Exchangeable Shares pursuant to their terms.

25. Prior to the closing of the Special Distribution:

    (a) BIPC will reclassify its share structure such that, following the reclassification, BIPC's authorized share capital will consist of: (i) an unlimited number of Exchangeable Shares; (ii) an unlimited number of class B multiple voting shares (the **Class B Shares**); (iii) an unlimited number of class C non-voting shares (the **Class C Shares**); (iv) an unlimited number of class A senior preferred shares (issuable in series); and (v) an unlimited number of class B junior preferred shares (issuable in series);

    (b) the following ownership interests will be contributed or transferred by BIP, or subsidiaries thereof, to BIPC:

        (i) approximately 80% of BUUK Infrastructure Holdings Limited, a gas distribution business located in the United Kingdom; and

        (ii) approximately 28% of Nova Transportadora do Sudeste S.A., a gas transportation business located in Brazil; and

    (c) BIP will receive Exchangeable Shares through a distribution by Holding LP of Exchangeable Shares to all the holders of equity units of Holding LP, including Brookfield through its indirect ownership of Redeemable Partnership Units and special general partner units in Brookfield Infrastructure Special LP.

26. The distribution ratio of Exchangeable Shares for each BIP Unit held will be based on the fair market value of the businesses to be transferred by BIP to BIPC, the number of BIP Units outstanding at the time of the Special Distribution (assuming exchange of the Redeemable Partnership Units), and the market capitalization of BIP. It is expected that holders of BIP Units will receive one (1) Exchangeable Share (less any Exchangeable Shares withheld to satisfy withholding tax obligations) for every nine (9) BIP Units held as of the record date of the Special Distribution.

27. Each Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BIP Unit and the rights, privileges, restrictions and conditions attached to each Exchangeable Share (the **Exchangeable Share Provisions**) are such that each Exchangeable Share is as nearly as practicable, functionally and economically, equivalent to a BIP Unit. In particular:

    (a) each Exchangeable Share will be exchangeable at the option of a holder for one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC) (an **Exchange**);

(b) the Exchangeable Shares are redeemable by BIPC for BIP Units (or its cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **Redemption**);

(c) upon a liquidation, dissolution or winding up of BIPC, holders of Exchangeable Shares will be entitled to receive BIP Units (or its cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of BIPC following such payment (a **BIPC Liquidation**);

(d) upon a liquidation, dissolution or winding up of BIP, including where substantially concurrent with a BIPC Liquidation, all of the Exchangeable Shares will be automatically redeemed for BIP Units (or its cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **BIP Liquidation**); and

(e) subject to applicable law and in accordance with the Exchangeable Share Provisions, each Exchangeable Share will entitle the holder to dividends from BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the Exchangeable Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

28. Upon being notified by BIPC that BIPC has received a request for an Exchange, BIP has an overriding call right to purchase (or have one of its affiliates purchase) all of the Exchangeable Shares that are the subject of the Exchange notice from the holder of Exchangeable Shares for BIP Units (or its cash equivalent, at BIP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

29. Upon being notified by BIPC that it intends to conduct a Redemption, BIP has an overriding call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding Exchangeable Shares for BIP Units (or its cash equivalent, at BIP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

30. Upon the occurrence of a BIP Liquidation or BIPC Liquidation, BIP will have an overriding liquidation call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding Exchangeable Shares on the day prior to the effective date of such BIP Liquidation or BIPC Liquidation for BIP Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

31. Prior to the Special Distribution, Brookfield will enter into a rights agreement (the **Rights Agreement**) pursuant to which it will agree that, for the five-year period beginning on the date of the Special Distribution, Brookfield will guarantee BIPC's obligation to deliver BIP Units or its cash equivalent in connection with an Exchange.

32. An investment in Exchangeable Shares will be as nearly as practicable, functionally and economically, equivalent to an investment in BIP Units. BIP expects that:

(a) investors of Exchangeable Shares will purchase Exchangeable Shares as an alternative way of owning BIP Units rather than a separate and distinct investment; and

(b) the market price of the Exchangeable Shares will be significantly impacted by (i) the combined business performance of BIPC and BIP as a single economic unit, and (ii) the market price of the BIP Units, in a manner that should result in the market price of the Exchangeable Shares closely tracking the market price of the BIP Units.

33. BIPC is intended to be an entity through which persons who do not wish to hold BIP Units directly, may hold their interests in BIP, and BIP is the entity through which holders of Exchangeable Shares and BIP Units hold their interests in the collective operations of BIP and its subsidiaries, including BIPC and its subsidiaries.

Ownership and Control of BIPC

34. The Related Party Transaction Requirements do not apply to an issuer carrying out a related party transaction if:

(a) as provided under paragraph 5.1(d) of MI 61-101, the parties to the transaction consist solely of (i) an issuer and one or more of its wholly-owned subsidiary entities, or (ii) wholly-owned subsidiary entities of the same issuer. A person is considered to be a "wholly-owned subsidiary entity" of an issuer if the issuer owns, directly or indirectly, all of the voting and equity securities and securities convertible into voting and equity securities of the person; and/or

(b) as provided under paragraph 5.1(g) of MI 61-101 (the **Downstream Transaction Carve-Out**), the transaction is a downstream transaction for the issuer. A "downstream transaction" means, for an issuer, a transaction

between the issuer and a related party of the issuer if, at the time the transaction is agreed to, (i) the issuer is a control person of the related party, and (ii) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction.

35. Section 1.3 of MI 61-101 provides that, for the purposes of MI 61-101, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be a transaction of the issuer.

36. Related party transactions among BIP and BIPC will be required for the operation of the Exchangeable Share Provisions and in connection with ordinary course financial support arrangements which may be entered into from time to time.

37. The only voting securities of BIPC are the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares are entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares.

38. Neither the Exchangeable Shares nor the Class B Shares carry a residual right to participate in the assets of BIPC upon liquidation or winding-up of BIPC, and accordingly, are not equity securities under the Legislation. The Class C Shares are the only equity securities of BIPC.

39. All of the Class B Shares and the Class C Shares will be indirectly owned by BIP and none of them will be transferable except to an affiliate of BIP. Accordingly, all of the equity securities of BIPC are held indirectly by BIP.

40. BIPC is not a wholly-owned subsidiary of BIP; BIP will not own, directly or indirectly, all of the voting securities of BIPC because Brookfield and members of the public will hold Exchangeable Shares. However, by virtue of the terms of the Class B Shares, BIP holds a 75% voting interest in BIPC, will control BIPC and the appointment and removal of directors of BIPC; the voting rights attached to the Exchangeable Shares do not allow holders of Exchangeable Shares to affect the control of BIPC. The voting right attached to each Exchangeable Share is expected to assist with index inclusion.

41. BIP is not able to rely on the Downstream Transaction Carve-Out because, upon completion of the Special Distribution, Brookfield will beneficially own or exercise control or direction over, more than five per cent of the Exchangeable Shares, as it will hold, directly or indirectly, approximately 29.6% of the Exchangeable Shares. Brookfield will accordingly have a 7.4% voting interest in BIPC.

42. BIPC is a controlled subsidiary of BIP and BIP will consolidate BIPC and its businesses in BIP's financial statements.

43. By virtue of the Exchangeable Share Provisions, the economic rights of the holders of the Exchangeable Shares will not be affected by transactions between BIP and BIPC. BIP, as the sole holder of equity securities of BIPC, will receive any benefit and/or bear any detriment from related party transactions between BIP and BIPC.

44. Minority approval is required of every class of affected securities, being equity securities of the issuer. For BIPC, minority approval of a related party transaction of BIPC with BIP would be sought from the holders of its Class C Shares, all of which are held by BIP. BIP, as the counterparty to such a related party transaction, does not require the protections of MI 61-101.

Market Capitalization Calculation

45. It is anticipated that BIP will, from time to time, enter into transactions with certain related parties, including Brookfield and its affiliates (other than BIP and its related entities, including BIPC) indirectly through Holding LP and its subsidiaries (including BIPC and its subsidiaries).

46. The Valuation and Minority Approval Requirements require, subject to the availability of an exemption, that an issuer obtain: (a) a formal valuation of the transaction in a form satisfying the requirements of MI 61-101 by an independent valuator; and (b) approval of the transaction by disinterested holders of the affected securities of the issuer.

47. A related party transaction that is subject to MI 61-101 may be exempt from the Valuation and Minority Approval Requirements if, at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the **Market Cap Exemption**).

48. It is unclear whether BIP would be entitled to rely on the Market Cap Exemption available under the Legislation because the definition of market capitalization in the Legislation does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.

49. The Exchangeable Shares represent part of the equity value of BIP and are functionally and economically equivalent to the BIP Units. As a result of the Exchangeable Share Provisions, holders of Exchangeable Shares have the ability to receive a BIP Unit or its cash equivalent (the form of payment to be determined at the election of BIPC) and will receive identical distributions to the BIP Units, as and when declared by the board of directors of BIPC. Moreover, the economic interests that underlie the Exchangeable Shares are identical to those underlying the BIP Units; namely, the assets and operations held directly or indirectly by BIP.

50. Any costs related to a transaction occurring within the BIPC group would be borne by BIP as the sole holder of the equity securities of BIPC. BIP will consolidate BIP and its businesses in its financial statements and the business of BIP (including BIPC and its subsidiaries) will be the same as it was before the creation of BIPC and the transactions conducted in connection with, and to facilitate, the Special Distribution.

51. If the Exchangeable Shares are not included in the market capitalization of BIP, the equity value of BIP will be understated initially by the value of the Exchangeable Shares, being approximately 11% (assuming a one-for-nine distribution ratio). As a result, related party transactions of BIP that are entered into through a subsidiary entity of BIPC may be subject to the Valuation and Minority Approval Requirements in circumstances where the fair market value of the transactions are effectively less than 25% of the fully diluted market capitalization of BIP.

52. BIP has already received relief similar to the Transaction Size Relief in respect of the Redeemable Partnership Units. On December 21, 2007, the Ontario Securities Commission granted BIP an exemption from the Valuation and Minority Approval Requirements in connection with any related party transaction of BIP entered into indirectly through Holding LP and its subsidiaries if that transaction would qualify for the Market Cap Exemption if the Redeemable Partnership Units were included in the calculation of BIP's market capitalization.

Decision

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

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

1. in respect of the BIP Related Party Relief and BIPC Related Party Relief:

   (a) all of the equity securities of BIPC are owned, directly or indirectly, by BIP;

   (b) all of the voting securities of BIPC (other than the Exchangeable Shares) are owned, directly or indirectly, by BIP;

   (c) there are no material changes to the Exchangeable Share Provisions, as described above; and

   (d) BIP consolidates BIPC and its businesses in BIP's financial statements;

2. in respect of the Transaction Size Relief:

   (a) the transaction would qualify for the Market Cap Exemption if the Exchangeable Shares were considered an outstanding class of equity securities of BIP that were convertible into BIP Units;

   (b) there are no material changes to the Exchangeable Share Provisions, as described above; and

   (c) any annual information form or equivalent of BIP that is required to be filed in accordance with applicable securities laws contain the following disclosure, with any immaterial modifications as the context may require:

> Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") provides a number of circumstances in which a transaction between an issuer and a related party may be subject to valuation and minority approval requirements. An exemption from such requirements is available when the fair market value of the transaction is not more than 25% of the market capitalization of the issuer. Brookfield Infrastructure Partners L.P. ("**BIP**") has been granted exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, permits it to be exempt from the minority approval and valuation requirements for transactions that would have a value of less than 25% of BIP's market capitalization, if Brookfield's indirect equity interest in BIP and the class A exchangeable subordinate voting shares of Brookfield Infrastructure Corporation ("**BIPC**") are included in the calculation of BIP's market capitalization. As a result, the 25% threshold above which the minority approval and valuation requirements would apply is increased to include the approximately 29.2% indirect interest in BIP in the form of redeemable partnership units of Brookfield

Infrastructure L.P. held by Brookfield and the approximately 11.1% indirect interest in BIP in the form of class A exchangeable subordinate voting shares of BIPC held by Brookfield and the public.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.1.4 IA Clarington Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted from conflict of interest trading prohibition in paragraphs 13.5(2)(b)(ii) and (iii) of NI 31-103 to permit Inter Fund Trades between Funds – Portfolio manager of Fund is also portfolio manager of other Funds and is therefore a responsible person – Relief subject to certain conditions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b)(ii) and (iii).

March 10, 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
IA CLARINGTON INVESTMENTS INC.
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the prohibitions under subparagraphs 13.5(2)(b)(ii) and (iii) of Regulation 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103)** which prohibit a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an associate of a responsible person, or from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, in order to permit:

(i) a Fund (as defined below) to purchase securities from or sell securities to another Fund; and

(ii) the transactions listed in (i) (each an **Inter Fund Trade**) to be executed at the last sale price, as defined in the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the **Last Sale Price**) in lieu of the closing sale price (the **Closing Sale Price**) contemplated by the definition of "current market price of the security" in subparagraph 6.1(1)(a)(i) of Regulation 81-107 *Independent Review Committee for Investment Funds* (**Regulation 81-107**) on that trading day, where the securities involved in the Inter Fund Trade are exchange-traded securities (which term shall include Canadian and foreign-exchange securities) ((i) and (ii) are, collectively, 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* (c.V-1.1, r.1) (**Regulation 11-102**) is intended to be relied upon in the provinces of Canada other than the Jurisdictions, and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions (c.V-1.1. r.3)*, Regulation 11-102, Regulation 31-103 and Regulation 81-107 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is the manager of certain existing investment funds (the **Existing Funds**) and may, in the future, be the manager of other investment funds that are governed by Regulation 81-102 – *Investment Funds* (**Regulation 81-102**) (collectively, with the Existing Funds, the **Funds** and, individually, a **Fund**).

2. The Filer is a corporation amalgamated under the laws of Canada. The Filer's head office is in Québec City, Québec.

3. The Filer is registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador, as an exempt market dealer in Québec and Ontario, and as a portfolio manager in all of the provinces of Canada.

4. The Filer is, or will be, the manager of each of the Funds and the sub-adviser to certain Funds. The Filer may appoint related or third party portfolio advisers or sub-advisers to the Funds.

5. Each Fund is, or will be, established under the laws of the Province of Ontario, under the laws of Canada or under the laws of another Jurisdiction, as an investment fund and is, or will be, a reporting issuer in one or more of the Jurisdictions.

6. The securities of each Fund are, or will be, qualified for distribution pursuant to simplified prospectuses and annual information forms that have been prepared and filed in accordance with Regulation 81-101 *Mutual Fund Prospectus Disclosure*. Each Fund is, or will be, subject to the provisions of Regulation 81-102.

7. Neither the Filer nor the Existing Funds are in default of securities legislation in any of the Jurisdictions.

8. The Filer wishes to be able to permit Inter Fund Trades of portfolio securities between Funds.

9. Regulation 31-103, Regulation 81-102 and Regulation 81-107 restrict inter-fund trading. Absent the Exemption Sought, neither the Funds, nor the Filer on their behalf, will be permitted to engage in Inter Fund Trades as contemplated by this decision.

10. The Filer is a responsible person for the purpose of paragraph 13.5(2)(b) of Regulation 31-103 and, absent exemptive relief, is prohibited from effecting certain Inter Fund Trades between the Funds for which the Filer, or other responsible person, acts as an adviser.

11. Each Inter Fund Trade will be consistent with the investment objectives of the relevant Fund.

12. At the time of an Inter Fund Trade, the Filer will have policies and procedures in place to enable the applicable Funds to engage in Inter Fund Trades.

13. The Filer, as manager of each Fund, has established, or will establish, an independent review committee (**IRC**) in respect of each Fund in accordance with Regulation 81-107.

14. Inter Fund Trades will be referred to and approved by the IRC of the Fund under subsection 5.2(1) of Regulation 81-107 and the Filer, as manager of the Funds, and the IRC of the Funds will comply with section 5.4 of Regulation 81-107 in respect of any standing instructions the IRC provides in connection with the Inter Fund Trade. The IRC of the Funds will not approve an Inter Fund Trade involving a Fund unless it has made the determination set out in subsection 5.2(2) of Regulation 81-107.

15. Inter Fund Trades will comply with paragraphs (c) to (g) of subsection 6.1(2) of Regulation 81-107 except that for the purposes of paragraph (e) of subsection 6.1(2) of Regulation 81-107, in respect of exchange-traded securities, the current market price of the securities may be the Last Sale Price.

16. The Filer cannot rely on the exemption available in subsection 6.1(4) of Regulation 81-107 for Inter Fund Trades unless the Inter Fund Trade occurs at the "current market price of the security" which, in the case of exchange-traded securities includes the Closing Price but not the Last Sale Price.

17. If the IRC of the Fund becomes aware of an instance where the Filer did not comply with the terms of this Proposed Relief, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator which is the Fund's principal regulator.

18. The Filer has determined that it would be in the best interests of all Funds to permit Inter Fund Trades because given the various investment objectives and investment strategies that are or will be utilized by the Funds, it may be appropriate for different investment portfolios to acquire or dispose of the same securities. The Filer has determined that engaging in these Inter Fund Trades directly rather than with a third party has potential benefits such as lower trading costs, reduced market disruption and quicker execution.

19. The Filer considers that it would be in the best interests of the Funds if an Inter Fund Trade could be conducted at the Last Sale Price prior to the execution of the trade, in lieu of the Closing Sale Price, as this will result in the trade being done at the price which is closest to the price at the time the decision to make the trade is made.

20. An Inter Fund Trade to be effected at the Last Sale Price will be implemented by the Filer as follows:

    (a) the portfolio manager will deliver the trade instruction in respect of a purchase or sale of a portfolio security by a Fund (*Party A*), to a trader on a third-party or affiliated dealers' trading desk;

    (b) the portfolio manager will deliver the trade instruction in respect of a purchase or sale of a portfolio security by another Fund (*Party B*), to a trader on a third-party or affiliated dealers' trading desk;

    (c) the trader on the trading desk will have the discretion to execute the trade as an Inter Fund Trade between Party A and Party B at the Last Sale Price of the portfolio security, prior to the execution of the trade;

    (d) the policies applicable to the trading desk will require that all orders are to be executed on a timely basis and orders will be executed for no consideration other than cash payment against prompt delivery of a security; and

    (e) the trader on the trading desk will advise of the Last Sale Price.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the following conditions are satisfied:

    (a) the Inter Fund Trade is consistent with the investment objectives of each of the Funds involved in the trade;

    (b) the Filer, as manager of the Funds, refers the Inter Fund Trade to the IRC of the Fund in the manner contemplated by section 5.1 of Regulation 81-107 and the Filer and the IRC of the Funds comply with section 5.4 of Regulation 81-107 in respect of any standing instructions the IRC provides in connection with the Inter Fund Trade;

    (c) the IRC of each Fund has approved the Inter Fund Trade in accordance with the terms of subsection 5.2(2) of Regulation 81-107; and

    (d) the Inter Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of Regulation 81-107, except that for the purposes of paragraph (e) of subsection 6.1(2) of Regulation 81-107 in respect of exchange-traded securities, the current market price of the securities may be the Last Sale Price.

Signed by

"Frédéric Pérodeau"
Superintendent, Client Services and Distribution Oversight

2.1.5 Vision Capital Corporation and Vision Market Neutral Alternative Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – filer seeking relief from NI 81-102 to permit alternative mutual funds to physically short sell up to 100% of net assets – relief subject to conditions.

Relief permitting processing of purchases and redemptions on a monthly basis.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds – ss. 2.6.1(1)(c)(v), 2.6.2, 9.3(1), 10.3(1).

February 21, 2020

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

AND

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

AND

IN THE MATTER OF
VISION CAPITAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
VISION MARKET NEUTRAL ALTERNATIVE FUND
(the Proposed Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Proposed Fund, and such alternative mutual funds as may be established in the future and for which the Filer or an affiliate of the Filer acts as investment fund manager (the **Future Funds** and together with the Proposed Fund, the **Funds,** and each a **Fund**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), exempting the Funds from the following provisions of NI 81-102:

(i) to permit the Funds to short sell securities up to 100% of a Fund's net asset value (**NAV**):

  (A) subparagraph 2.6.1(1)(c)(v) which restricts an alternative mutual fund from selling a security short if, at the time, the aggregate market value of all securities sold short by the fund exceeds 50% of the fund's NAV; and

  (B) section 2.6.2, which prohibits an alternative mutual fund from borrowing cash or selling securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the investment fund would exceed 50% of the fund's NAV (collectively, the **Short Selling Relief**);

(ii) subsection 9.3(1), to permit a Fund to process purchase orders for its units, as described in its simplified prospectus and fund facts, on a monthly basis at their class net asset value per unit calculated as at the last Valuation Date (as defined below) of the calendar month in which the purchase order for such units is received (**Purchase Relief**);

(iii) subsection 10.3(1), to permit a Fund to process redemption orders for its units, as described in its simplified prospectus and fund facts:

(A) initially, on a Valuation Date that is no more than 6 months after the date on which the receipt was issued for its initial prospectus (the **Initial Redemption Date**). Redemption orders for units received at least 20 business days prior to the Initial Redemption Date will be redeemed at their class net asset value per unit determined on the Initial Redemption Date; and

(B) following the date referred to in (A) above, and on at least 20 business days prior written notice, on a monthly basis, redeeming such units at their class net asset value per unit calculated on the last Valuation Date of each calendar month in which the redemption order for such units is received (**Redemption Relief**)

(collectively, **the Requested Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for this application; 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Yukon (the **Other Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

Background

1. The Filer is registered as a portfolio manager, investment fund manager and exempt market dealer in the provinces of Ontario, British Columbia, Alberta and Manitoba, and as an investment fund manager and exempt market dealer in the Province of Quebec, and as an investment fund manager in the Province of Newfoundland and Labrador. The Filer's head office is in Toronto, Ontario.

2. The Filer will be the investment fund manager, portfolio manager, trustee and promoter of the Proposed Fund and the Filer or an affiliate of the Filer, will be the investment fund manager, portfolio manager and trustee of the Future Funds. The Filer is not in default of applicable securities legislation in any of the Jurisdictions.

3. The Funds will be alternative mutual funds established under the laws of the Province of Ontario and will be governed by the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

4. Units of the Funds will be offered by simplified prospectus filed in all of the provinces of Canada and Yukon and, accordingly, the Funds will be reporting issuers in all of the provinces of Canada and Yukon.

5. The investment objective of the Proposed Fund is to generate consistent long-term capital appreciation and to provide investors with an attractive risk-adjusted rate of return with low downside volatility and drawdown, while maintaining a low correlation to the overall equity market through low equity and sectoral market exposure. The Proposed Fund will attempt to meet its objectives by employing alternative investment strategies that generally maintain long and short exposures that results in relatively low net exposures through investments in securities with a principal focus on real estate-based securities.

6. The Filer will manage the relative weightings of the Proposed Fund's long and short positions to achieve the Proposed Fund's investment objective. The Proposed Fund's gross exposure and net exposure will depend on the Filer's research and portfolio construction techniques along with the hedging of the general market exposure, which may contemplate short selling in excess of 50% of the Proposed Fund's net asset value.

7. The proposed investment objective for each Future Fund will differ, but in each case, a core investment strategy as stated in the simplified prospectus will make the extensive use of short selling an investment strategy that is available to the portfolio manager in order to achieve the investment objectives of the applicable Fund and the portfolio manager's desired combination of long and short positions.

8. The Funds' net asset values will be calculated at the close of regular trading, normally 4:00 p.m. (Eastern Time), on a day the Toronto Stock Exchange is open (a **Valuation Date**).

9. The Filer will determine each Fund's risk rating using the *CSA's Mutual Fund Risk Classification Methodology For Use In Fund Facts and ETF Facts* as set out in Appendix F of NI 81-102 (the **Risk Methodology**). Given that the Funds do not have an established ten-year track record, the Filer will determine the risk rating based on the standard deviation of a reference index selected in accordance with Item 5 of the Risk Methodology (the **Reference Index**). The Filer will assess the reasonableness of using the Reference Index on at least a quarterly basis. This will include monitoring the correlation between the Funds and the applicable Reference Index over time. In conducting this analysis, the Filer will also consider whether it is appropriate to exercise the discretion accorded by the Risk Methodology to increase the risk rating of a Fund.

Fund Disclosure of Alternative Strategies

10. The Filer proposes to file a simplified prospectus in respect of each Fund that:

    (a) identifies each Fund as an alternative mutual fund;

    (b) discloses within each Fund's investment objectives, the asset classes and strategies used which are outside the scope of the existing NI 81-102;

    (c) discloses within each Fund's investment objectives and strategies the maximum amount of leverage to be employed;

    (d) discloses within each Fund's investment strategies the maximum amount each Fund may borrow, together with a description of how borrowing will be used in conjunction with each Fund's other strategies and a summary of each Fund's borrowing arrangements; and

    (e) discloses, in connection with each Fund's investment strategies that may be used that are outside the scope of the existing NI 81-102, how such strategies may affect investors' chance of losing money on their investment in each Fund.

11. The Filer proposes to file an annual information form in respect of each Fund that:

    (a) identifies each Fund as an alternative mutual fund; and

    (b) discloses the name of each person or company that has lent money to each Fund including whether such person or company is an affiliate or associate of the manager of each Fund.

12. The Filer proposes to file a fund facts documents in respect of each Fund that:

    (a) identify each Fund as an alternative mutual fund; and

    (b) include cover page text box disclosure to highlight how each Fund differs from other mutual funds in terms of its investment strategies and the assets it is permitted to invest in.

13. The Filer will include within each Fund's financial statements and management reports of fund performance disclosure regarding actual use of leverage within each Fund for the applicable period referenced therein.

14. The Filer submits that the proposed disclosure in respect of each Fund accurately describes its investment strategies while emphasizing the particular strategies that are outside the scope of the existing NI 81-102.

Short Selling Relief

15. The investment strategies of each Fund will clearly disclose the short selling strategies of each Fund that are outside the scope of NI 81-102, including that the aggregate market value of all securities sold short by each Fund may exceed 50% of the net asset value of each Fund. The prospectus will also contain appropriate risk disclosure, alerting investors of any material risks associated with such investment strategies.

16. The investment strategies of each Fund will permit it to sell securities short, provided that at the time each Fund sells a security short (a) the aggregate market value of securities of any one issuer (other than "government securities" as defined in NI 81-102) sold short by each Fund does not exceed 10% of the net asset value of each Fund, and (b) the aggregate market value of all securities sold short by each Fund does not exceed 100% of its net asset value.

17. The investment strategies of each Fund will permit each Fund to enter into a cash borrowing or short selling transaction, provided that the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by each Fund does not exceed 100% of each Fund's net asset value (the **Total Borrowing and Short Sales Limit**). If Total Borrowing and Short Sales Limit is exceeded, each Fund shall, as quickly as commercially

reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate value of market value of securities sold short to be within the Total Borrowing and Short Sales Limit.

18. The investment strategies of each Fund will permit each Fund to borrow cash, enter into specified derivative transactions or sell securities short, provided that immediately after entering into a cash borrowing, specified derivative or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by each Fund and the aggregate notional amount of each Fund's specified derivatives positions (other than positions held for hedging purposes, as defined in NI 81-102) would not exceed three times each Fund's net asset value (the **Leverage Limit**). If the Leverage Limit is exceeded, each Fund shall, as quickly as commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and aggregate notional amount of each Fund's specified derivatives position to be within the Leverage Limit.

19. Any short position entered into by each Fund will be consistent with the investment objective and strategies of each Fund.

20. The Filer maintains internal controls regarding physical short sales including written policies and procedures, risk management controls and proper books and records

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

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

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

    (c) The Filer will monitor the short positions of each Fund at least as frequently as daily;

    (d) The security interest provided by each Fund over any of its assets that is required to enable each Fund to effect a short sale transaction is made in accordance with section 6.8.1 of NI 81-102 and will otherwise be made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transaction;

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

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

22. Where deemed appropriate and in the best interest of each Fund, the Filer is seeking latitude to enter into physical short positions rather than the use of synthetic short positions in order to achieve the investment objective and strategies of each Fund.

23. The Filer believes that since the underlying investment exposure between a physical short position and a synthetic short position is the same, each Fund will not be subject to any additional risks by entering into a physical short position versus a synthetic short position.

24. The Filer believes there is a greater number of options to borrow securities to short compared to a single counterparty for synthetic shorts resulting in lower borrowing costs to each Fund. As well, with a greater number of options to borrow securities to short, each Fund will be exposed to less counterparty risk than with a synthetic short position (e.g. counterparty default, counterparty insolvency, and premature termination of derivatives).

25. The Short Selling Relief will provide the Filer with the necessary flexibility to make timely trading decisions between physical short and synthetic short positions based on what is in the best interest of each Fund. The Filer, as a registrant and a fiduciary, is in the best position to determine whether each Fund should enter into a physical short position or a synthetic short position, depending on the surrounding circumstances. Accordingly, the Short Selling Relief will permit the Filer to engage in the most effective portfolio management available for the benefit of each Fund and its unitholders.

Purchase Relief and Redemption Relief

26. The Filer will calculate the NAV for each Fund on a daily basis in order to meet its obligations under NI 81-106 regarding the use of derivatives, including the obligation to daily mark-to-market the value of its derivatives.

27. Subsections 9.3(1) and 10.3(1) of NI 81-102 require that the purchase price and redemption price of a security of a mutual fund to which a purchase order and redemption order pertains, respectively, be the net asset value per security next determined after receipt by each Fund of the purchase order and redemption order, respectively.

28. As will be described in each Fund's simplified prospectus and fund facts, each Fund will:

    (a) process purchase orders for its units on a monthly basis at their class net asset value per unit calculated as at the last Valuation Date of the calendar month in which the purchase order for such units is received; and

    (b) process redemption orders for its units:

        (i) initially, on the Initial Redemption Date. Redemption orders for units received at least 20 business days prior to the Initial Redemption Date will be redeemed at their class net asset value per unit determined on the Initial Redemption Date; and

        (ii) following the date referred to in (i) above, and on at least 20 business days prior written notice, on a monthly basis, redeeming such units at their class net asset value per unit calculated on the last Valuation Date of each calendar month in which the redemption order for such units is received.

29. Each Fund will pay the redemption proceeds for units that are the subject of a redemption order no later than 15 business days after the Valuation Date on which the redemption price was calculated.

30. The Filer has structured its mutual fund operations so that it can consolidate all purchase orders into one efficient monthly processing transaction and all redemption orders into one efficient monthly transaction. The Filer has determined that effecting such purchases and redemptions on a monthly basis, strikes the best balance between the needs of a unitholder to invest or access its assets in a timely and orderly manner, and the need to minimize the impact of such transactions on other unitholders in each Fund.

31. The Filer believes that monthly redemptions will mitigate excessive portfolio turnovers to boost each Fund's net asset value due to lower transaction costs in the form of brokerage commissions and the bid-ask spread. Further, it has determined that monthly redemptions will protect each Fund from having to reduce positions at less than ideal times during potentially challenging market conditions. This will ensure that all unitholders of each Fund will be treated fairly in instances where a Fund is not able to unwind its portfolio holdings in an orderly manner to honour the redemption requests at the time.

Decision

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

1. In the case of the Short Selling Relief:

    (a) each Fund may sell a security short or borrow cash only if, immediately after the transaction:

        (i) the aggregate market value of all securities sold short by each Fund does not exceed 100% of each Fund's net asset value;

        (ii) the aggregate value of cash borrowing by each Fund does not exceed 50% of each Fund's net asset value; and

        (iii) the aggregate market value of securities sold short by each Fund combined with the aggregate value of cash borrowing by each Fund does not exceed 100% of each Fund's net asset value.

    (b) each short sale made by each Fund will otherwise comply with all of the short sale requirements applicable to alternative mutual funds under section 2.6.1 and 2.6.2 of NI 81-102;

    (c) each Fund's aggregate exposure to short selling, cash borrowing and specified derivatives will not exceed the Leverage Limit;

    (d) each short sale will be made consistent with each Fund's investment objectives and strategies; and

    (e) each Fund will disclose in its offering documents that each Fund can short sell securities up to 10% of each Fund's NAV, including the material terms of this decision.

2. In the case of the Purchase Relief, each Fund:

   (a) processes, and discloses in its simplified prospectus and in the "Quick Facts" section of its fund facts that it processes, purchase orders for its units on a monthly basis at their class net asset value per unit calculated as at the last Valuation Date of the calendar month in which the purchase order for such units is received (the **Purchase Processing Frequency**); and

   (b) discloses in the "Who should invest in the Fund?" section of the Part B of its simplified prospectus and in the "Who is this Fund for?" section of its fund facts, the Purchase Processing Frequency and that the Fund is only suitable for investors who can accept the Purchase Processing Frequency.

3. In the case of the Redemption Relief, the Funds:

   (a) process, and disclose in its simplified prospectus and in the "Quick Facts" section of its fund facts that it processes, redemption orders for its units as follows (the **Redemption Processing Frequency**):

      (i) initially, on the Initial Redemption Date. Redemption orders for units received at least 20 business days prior to the Initial Redemption Date will be redeemed at their class net asset value per unit determined on the Initial Redemption Date; and

      (ii) following the date referred to in (i) above, and on at least 20 business days prior written notice, on a monthly basis, redeeming such units at their class net asset value per unit calculated on the last Valuation Date of each calendar month in which the redemption order for such units is received; and

   (b) discloses in the "Who should invest in the Fund?" section of the Part B of its simplified prospectus and in the "Who is this Fund for?" section of its fund facts, the Redemption Processing Frequency and that each Fund is only suitable for investors who can accept the Redemption Processing Frequency.

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

2.1.6 Portland Investment Counsel Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of investment fund mergers – approval required because mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 Investment Funds – terminating funds and continuing funds do not have substantially similar fundamental investment objectives – mergers will not be a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act (Canada) – certain merger will require significant portfolio realignment of the terminating fund – mergers otherwise comply with pre-approval criteria, including securityholder vote, IRC approval – securityholders provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

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

March 10, 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 PORTLAND INVESTMENT COUNSEL INC.
(the Manager)

AND

PORTLAND CANADIAN FOCUSED FUND
PORTLAND ADVANTAGE FUND
PORTLAND VALUE FUND
PORTLAND 15 OF 15 FUND
(each, a Terminating Fund, and collectively, the Terminating Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) approving the proposed mergers (each a **Merger**, and collectively the **Mergers**) of each of the Terminating Funds into the applicable Continuing Fund (each as defined below) pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Approval Sought**).

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

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the Manager 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 British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (together with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. The following additional terms shall have the following meanings:

Continuing Fund or **Continuing Funds** means, individually or collectively, Portland Canadian Balanced Fund and/or Portland 15 of 15 Alternative Fund;

Fund or **Funds** means, individually or collectively, the Terminating Funds and/or the Continuing Funds;

Income Tax Act means the *Income Tax Act* (Canada);

IRC means the independent review committee for the Funds;

Representations

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

The Manager and the Funds

1. The Manager is a corporation incorporated under the laws of Ontario. The Manager is registered as:

    (a) in the provinces of Alberta, Newfoundland and Labrador, Ontario and Quebec in the category of investment fund manager;

    (b) in each of the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan as an adviser in the category of portfolio manager;

    (c) in each of the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec and Saskatchewan as a dealer in the category of exempt market dealer; and

    (d) in Ontario as a dealer in the category of mutual fund dealer.

2. The Manager is the manager of each Fund.

3. Each Terminating Trust Fund and each Continuing Trust Fund is an open-end mutual fund governed by a declaration of trust.

4. Neither the Manager nor the Funds are in default of securities legislation in any jurisdiction.

5. Each Fund is a reporting issuer under the securities legislation of each jurisdiction and is subject to the requirements of NI 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

6. Each Fund follows the standard investment restrictions and practices established under the securities legislation of the Jurisdictions, except to the extent that the Funds have received an exemption from the securities regulatory authority of a jurisdiction to deviate therefrom.

7. Each Fund is currently able to distribute its securities in all the Jurisdictions pursuant to a simplified prospectus and annual information form dated April 18, 2019, as amended.

Reason for Approval Sought

8. Regulatory approval of the Mergers is required because none of the Mergers satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102. In particular,

    (a) in respect of each Merger, a reasonable person may not consider the Terminating Fund to have a substantially similar fundamental investment objectives as its corresponding Continuing Fund;

    (b) none of the Mergers will be a “qualifying exchange” within the meaning of section 132.2 of the *Income Tax Act* (Canada) (the **Income Tax Act**) or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the Income Tax Act; and

    (c) in respect of Merger 2 and Merger 3, the portfolios of the Terminating Funds, may require a significant realignment prior to the Merger**.**

9. Other than the criteria described in paragraph 8, each Merger complies with all the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

The Proposed Mergers

10. The Manager intends to merge each Terminating Fund into the Continuing Fund shown opposite its name in the table below:

	Terminating Fund	**Continuing Fund**
"**Merger 1**"	Portland Canadian Focused Fund	Portland Canadian Balanced Fund
"**Merger 2**"	Portland Advantage Fund	Portland Global Dividend Fund (*to be renamed Portland 15 of 15 Alternative Fund*)
"**Merger 3**"	Portland Value Fund	Portland Global Dividend Fund (*to be renamed Portland 15 of 15 Alternative Fund*)
"**Merger 4**"	Portland 15 of 15 Fund	Portland Global Dividend Fund (*to be renamed Portland 15 of 15 Alternative Fund*)

11. The proposed Mergers were announced in:

    (a) a press release dated February 10, 2020;

    (b) a material change report dated February 10, 2020; and

    (c) amendments dated February 10, 2020 to the prospectuses of each of the Funds, each of which has been filed on SEDAR.

12. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Manager presented the terms of the Mergers to the IRC for its review. The IRC determined that the Mergers, if implemented, will achieve a fair and reasonable result for each of the Funds.

13. The Manager expects to mail to securityholders the Circular (defined below) and fund facts documents of the Continuing Funds on or about February 28, 2020.

14. In determining the Funds the Manager would propose to securityholders to merge, including the Funds that would continue, the Manager considered the following:

    (a) To the extent possible, attempt to merge Funds with similar investment styles and strategies;

    (b) For Merger 2, Merger 3 and Merger 4, the Continuing Fund was chosen based on the size of the tax losses and the desire to preserve those tax losses for the benefit of securityholders;

    (c) With respect to Merger 2, Merger 3 and Merger 4, the securityholders will benefit from the mutual fund trust status of the Continuing Fund; and

    (d) The intention to simplify the product line-up and give securityholders the potential for lower operating costs and expenses.

15. The Manager is convening a special meeting of the securityholders of each Terminating Funds in order to seek the approval of the securityholders each of the Terminating Funds to complete its Mergers, as required by paragraph 5.1(1)(f) of NI 81-102. The meetings will be held on or about March 26, 2020.

16. The Manager has concluded that the Mergers are material changes to the Continuing Funds, and accordingly, it has also convened a meeting of securityholders of the Continuing Funds to approve the Mergers pursuant to paragraph 5.1(1)(g) of NI 81-102. The meetings will be held on or about March 26, 2020.

17. If all required approvals for the Mergers are obtained, it is intended that the Mergers will occur after the close of business on or about April 17, 2020 (the **Effective Date**). The Manager, therefore, anticipates that each securityholder of a Terminating Fund will become a securityholder of its Continuing Fund after the close of business on the Effective Date. Each Terminating Fund will be wound-up as soon as reasonably possible following its Merger.

18. The tax implications of the Mergers as well as the differences between the investment objectives and other features of the Terminating Funds and the Continuing Funds and the IRC's recommendation of the Mergers are described in the information circular (the **Circular**), so that securityholders may make an informed decision before voting on whether to approve the Mergers. The Circular will also describe the various ways in which securityholders can obtain a copy of the simplified prospectus, annual information forms and fund facts for the Continuing Funds and their most recent interim and annual financial statements and management reports of fund performance**.**

19. Securityholders of each Terminating Fund will continue to have the right to redeem securities of the Terminating Fund at any time up to the close of business on the Effective Date. Following each Merger, all optional plans (including pre-authorized purchase programs, automatic withdrawal plans, systematic switch programs and automatic rebalancing services) which were established with respect to the Terminating Fund will be re-established in comparable plans with respect to its Continuing Fund, unless securityholders advise otherwise.

20. The costs of effecting the Mergers (consisting primarily of legal and regulatory fees, and proxy solicitation, printing and mailing costs) will be borne by the Manager.

21. No sales charges will be payable by securityholders of the Funds in connection with the Mergers.

22. Securities of the applicable Continuing Funds received by securityholders of the Terminating Funds as a result of the Mergers will have the same sales charge option and, for securities purchased under a deferred sales charge option or low sales charge option, the same remaining deferred sales charge schedule or low sales charge schedule, as their securities in the Terminating Funds.

23. The Manager has determined that it would not be appropriate to effect the Mergers as a "qualifying exchange" within the meaning of section 132.2 of the Income Tax Act or as a tax- deferred merger for the following reasons: (i) to the extent that securityholders in the Terminating Funds have an accrued capital loss on their securities, effecting the Merger on a taxable basis will afford them the opportunity to realize that loss and use it against current capital gains or even carry it forward or back as permitted under the Income Tax Act; (ii) effecting the Mergers on a taxable basis would preserve the net losses and loss carryforwards in the Continuing Funds; and (iii) neither Portland Advantage Fund, Portland Value Fund nor Portland 15 of 15 Fund is a "mutual fund trust" under the Income Tax Act, and accordingly it is not possible to effect Merger 2, Merger 3 and Merger 4 as a "qualifying transaction".

24. Securities of the Continuing Funds are, and are expected to continue to be at all material times, "qualified investments" under the Income Tax Act for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability plans and tax free savings accounts.

25. The investment portfolio and other assets of each Terminating Fund to be acquired by the applicable Continuing Fund in order to effect the Mergers are currently, or will be, acceptable, on or prior to the Effective Date, to the portfolio manager(s) of the applicable Continuing Fund and are, or will be, consistent with the investment objective of the applicable Continuing Fund.

Merger Steps

26. The steps to implement each Merger are as follows:

    i. Prior to the Merger, if required, the Terminating Fund will sell any securities in its portfolio that do not meet the investment objective and investment strategies of the Continuing Fund. As a result, the Terminating Fund may temporarily hold cash or money market instruments and may not be fully invested for a brief period of time prior to the Merger being effected.

    ii. The value of the Terminating Fund's investment portfolio and other assets will be determined at the close of business on the Effective Date in accordance with the constating documents of the Terminating Fund.

    iii. Each of the Terminating Fund and the Continuing Fund may declare, pay and automatically reinvest a distribution to its securityholders of net realized capital gains and net income, if any to ensure it will not be subject to tax for its current taxation year.

    iv. The Terminating Fund will transfer substantially all of its assets to the Continuing Fund which will consist of cash and portfolio securities, less an amount required to satisfy the liabilities of the Terminating Fund. In return, the Continuing Fund will issue to the Terminating Fund units of the Continuing Trust Fund having an aggregate net asset value equal to the value of the assets transferred to the Continuing Fund.

    v. The Continuing Fund will not assume liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the Effective Date.

    vi. Immediately thereafter, units of the Continuing Fund received by the Terminating Fund will be distributed to securityholders of the Terminating Fund in exchange for their securities in the Terminating Fund on a dollar-for-dollar and class-by-class basis.

    vii. The Terminating Fund will be wound-up as soon as practicable following its Merger.

    viii. The Continuing Fund's name under Merger 2, Merger 3 and Merger 4 will be changed.

27. Although the procedures for implementing the Mergers may vary, the result of each Merger will be that investors in each Terminating Fund will cease to be securityholders of the Terminating Fund and will become securityholders of its Continuing Fund.

Benefits of the Mergers

28. In the opinion of the Manager, the Mergers will be beneficial to securityholders of the Funds for the following reasons:

    (a) The Mergers have the potential to lower costs for securityholders as the operating costs of the Continuing Funds will be spread over a greater pool of assets after the Mergers, potentially resulting in a lower management expense ratio for the Continuing Funds than may occur otherwise;

    (b) The Mergers will result in securityholders of the Terminating Funds holding a series of Units of the Continuing Funds that has lower management fees. The Continuing Fund for Merger 2, Merger 3 and Merger 4 will be subject to a performance fee;

    (c) The Mergers will eliminate fund offerings, which is expected to result in a more simplified product line-up that is easier for investors to understand;

    (d) The securityholders of the Terminating Funds and the Continuing Funds will not be responsible for the costs associated with the Mergers as such costs will be borne by the Manager; and

    (e) In connection with Merger 2, Merger 3 and Merger 4, the Continuing Fund will retain approximately $27 million of existing tax losses. These losses may permit the Continuing Fund to receive a more favourable tax treatment in the hands of its securityholders.

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 the Filer obtains the prior approval of the securityholders of the Terminating Funds and Continuing Funds at special meetings held for that purpose.

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

2.1.7 Great Canadian Gaming Corporation

March 13, 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
GREAT CANADIAN GAMING CORPORATION
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the "**Common Shares**") pursuant to a formal issuer bid (the "**Offer**"), the Filer be exempt, subject to the conditions set forth herein from the following requirements (the "**Exemption Sought**"):

(a) the proportionate take up requirements in Section 2.26 of National Instrument 62-104 – *Take-Over Bids and Issuer Bids* ("**NI 62-104**") to take up and pay for Common Shares deposited pursuant to the Offer proportionately according to the number of Common Shares deposited by each shareholder (collectively, the "**Proportionate Take-up Requirement**");

(b) the requirements in Item 8 of Form 62-104F2 to NI 62-104 to provide disclosure of the proportionate take up and payment of Common Shares under the Offer in the Filer's issuer bid circular (the "**Circular**") (collectively, the "**Proportionate Take-Up Disclosure Requirement**"); and

(c) the requirement in Subsection 2.32(4) of NI 62-104 that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the Filer first takes up all Common Shares deposited under the Offer and not withdrawn (the "**Extension Take-Up Requirement**").

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

Interpretation

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

Representations

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

1. The Filer is a corporation governed by the *Business Corporations Act* (British Columbia).

2. The head office and registered office of the Filer is located at 39 Wynford Drive, North York, Ontario M3C 3K5.

3. The Filer is a reporting issuer in each of the provinces of Canada and the Common Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") under the symbol "GC". The Filer is not in default of any requirement of the securities legislation in any of the jurisdictions in which it is a reporting issuer.

4. The Filer's authorized share capital consists of an unlimited number of Common Shares with no par value. As of February 7, 2020, there were 55,520,886 Common Shares issued and outstanding.

5. On February 7, 2020, the closing price of the Common Shares on the TSX was $39.86. On the basis of this closing price, on such date the Common Shares had an aggregate market value of approximately $2,213,062,500 (on a non-diluted basis).

6. As at February 7, 2020, according to publicly available information, BloombergSen Inc. ("**BloombergSen**") exercised control or direction over 10,731,228 Common Shares, representing approximately 19.4% of the issued and outstanding Common Shares, and Cambridge Global Asset Management (a business unit of CI Investments Inc.) ("**Cambridge**") exercised control or direction over 8,112,072 Common Shares, representing approximately 14.7% of the issued and outstanding Common Shares. To the knowledge of the Filer, no other person holds in excess of 10% of the outstanding Common Shares.

7. To the knowledge of the Filer and its directors and officers, after reasonable inquiry, no director or officer of the Filer, no associate or affiliate of a director or officer of the Filer, no associate or affiliate of the Filer, nor any other insider of the Filer (including BloombergSen and Cambridge, each of whom beneficially own or control more than 10% of the Filer's outstanding Common Shares), and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's or company's Common Shares pursuant to the Offer.

8. Shareholders of the Filer are subject to certain share ownership restrictions and constraints (derived from the terms and conditions of registration or licensing and operations services agreements, under the gaming statutes in the jurisdictions in which the Filer operates or the Filer's articles).

9. The Filer launched the Offer on February 14, 2020 pursuant to which it is offering to purchase that number of Common Shares having an aggregate purchase price of up to $500 million.

10. On March 11, 2020, the Filer issued a press release announcing an amendment to the offer to decrease the aggregate purchase amount from $500 million to $350 million (the "**Specified Maximum Dollar Amount**"). Such amendment was fully described in a notice of extension and variation, dated March 11, 2020 ("**NOVE**") and filed on the Filer's SEDAR profile. All references to the Offer herein are deemed to include the NOVE.

11. The board of directors of the Filer (the "**Board**") has determined that the Offer is in the best interests of the Filer.

12. The purchase price per Common Share will be determined by the Filer through a modified "Dutch auction" procedure in the manner described below within a range (the "**Price Range**") between a minimum of $39.00 per Common Share and a maximum of $46.00 per Common Share as specified in the Circular.

13. The Filer will fund the purchase of Common Shares pursuant to the Offer, together with the fees and expenses of the Offer, with drawings on existing credit facilities and cash on hand. The Offer is not conditional upon the receipt of financing.

14. A holder of Common Shares (a "**Common Shareholder**", and collectively, the "**Common Shareholders**") wishing to tender to the Offer is able to do so in one of three ways:

    (a) by making an auction tender pursuant to which it agrees to sell to the Filer, at a specified price per Common Share within the Price Range (an "**Auction Price**"), a specified number of Common Shares (an "**Auction Tender**");

    (b) by making a purchase price tender pursuant to which it agrees to sell a number of Common Shares to the Filer at the Purchase Price (as defined below) (a "**Purchase Price Tender**"); or

    (c) by making a proportionate tender pursuant to which it agrees to sell to the Filer that number of Common Shares owned by it that will result in it maintaining its proportionate Common Share ownership following the completion of the Offer at the Purchase Price (a "**Proportionate Tender**").

15. Common Shareholders may deposit some of their Common Shares pursuant to an Auction Tender and deposit different Common Shares pursuant to a Purchase Price Tender. Common Shareholders who tender shares in an Auction Tender and/or a Purchase Price Tender cannot tender shares in a Proportionate Tender. Common Shareholders may not deposit the same Common Shares pursuant to more than one method of tender or pursuant to

an Auction Tender at more than one price. Common Shareholders who tender shares in a Proportionate Tender may not tender shares in an Auction Tender or a Purchase Price Tender.

16. Any Common Shareholder who owns fewer than 100 Common Shares and tenders all of such Common Shareholder's Common Shares pursuant to an Auction Tender at or below the Purchase Price or pursuant to a Purchase Price Tender will be considered to have made an "Odd Lot Tender".

17. The Filer will determine the purchase price payable per Common Share (the "**Purchase Price**") based on the Auction Prices and the number of Common Shares specified in valid Auction Tenders and Purchase Price Tenders (considered for purposes of determining the Purchase Price to have been tendered at the minimum price per Common Share offered). The Purchase Price will be the lowest price that enables the Filer to purchase that number of Common Shares tendered pursuant to valid Auction Tenders and Purchase Price Tenders having an aggregate purchase price not to exceed an amount (the "**Auction Tender Limit Amount**") equal to

    (a) the Specified Maximum Dollar Amount, less

    (b) the product of

        (i) the Specified Maximum Dollar Amount; and

        (ii) a fraction, the numerator of which is the aggregate number of Common Shares owned by Common Shareholders making valid Proportionate Tenders, and the denominator of which is the aggregate number of Common Shares outstanding at the time of expiry of the Offer.

18. If the aggregate purchase price for Common Shares validly tendered pursuant to Auction Tenders (at Auction Prices at or below the Purchase Price) and Purchase Price Tenders is less than or equal to the Auction Tender Limit Amount, the Filer will purchase, at the Purchase Price, all Common Shares so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders.

19. If the aggregate purchase price for Common Shares validly tendered pursuant to Auction Tenders (at Auction Prices at or below the Purchase Price) and Purchase Price Tenders is greater than the Auction Tender Limit Amount, the Filer will purchase a portion of the Common Shares so deposited pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders, determined as follows: (i) the Filer will purchase all such Common Shares tendered by Common Shareholders pursuant to Odd Lot Tenders; and (ii) the Filer will purchase on a pro rata basis that portion of such Common Shares having an aggregate purchase price, based on the Purchase Price, equal to (A) the Auction Tender Limit Amount, less (B) the aggregate amount paid by the Filer for Common Shares tendered pursuant to Odd Lot Tenders, in each of the cases set forth in clauses (i) and (ii) of this paragraph, at the Purchase Price.

20. The Filer will purchase at the Purchase Price that portion of the Common Shares owned by Common Shareholders making valid Proportionate Tenders that results in each tendering Common Shareholder maintaining its proportionate Common Share ownership following completion of the Offer (the "**Proportionate Take Up**").

21. The number of Common Shares that the Filer will purchase pursuant to the Offer and the aggregate purchase price will vary depending on whether the aggregate purchase price payable in respect of Common Shares required to be purchased pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders (the "**Aggregate Tender Purchase Amount**") is equal to or less than the Auction Tender Limit Amount. If the Aggregate Tender Purchase Amount is equal to the Auction Tender Limit Amount, the Filer will purchase Common Shares pursuant to the Offer for an aggregate purchase price equal to the Specified Maximum Dollar Amount; if the Aggregate Tender Purchase Amount is less than the Auction Tender Limit Amount, the Filer will purchase proportionately fewer Common Shares in the aggregate, with a proportionately lower aggregate purchase price.

22. All Common Shares purchased by the Filer pursuant to the Offer (including Common Shares tendered at Auction Prices at or below the Purchase Price) will be purchased at the Purchase Price. Common Shareholders will receive the Purchase Price in cash. All Auction Tenders, Purchase Price Tenders and Proportionate Tenders will be subject to adjustment to avoid the purchase of fractional Common Shares. All payments to Common Shareholders will be subject to deduction of applicable withholding taxes.

23. All Common Shares tendered to the Offer and not taken up will be returned to the appropriate Common Shareholders.

24. The Offer is subject to the provisions of Regulation 14E promulgated under the United States Securities Exchange Act of 1934, as amended ("**Regulation 14E**").

25. Until expiry of the Offer, all information about the number of Common Shares tendered and the prices at which the Common Shares are tendered will be required to be kept confidential by the depositary and the Filer until the Purchase Price has been determined.

26. Common Shareholders who do not accept the Offer will continue to hold the number of Common Shares owned before the Offer, assuming Common Shares are validly tendered to the Offer, their proportionate Common Share ownership will increase following completion of the Offer.

27. The Filer may elect to extend the Offer without first taking up all the Common Shares deposited and not withdrawn under the Offer if the aggregate purchase price for Common Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than or equal to the Auction Tender Limit Amount. Under the Extension Take Up Requirement contained in Section 2.32 of NI 62-104, an issuer may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all the securities deposited and not withdrawn under the issuer bid. Under Regulation 14E, the Filer must promptly pay for all securities deposited pursuant to the Offer at the time of expiry of the Offer. Regulation 14E does not allow the Filer to extend the Offer after having taken up and paid for securities deposited pursuant to the Offer.

28. The Filer is relying on the exemption from the formal valuation requirements applicable to issuer bids under Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") set out in Subsection 3.4(b) of MI 61-101 (the "**Liquid Market Exemption**").

29. The Board has determined that there is a "liquid market" for the Common Shares, as such term is defined in MI 61-101, as of the date of the making of the Offer because the test in Subsection 1.2(1)(a) of MI 61-101 has been satisfied. In addition, the Board has also obtained a liquidity opinion (the "**Liquidity Opinion**") from Scotia Capital Inc. Subject to the qualifications, assumptions and restrictions set out therein, the Liquidity Opinion confirms the determination of the Filer with respect to market liquidity. A copy of the Liquidity Opinion is attached to the Circular. In addition, Scotia Capital Inc. has advised the Filer that its opinion on liquidity remains the same notwithstanding the amendment of the Offer described above in paragraph 10. A copy of Scotia Capital's consent, which references the foregoing confirmation, is included in the NOVE.

30. Based on the maximum number of Common Shares that may be purchased under the Offer, as of the date of the Offer (for greater certainty, as amended by the NOVE), the Board has determined that it will be reasonable to conclude (and the Liquidity Opinion, provides that it is reasonable to conclude) that, following the completion of the Offer in accordance with its terms, there will be a market for holders of the Common Shares who do not tender to the Offer that is not materially less "liquid", as such term is defined in MI 61-101, than the market that existed at the time of the making of the Offer.

31. The Filer has disclosed in the Circular (or as applicable, the NOVE) relating to the Offer the following information:

    (a) the mechanics for the take up of and payment for Common Shares as described herein;

    (b) that, by tendering Common Shares at the lowest price in the Price Range under an Auction Tender or by tendering Common Shares under a Purchase Price Tender or a Proportionate Tender, a Common Shareholder can reasonably expect that the Common Shares so tendered will be purchased at the Purchase Price, subject to proration and other terms of the Offer as specified herein;

    (c) that the Filer has applied for an exemption from the Proportionate Take Up Requirement, the Proportionate Take Up Disclosure Requirement and the Extension Take Up Requirement;

    (d) the manner in which an extension of the Offer will be communicated to Common Shareholders;

    (e) that Common Shares deposited pursuant to the Offer may be withdrawn at any time prior to the Common Shares being taken up by the Filer;

    (f) if known after reasonable inquiry, the name of every person named in Item 11 of NI 62-104 who has accepted or intends to accept the Offer and the number of Common Shares in respect of which the person has accepted or intends to accept the Offer;

    (g) the facts supporting the Filer's reliance on the Liquid Market Exemption and the Liquidity Opinion; and

    (h) except to the extent exemptive relief is granted further to this application, the disclosure prescribed by applicable securities laws for issuer bids.

Decision

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

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

(a) Common Shares deposited pursuant to the Offer and not withdrawn are taken up and paid for, or dealt with, in each case, in the manner described above;

(b) the Filer is eligible to rely on the Liquid Market Exemption; and

(c) the Filer complies with the requirements of Regulation 14E.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.1.8 CI Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the concentration restriction requirements to permit fixed income funds to invest in debt securities issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) – relief is required to allow funds to invest more than 10 percent of their net asset value in Fannie Mae and Freddie Mac – Fannie Mae and Freddie Mac are implicitly guaranteed by the U.S. government – Fannie Mae and Freddie Mac are government sponsored entities in the U.S. – Fannie Mae and Freddie Mac are classified as "government securities" under the U.S. Investment Company Act of 1940 – Fannie Mae and Freddie Mac has a U.S. government equivalent credit rating – exemptive relief granted from subsection 2.1(1) of National Instrument 81-102 Investment Funds, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, subsection 2.1(1) and section 19.1.

March 10, 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
CI INVESTMENTS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each investment fund of which the Filer currently is the manager (the **Current Funds**) and each investment fund of which the Filer in the future becomes the manager (the **Future Funds** and, together with the Current Funds, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that grants exemptive relief to the Filer and the Funds from:

(a) subsection 2.1(1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each Fund that is a mutual fund, other than an alternative mutual fund, to purchase a security of an issuer, enter into a specified derivative transaction or purchase index participation units (each a **Purchase**) when, immediately after the Purchase, more than 10 percent of the net asset value of the Fund would be invested in debt obligations issued or guaranteed by either the Federal National Mortgage Association (**Fannie Mae**) or the Federal Home Loan Mortgage Corporation (**Freddie Mac**); and

(b) subsection 2.1(1.1) of NI 81-102 to permit each Fund that is an alternative mutual fund or a non-redeemable investment fund to make a Purchase when, immediately after the Purchase, more than 20 percent of the net asset value of the Fund would be invested in debt obligations issued or guaranteed by either the Fannie Mae or Freddie Mac,

(together, the **Exemption Sought**).

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

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

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

Interpretation

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

1940 Act means the United States *Investment Company Act of 1940*, as amended from time to time;

Fannie and Freddie Securities means debt obligations issued or guaranteed by either Fannie Mae or Freddie Mac including, without limitation, bonds and mortgage-backed securities and **Fannie or Freddie Security** means any one such debt obligation;

Minimum Rating means a credit rating of BBB- assigned by Standard & Poor's Rating Service or an equivalent rating by one or more other designated rating organizations; and

U.S. Government Equivalent Rating means a credit rating assigned by Standard & Poor's Rating Services (Canada), or an equivalent rating assigned by one or more other designated rating organizations, to a Fannie or Freddie Security that is not less than the credit rating then assigned by such designated rating organization to the debt of the United States government of approximately the same term as the remaining term to maturity of, and denominated in the same currency as, the Fannie or Freddie Security.

Representations

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

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

2. The Filer is registered under the securities legislation in:

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

   (b) as a portfolio manager and exempt market dealer in each of the Jurisdictions, and

   (c) as a commodity trading counsel and commodity trading manager under the *Commodity Futures Act* in Ontario.

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

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

5. Each Fund is or will be an investment fund to which NI 81-102 applies, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

6. Each Current Fund is a reporting issuer under the securities legislation of all the Jurisdictions. Each Future Fund will be a reporting issuer under the securities legislation of Ontario and may be a reporting issuer under the securities legislation of one or more other Jurisdictions.

7. Each Current Fund is not in default of securities legislation in any Jurisdiction.

8. The investment objectives of each Fund that will rely on the Exemption Sought is or will permit the Fund to invest a majority of its assets in fixed income securities. The ability to invest in Fannie and Freddie Securities is or will be an important feature of each Fund due to the size and role of Fannie Mae and Freddie Mac in the United States mortgage industry and the expertise of the Filer and its sub-advisers in investing in such securities.

9. Fannie Mae is a financial services corporation originally established by the United States Congress in 1938 to provide United States federal government money to local banks to finance home mortgages during the Great Depression. Its business includes borrowing money in the debt markets by selling bonds and providing liquidity to mortgage originators by purchasing whole loans which it then securitizes by issuing mortgage-backed securities. Fannie Mae also earns guarantee fees for assuming the credit risk on mortgage loans.

10. Freddie Mac is a financial services corporation that was created by the United States Congress in 1970 to expand the secondary market for mortgages in the United States. It was established to provide competition to Fannie Mae. Similar to Fannie Mae, the business of Freddie Mac includes buying mortgages in the secondary market, pooling them, and issuing mortgage-backed securities, as well as earning guarantee fees for assuming the credit risk on mortgage loans.

11. Fannie and Freddie Securities provide a substantial portion of the financing for residential mortgages in the United States.

12. Originally, the obligations of Fannie Mae were explicitly guaranteed by the United States government. The explicit guarantee was removed as part of a reorganization of Fannie Mae in 1968. Like Fannie Mae, there is no explicit guarantee of the obligations of Freddie Mac by the United States government.

13. Notwithstanding the absence of an explicit guarantee, it is widely assumed that there is an implied guarantee of the obligations of both Fannie Mae and Freddie Mac by the United States government. This assumption is based on the view that Fannie Mae and Freddie Mac each are considered to be "to big to fail" due to the critical roles they play as instrumentalities of the United States government existing to support the liquidity of the residential real estate mortgage market. Accordingly, it is widely believed that the United States government implicitly guarantees the obligations of Fannie Mae and Freddie Mac. This is reflected in Fannie and Freddie Securities currently having a U.S. Government Equivalent Rating.

14. The implied guarantee was evidenced during the 2008 financial crisis. At that time, Fannie Mae and Freddie Mac together owned or guaranteed approximately half of the United States' US$12 trillion mortgage market and were at risk of defaulting on their obligations. Such a default would have increased the cost of obtaining mortgage financing from other sources, thereby exacerbating the decline in the U.S. residential real estate market, as well as negatively impacting investors (including retirement funds and money market funds) that held Fannie and Freddie Securities. As a result, on September 7, 2008, Fannie Mae and Freddie Mac were placed into conservatorship of the United States Federal Housing Financing Agency in order to stabilize them. The United States government avoided creating an explicit guarantee of the obligations of Fannie Mae and Freddie Mac due to the negative impact it would have had on the United States Treasury. Fannie Mae and Freddie Mac were expressly excluded from the bail-in regime created under Title II of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act to preclude future U.S. government bail-outs of large financial companies. It is expected that a further act of the U.S. Congress would be required to remove the implied guarantee of Fannie and Freddie Securities as part of a larger reform of the U.S. residential real estate market. No such initiative currently is a priority of the U.S. Congress.

15. Under the 1940 Act, an investment company registered with the United States Securities and Exchange Commission (the **SEC**) seeking to qualify as a "diversified company" is required, among other matters, to invest at least 75% of its total assets in a manner whereby not more than 5% of the value of its total assets is invested in the securities of any single issuer. This restriction is analogous to the diversification requirement imposed on public mutual funds in Canada by subsection 2.1(1) of NI 81-102 on public mutual funds in Canada. Similar to paragraph 2.1(2)(a) of NI 81-102, the 1940 Act excludes a "government security" from the 5% limit described.

16. The definition of "government security" in the 1940 Act differs from that contained in NI 81-102 by including any security issued by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States (a **U.S. government instrumentality**). Each of Fannie Mae and Freddie Mac is considered to be a U.S. government instrumentality and Fannie and Freddie Securities therefore are "government securities" under the 1940 Act.

17. The definition of "government security" in NI 81-102 does not include U.S. government instrumentalities. Accordingly, the only United States securities which qualify as government securities are those directly issued by, or fully and unconditionally guaranteed by, the United States government. Fannie and Freddie Securities do not meet this definition since their obligations are not explicitly fully and unconditionally guaranteed by the United States government.

18. As a result, the restriction in subsection 2.1(1) applies to each investment by a Fund in Fannie and Freddie Securities.

19. Fannie and Freddie Securities represent a large, attractive and unique category of investment that cannot be replicated by any other issuer. For this reason, it is important to the Funds that they be entitled to maximize their opportunity to invest in Fannie and Freddie Securities.

20. Investments in Fannie and Freddie Securities are considered by the Filer to be more prudent than investments in equivalent bonds and mortgage-backed securities of other issuers due to the implied guarantee by the United States government. Accordingly, if the Exemption Sought is granted, each Fund will have the opportunity to maintain a more prudent portfolio through greater exposure to securities implicitly guaranteed by the United States government.

21. The US-based sub-adviser that the Filer intends to retain to advise certain Future Funds manages investment companies in the United States that currently hold significant amounts of Fannie and Freddie Securities, in many cases with individual investment companies investing more than 10% of their net assets in the securities of either Fannie Mae or Freddie Mac. Granting the Exemption Sought will enable the Funds to invest in Fannie and Freddie Securities to the same degree and proportions as their equivalent U.S. investment company counterparts managed by such sub-adviser.

22. The Filer intends, either directly or through sub-advisers, to research and monitor the investment attributes and trading operations for Fannie and Freddie Securities. Such ongoing research and monitoring will include monitoring proposals to restructure the U.S. residential housing market that may impact the implied guarantee of Fannie and Freddie Securities by the U.S. government. If, the U.S. Congress proposes legislation to change or remove the implied guarantee and the Filer determines in its judgement that, as a result of the announced proposed legislation, there is a significant risk that the Fannie and Freddie Securities held by the Funds could cease to have a U.S. Government Equivalent Rating or their credit ratings could decline below a Minimum Rating, the Funds will take steps that are reasonably required to dispose of their Fannie and Freddie Securities in an orderly and timely fashion such that the Fannie and Freddie Securities held by the Fund comply with subsection 2.1(1) 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 is that the Exemption Sought is granted provided that:

(a) at the time of Purchase, the Fannie or Freddie Security has a U.S. Government Equivalent Rating and a rating not less than the Minimum Rating;

(b) the simplified prospectus of each Fund that is a mutual fund distributing its securities, the prospectus of each Fund that is a non-redeemable investment fund distributing its securities, and the annual information form of each Fund that is not distributing its securities:

(i) discloses that the Fund has received permission to invest more than 10% (or, in the case of an alternative mutual fund or a non-redeemable investment fund, 20%) of its net assets in each of Fannie Mae and Freddie Mac provided the Fannie and Freddie Securities maintain a U.S. Government Equivalent Rating and a rating not less than the Minimum Rating;

(ii) discloses (in the case of a prospectus or simplified prospectus, under the heading or sub-heading "Investment Strategies") the maximum amount the Fund may invest in Fannie and Freddie Securities; and

(iii) contains risk factors that:

(A) the U.S. government may not guarantee payment of Fannie and Freddie Securities; and

(B) describe the risks associated with the Fund investing more than 10% (or, in the case of an alternative mutual fund or a non-redeemable investment fund, 20%) of its net assets in securities of Fannie Mae or Freddie Mac,

provided that in the case of a Fund that is a mutual fund currently distributing its securities, the information required by this condition (b) may instead be included in the simplified prospectus of the Fund when it is next renewed or amended;

(c) if the rating of a Fannie or Freddie Security held by a Fund ceases to have a U.S. Government Equivalent Rating or declines below the Minimum Rating, the Fund will take the steps that are reasonably required to dispose of such Fannie or Freddie Security in an orderly and timely fashion such that the Fannie and Freddie Securities of such issuer held by the Fund comply with subsection 2.1(1) of NI 81-102; and

(d) if the U.S. Congress:

(i) proposes legislation intended to change or remove the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac and the Filer determines in its judgement that, as a result of the announced proposed legislation, there is a significant risk that the Fannie and Freddie Securities held

by the Funds could cease to have a U.S. Government Equivalent Rating or their credit ratings could decline below the Minimum Rating; or

(ii) enacts legislation that:

(A) removes the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac; or

(B) specifies a future effective date on which the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac will end,

the Funds will take the steps that are reasonably required to dispose of such Fannie and Freddie Securities in an orderly and timely fashion such that the Fannie and Freddie Securities held by the Funds comply with subsection 2.1(1) of NI 81-102.

"Darren McKall"
Manager
Investment Funds & Structured Products Branch
Ontario Securities Commission
Government of Ontario

2.2 Orders

2.2.1 GGO Gold Corp. (formerly Explor Resources Inc.)

Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Policy Statement 11-206 respecting Process for Cease to be a Reporting Issuer Applications – The issuer ceases 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).
Securities Act, CQLR, c. V-1.1, s. 69.

[TRANSLATION]

Decision N°: 2020-IC-0004

File N°: 22387

March 11, 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
GGO GOLD CORP.
(formerly Explor Resources Inc.)
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System* (Regulation 11-102) is intended to be relied upon in British Columbia, Alberta and Saskatchewan;

(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*, in Regulation 11-102 and, in *Regulation 14-501Q respecting Definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

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

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

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

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

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

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

Order

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

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

"Martin Latulippe"
Director, Continuous Disclosure

2.2.2 Paramount Equity Financial Corporation et al.

IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION,
SILVERFERN SECURED MORTGAGE FUND,
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,
GTA PRIVATE CAPITAL INCOME FUND,
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC.,
PARAMOUNT ALTERNATIVE CAPITAL CORPORATION,
PACC AINSLIE CORPORATION,
PACC COSTIGAN CORPORATION,
PACC CRYSTALLINA CORPORATION,
PACC DACEY CORPORATION,
PACC GOULAIS CORPORATION,
PACC HARRIET CORPORATION,
PACC MAJOR MACK CORPORATION,
PACC MAPLE CORPORATION,
PACC MULCASTER CORPORATION,
PACC REGENT CORPORATION,
PACC SCUGOG CORPORATION,
PACC SECHELT CORPORATION,
PACC SHAVER CORPORATION,
PACC SIMCOE CORPORATION,
PACC THOROLD CORPORATION,
PACC WILSON CORPORATION,
TRILOGY MORTGAGE GROUP INC.,
TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP,
MARC RUTTENBERG,
RONALD BRADLEY BURDON and
MATTHEW LAVERTY

File No. 2019-12

Timothy Moseley, Vice-Chair and Chair of the Panel
Garnet W. Fenn, Commissioner
Heather Zordel, Commissioner

March 13, 2020

ORDER

WHEREAS on March 10, 2020, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider a motion brought by Staff of the Commission (**Staff**), validating service on the respondent Marc Ruttenberg, and seeking leave to amend further the Amended Statement of Allegations in this proceeding;

ON READING the affidavit of Louisa Fiorini sworn February 27, 2020, the Supplementary Affidavit of Service of Louisa Fiorini sworn March 6, 2020, the affidavit of service of Jody Sikora sworn March 10, 2020, and Staff's notice of withdrawal dated March 9, 2020, and on hearing the submissions of the representative for Staff, no one appearing for the respondents;

IT IS ORDERED THAT:

1. pursuant to Rule 6(4) of the *Ontario Securities Commission Rules of Procedure and Forms*, (2019) 42 OSCB 9714 (the **Rules**), service of the Notice of Hearing and Statement of Allegations in this proceeding on the respondent Marc Ruttenberg is hereby validated;

2. Staff shall serve this Order on Marc Ruttenberg by sending a copy of it by regular mail to 455 Danforth Avenue, Suite 120, Toronto, Ontario M4K 1P1, which service shall be effective on the fifth day after the day of mailing;

3. the Amended Statement of Allegations is hereby further amended, as reflected in Annex A to this order;

4. Paramount Alternative Capital Corporation, PACC Ainslie Corporation, PACC Costigan Corporation, PACC Crystallina Corporation, PACC Dacey Corporation, PACC Goulais Corporation, PACC Harriet Corporation, PACC Major Mack

Corporation, PACC Maple Corporation, PACC Mulcaster Corporation, PACC Regent Corporation, PACC Scugog Corporation, PACC Sechelt Corporation, PACC Shaver Corporation, PACC Simcoe Corporation, PACC Thorold Corporation, PACC Wilson Corporation and Trilogy Equities Group Limited Partnership are removed as respondents in this proceeding;

5. pursuant to Rule 19(2) of the Rules, the title of this proceeding on all subsequent documents shall be:

IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION, SILVERFERN SECURED MORTGAGE FUND, SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP, GTA PRIVATE CAPITAL INCOME FUND, GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP, SILVERFERN GP INC., TRILOGY MORTGAGE GROUP INC., MARC RUTTENBERG, RONALD BRADLEY BURDON and MATTHEW LAVERTY

6. Staff shall file a Fresh as Amended Statement of Allegations.

“Timothy Moseley”

“Garnet W. Fenn”

“Heather Zordel”

Annex A

IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION, SILVERFERN SECURED MORTGAGE FUND, SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP, GTA PRIVATE CAPITAL INCOME FUND, GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP, SILVERFERN GP INC., ~~PARAMOUNT EQUITY INVESTMENTS INC., PARAMOUNT ALTERNATIVE CAPITAL CORPORATION, PACC AINSLIE CORPORATION, PACC COSTIGAN CORPORATION, PACC CRYSTALLINA CORPORATION, PACC DACEY CORPORATION, PACC GOULAIS CORPORATION, PACC HARRIET CORPORATION, PACC MAJOR MACK CORPORATION, PACC MAPLE CORPORATION, PACC MULCASTER CORPORATION, PACC REGENT CORPORATION, PACC SCUGOG CORPORATION, PACC SECHELT CORPORATION, PACC SHAVER CORPORATION, PACC SIMCOE CORPORATION, PACC THOROLD CORPORATION, PACC WILSON CORPORATION,~~ NIAGARA FALLS FACILITY INC., TRILOGY MORTGAGE GROUP INC., ~~TRILOGY EQUITIES GROUP LIMITED PARTNERSHIP,~~ MARC RUTTENBERG, RONALD BRADLEY BURDON and MATTHEW LAVERTY

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

A. ORDER SOUGHT

1. Staff of the Enforcement Branch ("**Enforcement Staff**") of the Ontario Securities Commission (the "**Commission**") request that the Commission make the following orders:

   (a) As against the **Paramount Group** (as defined below):

      (i) that it cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2) of the *Securities Act*, RSO 1990, c.S.5, as amended (the "Act");

      (ii) that it be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2.1) of the Act;

      (iii) that any exemption contained in Ontario securities law not apply to it permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(3) of the Act;

      (iv) that it be reprimanded, pursuant to subsection 127(1)(6) of the Act;

      (v) that it be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.5) of the Act; and

      (vi) such other order as the Commission considers appropriate in the public interest.

   (b) As against **Trilogy** (as defined below):

      (i) that the Order of the Commission dated September 10, 2018, which extended its initial Order of April 16, 2018 that Trilogy temporarily cease trading in securities be extended until the conclusion of this hearing pursuant to subsection 127(1)(2) and (8) of the Act;

      (ii) that it cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2) of the Act;

      (iii) that it be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2.1) of the Act;

      (iv) that any exemption contained in Ontario securities law not apply to it permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(3) of the Act;

      (v) that it be reprimanded, pursuant to subsection 127(1)(6) of the Act;

      (vi) that it be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.5) of the Act;

      (vii) that it pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to subsection 127(1)(9) of the Act;

(viii) that it pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

(ix) such other order as the Commission considers appropriate in the public interest.

(c) As against each of Marc Ruttenberg, Ronald Bradley Burdon and Matthew Laverty, the **Principals** (as defined below):

(i) that he cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2) of the Act;

(ii) that he be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2.1) of the Act;

(iii) that any exemption contained in Ontario securities law not apply to him permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(3) of the Act;

(iv) that he be reprimanded, pursuant to subsection 127(1)(6) of the Act;

(v) that he resign any position he may hold as a director or officer of any issuer, pursuant to subsection 127(1)(7) of the Act;

(vi) that he be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8) of the Act;

(vii) that he resign any position he may hold as a director or officer of any registrant, pursuant to subsection 127(1)(8.1) of the Act;

(viii) that he be prohibited from becoming or acting as a director or officer of any registrant permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.2) of the Act;

(ix) that he be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.5) of the Act;

(x) that he pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to subsection 127(1)(9) of the Act;

(xi) that he disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

(xii) that he pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

(xiii) such other order as the Commission considers appropriate in the public interest.

B. FACTS

Enforcement Staff make the following allegations of fact:

OVERVIEW

2. This proceeding involves fraud, misleading investors, unregistered trading, and the illegal distribution of securities of Mortgage Investment Entities (“MIEs”).

3. MIEs are mortgage-financing businesses that pool together money from investors to lend as mortgages. Each mortgage is meant to be secured by real property. The mortgage is registered in the name of the MIE or an entity created by the MIE for the benefit of the MIE investors. MIEs must comply with Ontario securities law when engaging in the distribution of securities in the exempt market.

4. The Respondents engaged in egregious violations of securities law, misleading investors and misusing investor funds for personal gain. The Commission applied for and had a receiver appointed to shut down these activities by the Paramount Group and the Principals. The Principals then engaged in similar conduct through Trilogy, and the Commission issued a cease trade order to stop that activity. This improper and fraudulent behaviour is an affront to

investors that undermines public confidence in the fairness and efficiency of Ontario's capital markets. This fraudulent behaviour must be definitively and permanently stopped.

5. Between September 2014 and December 1, 2016, the Paramount Group raised approximately $78 million from over 500 investors through pooled MIEs by engaging in unregistered trading and through illegal distributions.

6. Investors were told their money would be invested in second residential mortgages. Instead, approximately $50 million of their funds were invested in higher risk land and property development projects ("**Multi-Res Projects**"). Paramount Group and the Principals of the mortgage investment entities' manager engaged in hidden self-dealing by paying approximately $3.87 million in fees on these projects to the Principals and by the Principals either taking an indirect 50% ownership interest in such projects or agreeing to do so as described below.

7. The Paramount Group also used funds reserved to pre-pay interest on mortgages for its own purposes, without disclosing this to investors.

8. With respect to one Multi-Res Project, PACC Angus, the Paramount Group and its principals surreptitiously cycled investor funds advanced by the Silverfern Fund as a loan on this project back to themselves in the guise of a loan from an entity described as Aleria Capital Inc. ("**Aleria**"), which was ~~a corporation~~ controlled by one of the Principals, Ronald Bradley Burdon, to PEFC (as defined below). In the course of doing so, they conferred a financial benefit on a business associate, Enzo Mizzi ("**Mizzi**"), for no apparent business purpose.

9. In May 2017, the OSC applied for and obtained a receivership order over the Paramount Group. Following this, and in or after February 2018 to April 24, 2018, Trilogy employed a website to offer securities to the public. Trilogy made misleading statements to investors, including grossly inflating the appraised value of certain properties and failing to disclose that the owners of certain properties were in receivership. Further, Trilogy was not registered, nor did it comply with the disclosure requirements of Ontario securities law. Trilogy was assisted in these breaches of Ontario securities law by the same Principals who were the directing minds of the Paramount Group. Fortunately, there is no evidence that any money was obtained from investors before Trilogy was cease traded by the Commission.

10. The activity of the Paramount Group and the Principals outlined below constitutes a fraud perpetrated against the Silverfern Fund investors. Trilogy and the Principals made misleading statements to investors and failed to disclose material facts and material risks to potential investors. The Paramount Group, Trilogy and the Principals engaged in significant non-compliance with the registration and disclosure provisions of Ontario securities law. Their conduct breached securities law and undermined the integrity of the capital markets. It was conduct contrary to the public interest.

THE RESPONDENTS

11. Paramount Equity Financial Corporation ("**PEFC**"), Silverfern Secured Mortgage Fund ("**Silverfern Fund**"), Silverfern Secured Mortgage Limited Partnership ("**Silverfern LP**"), GTA Private Capital Income Fund ("**GTA Fund**", together with the Silverfern Fund, the "**Funds**"), GTA Private Capital Income Limited Partnership ("**GTA LP**"), and Silverfern GP Inc. are collectively referred to herein as the "**Paramount Group**".

12. PEFC is an Ontario corporation which, had its head office in Stouffville, Ontario and was licensed as a mortgage broker with the Financial Services Commission of Ontario.

13. Silverfern GP Inc. is an Ontario corporation which had its head office in Stouffville, Ontario. It was the general partner of the Silverfern Fund and the GTA Fund.

14. The Silverfern Fund is a trust pursuant to a Declaration of Trust dated September 2, 2014. As outlined below, investors in the Silverfern Fund acquired ownership in limited partner units of Silverfern LP. Legal ownership of the fund units was held by the Principals, as defined below.

15. The GTA Fund is a trust pursuant to a Declaration of Trust dated May 5, 2015. Investors in the GTA Fund acquired ownership in limited partner units of GTA LP. Legal ownership of the fund units was held by the Principals, as defined below.

16. Paramount Alternative Capital Corporation ("**PACC**") is the parent company to a number of companies that have "PACC" in their name (the "**PACC Affiliates**"). The function of these companies was to hold co-ownership interests in Multi-Res Projects, which were structured as joint ventures in which PACC or a PACC Affiliate was either granted a 50% interest or there was an intention to make such a grant. It would appear that certain intended PACC Affiliates were never incorporated. Attached as Appendix A is a chart outlining PACC's ownership of certain PACC Affiliates.

17. Trilogy Mortgage Group Inc. ("~~TMG~~ Trilogy") ~~and Trilogy Equities Group Limited Partnership ("TEGLP") (collectively, "Trilogy") are entities that~~ offered securities to the public and solicited investors via a website (the "**Website**") as set out below.

18. Marc Ruttenberg ("**Ruttenberg**") is the founder, and was the Chief Executive Officer and a director of PEFC. He was also PEFC's principal broker. He was a director and officer of Silverfern GP Inc and a trustee of the Silverfern Fund and the GTA Fund. Ruttenberg was a director and a 40% indirect owner of PACC and of the PACC Affiliates. He was also a *de facto* officer and director of Trilogy.

19. Ronald Bradley Burdon ("**Burdon**") was an officer and a de facto director of PEFC. He was a director and officer of Silverfern GP Inc. Burdon was a trustee of the Silverfern Fund and the GTA Fund. Burdon was a director and a 40% indirect owner of PACC and of the PACC Affiliates. He was also a *de facto* officer and director of Trilogy.

20. Matthew Laverty ("**Laverty**") was an officer and a de facto director of PEFC. He was a trustee of the Silverfern Fund and the GTA Fund. Laverty was a 20% indirect owner of PACC and of the PACC Affiliates. He was also a *de facto* officer and director of Trilogy.

21. Collectively, Ruttenberg, Burdon and Laverty are referred to herein as the **Principals**.

BACKGROUND

22. Ruttenberg began operating PEFC as a mortgage broker in 2006. PEFC began to arrange second mortgages on single-family properties, with PEFC performing the administration of these mortgages.

23. In September 2014, the Principals established the Silverfern Fund. The funds raised from investors were pooled and were to be used to lend to various borrowers on the security of second residential mortgages in various markets across Canada.

24. In May 2015, the Principals established the GTA Fund for a group of investors that did not want their investment funds co-mingled with other investors. This group of investors required that their pooled funds only be used in residential second mortgages in the Greater Toronto Area.

25. PEFC promoted and administered the Funds. It was responsible for mortgage origination, underwriting and administration and for investor relations.

26. Notwithstanding that the Silverfern Fund monies were to be invested in second residential mortgages, a majority of investor funds were used to finance Multi-Res Projects. These carried higher risk for the Silverfern Fund.

27. On application to the Ontario Superior Court by the Commission pursuant to s. 129 of the Securities Act, Grant Thornton Limited ("**GTL**") was appointed interim receiver over the Paramount Group, PACC and certain PACC Affiliates on June 7, 2017 and full receiver on August 2, 2017. GTL has been realizing on the security held over the various Multi-Res Projects. It is clear that there will be significant shortfalls and that many investors in the Funds will suffer material losses. The period between September 2014, when the Paramount Group began to raise funds through mortgage investment entities, and August 2, 2017 when the receivership order was made is referred to herein as the **Paramount Relevant Period**.

28. At some point in or after February 2018, Trilogy began offering securities to the public and was soliciting investors via the Website. The Website was later removed on or about April 24, 2018 at the request of OSC Staff (February 2018 to April 24, 2018 is referred to herein as the "**Trilogy Relevant Period**"). As outlined below, Trilogy misled investors through statements on the Website about the nature of certain real estate development projects for which it solicited investments. Staff applied for and received a Temporary Cease Trade Order with respect to Trilogy on April 16, 2018. The Temporary Cease Trade Order remains in place and has been extended to March 31, 2019. Based on Staff's investigation, it appears that the formation of TEGLP was never completed and that there were never any investors in Trilogy.

ALLEGATIONS INVOLVING THE PARAMOUNT GROUP

Acts, practices and a course of conduct that have perpetrated a fraud upon investors

29. The conduct described below involves misrepresentations, omissions and non-disclosures as well as unauthorized and hidden uses of investor funds. This either caused economic loss to the Silverfern Fund investors or gave rise to an increased risk of economic loss to them. In consequence, these actions constitute a fraud perpetrated upon the Silverfern Fund and its investors contrary to subsection 126.1(1)(b) of the Act.

(c) *Nature and risk profile of the investment in the Silverfern Fund*

30. The Paramount Group and the Principals made statements to investors regarding the nature and risk profile of their investment in the Silverfern Fund that were untrue, misleading or omitted necessary information to prevent statements from being misleading.

31. The constating legal documents of the Silverfern Fund, as well as materials provided to investors refer to the Silverfern Fund's proceeds being used to invest in second residential mortgages of up to 85% loan to value ratio ("LTV") and, in certain cases, higher ratio residential mortgages, provided that such higher ratio mortgages shall not exceed 50% of the Silverfern Fund's total mortgage portfolio. They state that the Silverfern Fund's investment objective is focused on capital preservation and to build a diversified portfolio of mortgage assets that generates attractive, stable returns to unitholders.

32. The written materials provided to investors in the Silverfern Fund, which included fund fact sheets, power point presentations, web-based material and video presentations, describe the Fund as investing in residential second mortgages in Canada. They describe investment in the Silverfern Fund using words such as "predictable, steady returns", "low volatility", "high-returning annuity/GIC alternative", "safety", "capital preservation" and "stable returns".

33. Ruttenberg made representations to investors that were similar to the statements outlined in paragraphs 29 and 30.

34. The subscription agreements for the Silverfern Fund prepared by the Paramount Group and provided to certain investors described the use of proceeds as going to fund second residential mortgages.

35. In fact, as of February 16, 2017, the Silverfern Fund had investments totaling approximately $70 million, of which only approximately $21 million were second residential mortgages, with the balance invested in Multi-Res Projects.

36. The investment in Multi-Res Projects included second, third and/or fourth mortgages on land or development projects seeking to re-zone, construct, and/or convert properties into multiple residential units ("**Multi-Res Mortgages**"), although in two cases (the PACC Angus Project, as defined below, and Levante Living Project), no mortgages were registered in respect of the advances made. The Multi-Res Mortgages and other advances were different in nature from the second residential mortgages promised to investors in the Silverfern Fund and carried significant additional risk in comparison to what was represented to investors. The additional risk included the following:

    a. In many cases, the value of the total mortgage debt exceeded the 'as is' value of the property. The ranking of the mortgage also left insufficient value in the property to cover the debt. In two cases, no mortgages were registered.

    b. No, or insufficient income was generated by the projects to service the debt.

    c. Many of the projects were speculative, with recovery dependent upon resale of the development at a sufficient price to repay the loan.

    d. The fees and "soft costs" were often significant and without clear controls.

    e. With many of the Multi-Res Mortgages, the mortgage term was for more than one year. Prepaid interest for the first year was added to the principal amount of the mortgage; no provision was made for the payment of interest in the following period with the resulting risk of no revenue available to pay interest; and

    f. Most of the Multi-Res Mortgages were related to entities controlled by one individual, Mizzi. This increased risk due to concentration.

37. These risks, inherent in the Multi-Res Mortgages, were not disclosed to investors.

38. PEFC represented that, with respect to the investments in the Silverfern Fund, it would exercise diligence in selecting mortgage investments, manage and service the mortgage loans and ensure that proper underwriting and credit assessment processes were followed. Investors were told this would be the case. In fact, the risk to investors in the Silverfern Fund was compounded by the substandard mortgage underwriting practices and inaccurate books and records and financial controls of PEFC, which was not disclosed to investors.

(b) *Hidden self-dealing – failure to disclose interest in Multi-Res Projects and fees paid to Paramount Group and Principals*

39. With respect to most of the Multi-Res Projects, PACC, one of the PACC Affiliates, or a contemplated but not yet incorporated PACC Affiliate, received or was intended to receive a 50% co-ownership interest in the joint ventures that

owned these development projects, and thereby acquired an equity interest and the right of profit participation in the joint ventures (the "**PACC Co-Ownership Interests**"). In this manner, the Principals acquired or intended to acquire an indirect 50% interest in the Multi-Res Projects, although they do not appear to have invested any of their own funds in these projects. Instead, the PACC Co-Ownership Interests were acquired or planned for acquisition as a result of approximately $50 million of mortgages being funded with investor money from the Silverfern Fund.

40. The Paramount Group and the Principals intentionally withheld disclosure of the actual or intended PACC Co-Ownership Interests from investors. There is no disclosure of these interests in any of the marketing materials for the Silverfern Fund. The Silverfern Fund OM, dated April 30, 2016, does not include reference to them. Instead, it stated that the Silverfern Fund will avoid making investments in entities that are not at arm's length in amounts which exceed an amount equal to 25% of the book value of its mortgage investments. It also stated that the fund has no present intention to create any borrowing exposure to entities that are not at arm's length to the Fund or PEFC. Both statements were untrue.

41. The Paramount Group and the Principals also initially withheld information about the existence, nature and degree of the PACC Co-Ownership Interests from OSC Staff. On December 8, 2016, Ruttenberg advised Staff, in an examination under oath, that there were only two PACC mortgages that were related to PEFC or its affiliates. This was later confirmed in writing on December 16, 2016. In his examination, Ruttenberg references the 25% threshold outlined in the Silverfern Fund OM and advised that it had only been exceeded once (in 2015) and that it was currently below 25%. On January 26, 2017, PEFC advised that it received a minority interest in borrowers. Finally, in response to further inquiries by Staff, on February 2, 2017, PEFC provided the truth: a list that showed that the PACC Co-Ownership Interest was 50% in most of the Multi-Res Projects.

42. In addition, $3.87 million in undisclosed brokerage or lending fees on the Multi-Res Mortgages and other advances on Multi-Res Projects were paid to a PACC Affiliate or in respect of a not yet incorporated PACC Affiliate. None of the PACC Affiliates were licensed mortgage brokers. These fees were in addition to sourcing and brokerage fees paid to PEFC. The Paramount Group confirmed to Staff that these fees were allocated amongst the Principals according to their percentage ownership of the PACC Affiliates which was 40% to each of Ruttenberg and Burdon and 20% to Laverty, subject, in certain cases, to a holdback. Approximately $2.55 million of the monies used to pay these fees came from the Silverfern Fund. The fees were not disclosed to Silverfern Fund investors, nor was the fact that they were allocated to the Principals.

43. The Paramount Group and the Principals deliberately or recklessly withheld information from the Silverfern Fund investors concerning their own interests in the Multi-Res Projects and the fees from the Multi-Res Mortgages as set out above, in order to be able to direct Silverfern Fund monies to their own benefit, and to the detriment of investors. It is clear that there will be significant shortfalls and that many investors in the Funds will suffer material losses. They have perpetrated a fraud on the Silverfern Fund investors contrary to subsection 126.1(1)(b) of the *Act*.

(c) *Misuse of Prepaid Funds Account*

44. According to the terms of the Multi-Res Mortgages, prepaid interest representing one year of interest payments and what was described as buy-down rate fees was added to the principal amount for the purpose of paying interest in the first year of the mortgage. The amount of the prepaid interest and fees was advanced by the Silverfern Fund and then paid back to PEFC to be held in trust to pay the interest and fees for the first year of the mortgages. These monies were commingled into a PEFC account with other funds related to PEFC's business, rather than being segregated for the purpose intended. PEFC and the Principals used at least $1.5 million of the funds in this PEFC account for their own purposes, including to cover operating costs and to pay back over $1 million in PEFC loans from individuals, rather than being held in trust to pay interest and fees on the Multi-Res Mortgages.

45. The foregoing information was withheld from Silverfern Fund investors. The conduct permitted the Paramount Group and the Principals to divert monies intended to fund prepaid interest for their own benefit to the detriment of the Silverfern Fund investors.

(d) *Advances on the Angus Multi-Res Project*

44. The Paramount Group and the Principals caused approximately $2.36 million in Silverfern Fund monies to be diverted to the benefit of the Principals and their business associate, Mizzi, for no valid business purpose. In particular:

(a) Approximately $2.36 million of investor funds from the Silverfern Fund were advanced to 21830366 Ontario Inc. ("**218 Ontario**"), an entity controlled by Mizzi, which was the borrower on a Multi-Res Project in Angus, Ontario (the "**PACC Angus Project**") in May and June 2016. These funds were ostensibly presented as a mortgage advance on the PACC Angus Project. However, no mortgage or other documents were ever registered for this transaction.

(b) Of the approximate $2.36 million:

(i) $1.75 million was redirected to PEFC under the guise of a loan from Aleria, a company controlled by Burdon. According to PEFC's financial records, the $1.75 million advanced was used by PEFC to replenish the bank account that held the prepaid interest and fees. In June 2017, Aleria demanded repayment of approximately $1.78 million from PEFC by July 5, 2017. On August 2, 2017, GTL learned that Aleria had taken possession of two vehicles owned by PEFC, apparently pursuant to its general security agreement; and

(ii) approximately $610,000 was conferred upon Mizzi and/or 218 Ontario, for no apparent reason;

45. Further, $190,000 in 'repayments' on the loan to Aleria were also made to 218 Ontario (rather than to Aleria) between August and November 2016 from the undisclosed brokerage or lending fees on the Multi-Res Mortgages. The notations in the financial records show the payments as being in respect of loan repayments from Ruttenberg connected to specific PACC transactions or the loan to Aleria.

Representation to Silverfern Fund investors relevant to deciding whether to enter into or maintain a trading relationship

46. The conduct by the Paramount Group and the Principals, outlined below, is contrary to subsection 44(2) of the Act and is therefore contrary to Ontario Securities law.

47. The Paramount Group, through the Principals and referral agents, made certain statements, or omitted to provide certain information, to Silverfern Fund investors that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship. This included:

(a) The statements and omissions described above with respect to the nature and risk profile of the Silverfern Fund investments;

(b) The omission to disclose the actual or intended PACC Co-Ownership Interests; and

(c) The omission to disclose the fees, and other compensation received by the Principals through PACC and the PACC Affiliates.

Trading in Securities without registration

48. During the Paramount Relevant Period, the Paramount Group and the Principals raised over $70 million from over 500 investors in the Silverfern Fund and over $5 million from 6 investors in the GTA Fund without being registered and without being eligible for an exemption from the dealer registration requirement, contrary to Ontario securities law and, in particular, contrary to subsection 25(1) of the Act.

49. In addition, they used a network of referral agents to sell units of the Funds to investors. These agents were not registered with the Commission.

50. Units in the Funds were sold to investors. The investors' funds were pooled and were to be used to make loans secured by mortgages. Investors received units in the Funds. Thus, the units of the Funds are securities as that term is defined in subsection 1(1) of the Act.

51. Marketing materials were prepared by PEFC and were provided to prospective investors in the Funds. Such materials included term sheets, PowerPoint presentations, web pages, investor testimonials, and fund fact sheets. Investors were provided subscription agreements and unit certificates in connection with their purchases of units in the Funds. The unit certificates and the Silverfern Fund OM, as defined below, were signed by the Principals.

52. In marketing and selling the units of the Funds to the public, and in operating the Funds, the Paramount Group were acting as a dealer and as such were required to be registered under the Act.

53. In addition, Ruttenberg and Laverty engaged directly in marketing and selling units of the Funds to the public and were therefore engaged, and held themselves out as engaged, in the business of trading in securities and as such was required to be registered under the Act.

54. PEFC was paid approximately $700,000 in management fees by the Silverfern Fund. Ruttenberg and Laverty each received commissions or referral fees from the Silverfern Fund, and all of the Principals through their ownership

interests in PACC and the PACC Affiliates were paid fees in respect of mortgages funded by the Silverfern Fund and were either provided with, or promised, an ownership interest in Multi-Res Projects.

55. PEFC made 11 offerings of the Silverfern Fund between June 1, 2016 and November 15, 2016, raising approximately $39 million of the approximately $70 million raised in respect of this fund, despite having received legal advice that sales should be effected through a registered entity.

56. On November 11, 2016, Staff wrote to PEFC to advise that it may be conducting unregistered trading and that it should cease accepting any new client funds and contact Staff immediately. On November 25, 2016, PEFC acknowledged to Staff that it was now aware that its offerings should have been made through a registered dealer. However, notwithstanding this, PEFC closed a $5.2 million offering of the Silverfern Fund on November 15, 2016, four days after Staff's letter.

57. On December 1, 2016, the Paramount Group provided an undertaking to the Commission that it would cease trading the Funds' units. The undertaking was broadened on March 9, 2017.

58. On April 7, 2017, PEFC sent a letter to all investors in the Funds and to the referral agents acknowledging that the units should have been sold through a registered entity or individual.

Illegal distributions

59. During the Paramount Relevant Period, the Paramount Group and the Principals engaged in distributions of securities without having filed or received a receipt for a prospectus, contrary to Ontario securities law and, in particular, contrary to subsection 53(1) of the Act.

60. During the Paramount Relevant Period, no prospectus was filed by any member of the Paramount Group, whether in respect of the Silverfern Fund or otherwise.

61. During the Paramount Relevant Period, units in the Silverfern Fund were distributed in purported reliance upon the accredited investor, family, friends and business associates and minimum amount prospectus exemptions. In June 2016, a Silverfern Fund Offering Memorandum (the "**Silverfern Fund OM**") was filed with the Commission dated April 30, 2016. After that point, investors were also subscribed with reliance upon the offering memorandum exemption.

62. On November 25, 2016, PEFC also advised Staff that it had taken steps to ensure that all investors comply with exemption requirements, including implementing screening procedures with a complete Know Your Client checklist and suitability checklists. This was not true. For a number of the investors where the Paramount Group purported to rely upon the accredited investor exemption set out in section 2.3 of NI 45-106, those investors did not meet the requirements of the accredited investor definition in the National Instrument.

63. Based on the 45-106F1 filings made by the Paramount Group, for at least eleven distributions of units of the Silverfern Fund, there was inappropriate reliance upon the family, friends and business associates prospectus exemption available pursuant to section 2.5 of NI 45-106 as a commission was paid to a director, officer, founder, or control person of the issuer or an affiliate of the issuer in connection with the distributions: in nine cases to Ruttenberg and in two cases to Laverty, contrary to subsection 2.5(2) of NI 45-106. In addition, Ruttenberg advised certain investors that they could rely on the friends and family exemption, in circumstances where he knew or ought to have known that they could not.

ALLEGATIONS INVOLVING TRILOGY

Trilogy and the Principals made statements that they knew or ought reasonably to have known were misleading or untrue

64. As outlined above, the Paramount Group had provided an undertaking to the Commission in December 2016, which it broadened in March 2017, that it would cease trading in the Funds' units. On May 25, 2017 the Commission commenced the receivership application in respect of the Paramount Group. GTL was appointed interim receiver on June 7, 2017. Thus, by the beginning of the Trilogy Relevant Period, the Principals were well aware of the concerns of the Commission and of the Ontario Superior Court with respect to their activities.

65. Nonetheless, they participated in Trilogy's launch of the Website and in the Trilogy activities, as outlined below. In so doing, Trilogy and the Principals made statements that they knew or ought reasonably to have known in a material respect, at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts necessary to make the statements not misleading and would reasonably be expected to have a significant effect on the value of the securities being offered by Trilogy, contrary to subsection 126.2(1) of the Act.

67. On the Website, Trilogy marketed investment opportunities in a property located in Cambridge, Ontario (the "**Cambridge Property**") and in a property in Toronto, Ontario (the "**Wilson Property**") that had been the subject of Multi-Res Mortgages invested in by the Paramount Group.

68. The Website stated that there was an "as is" appraisal valuing the Cambridge Property at $8.4 million. GTL was appointed as receiver over the Cambridge Property on April 10, 2018. An appraisal for the Cambridge Property, prepared for the Paramount Group showed an estimated property value of $8.4 million based on an approved development with a gross floor area of approximately 339,106 square feet. As of April 10, 2018, the specified approvals had not been granted for this property. Despite this, under "Project Status" for the Cambridge Property on the Website, Trilogy stated that there was an "as is" appraisal valuing the Cambridge Property at $8.4 million. In fact, the value of the Cambridge property was significantly lower than $8.4 million.

69. The Website also failed to disclose:

    (a) that the owner of the Cambridge Property was put into receivership on April 10, 2018,

    (b) the ongoing receivership proceedings relating to the Wilson property;

    (c) that GTL had made a demand loan related to the Cambridge property on November 23, 2017, and another related to the Wilson property on March 7, 2018, neither of which were paid.

Trading in Securities without registration

70. During the Trilogy Relevant Period, Trilogy and the Principals engaged in, and held themselves out to be engaged in, the business of trading in securities to the public despite the fact that they were not registered with the Commission, nor were they eligible for an exemption from the dealer registration requirement. They used the Website to promote the sale of investments in mortgages secured against real estate to investors. They represented that they offered a full range of investment options, including those suitable for RRSPs, LIRAs and TFSAs and that investors could contact Trilogy to obtain offering memoranda and subscription agreements.

71. In so doing, Trilogy and the Principals were acting as a dealer and as such were required either to be registered under the Act or to be eligible for a recognized registration exemption. Despite this, they actively marketed the investments without being registered and without being eligible for a registration exemption, contrary to Ontario securities law and, in particular, to subsection 25(1) of the Act.

Illegal distributions

72. Based on the representations on the Website, Trilogy and the Principals were promoting that a security was available to be acquired. They advised that an offering memoranda and subscription agreement were available, and that investment could be made through an exempt market dealer or financial advisor. At no time had Trilogy or the Principals engaged an exempt market dealer.

73. No prospectus or preliminary prospectus was filed with the Commission by Trilogy and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect to trades offered on the Website by Trilogy. No exemptions from the prospectus requirements were available, and no exemptive relief was sought.

74. Thus, during the Trilogy Relevant Period, Trilogy and the Principals engaged in distributions of securities without having filed or received a receipt for a prospectus, contrary to Ontario securities law and, in particular, contrary to subsection 53(1) of the Act.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

75. Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest by the Paramount Group, ~~PACC and the PACC Affiliates~~ and the Principals during the Paramount Relevant Period:

    (a) The Paramount Group~~, PACC and the PACC Affiliates,~~ and ~~their~~ the Principals directly or indirectly engaged or participated in acts, practices or courses of conduct relating to the securities of the Silverfern Fund that they knew or reasonably ought to have known perpetrated a fraud on persons contrary to subsection 126.1(b) of the Act;

    (b) The Principals, as actual or *de facto* officers and/or directors of the Paramount Group, PACC and the PACC Affiliates, authorized, permitted, and/or acquiesced in the breaches of subsection 126.1(b) of the Act by the

Paramount Group, PACC and the PACC Affiliates and thereby failed to comply with Ontario securities law pursuant to section 129.2 of the Act;

(c) The Paramount Group and the Principals made certain statements, or omitted to provide certain information, to Silverfern Fund investors that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship contrary to subsection 44(2) of the Act;

(d) The Paramount Group and the Principals engaged in, and held themselves out to be engaged in, the business of trading in securities to the public while being unregistered to do so contrary to subsection 25(1) of the Act;

(e) The Paramount Group and the Principals failed to file a prospectus or preliminary prospectus with respect to trades of units of the Silverfern Fund contrary to subsection 53(1) of the Act, in circumstances where no prospectus exemptions were available pursuant to Part XVII of the Act;

(f) The Principals, as actual or de facto officers and/or directors of the Paramount Group, authorized, permitted, and/or acquiesced in the breaches of subsections 25(1), 53(1), and 44(2) of the Act by the Paramount Group and thereby failed to comply with Ontario securities law pursuant to 129.2 of the Act; and

(g) Further, and in any event, the conduct described above is contrary to the public interest.

76. Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest by Trilogy and the Principals during the Trilogy Relevant Period:

(a) Trilogy and the Principals made statements that they knew or ought reasonably to have known in a material respect, at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts necessary to make the statements not misleading and would reasonably be expected to have a significant effect on value of the security being offered, contrary to subsection 126.2(1) of the Act;

(b) Trilogy and the Principals engaged in, and held themselves out to be engaged in, the business of trading in securities to the public while not being registered to do so contrary to subsection 25(1) of the Act;

(c) Trilogy and the Principals failed to file a prospectus or preliminary prospectus with respect to proposed trades in securities contrary to subsection 53(1) of the Act, in circumstances where no prospectus exemptions were available pursuant to Part XVII of the Act;

(d) The Principals, as actual or *de facto* officers and/or directors of Trilogy, authorized, permitted, and/or acquiesced in the breaches of subsections 25(1), 53(1), and 126.2(1) of the Act by Trilogy and thereby failed to comply with Ontario securities law pursuant to section 129.2 of the Act; and

(e) Further, and in any event, the conduct described above is contrary to the public interest.

Enforcement Staff reserve the right to make such other allegations as Enforcement Staff may advise and the Commission may permit.

DATED at Toronto, ~~March 29,~~ ~~May 24, 2019~~.March 12, 2020

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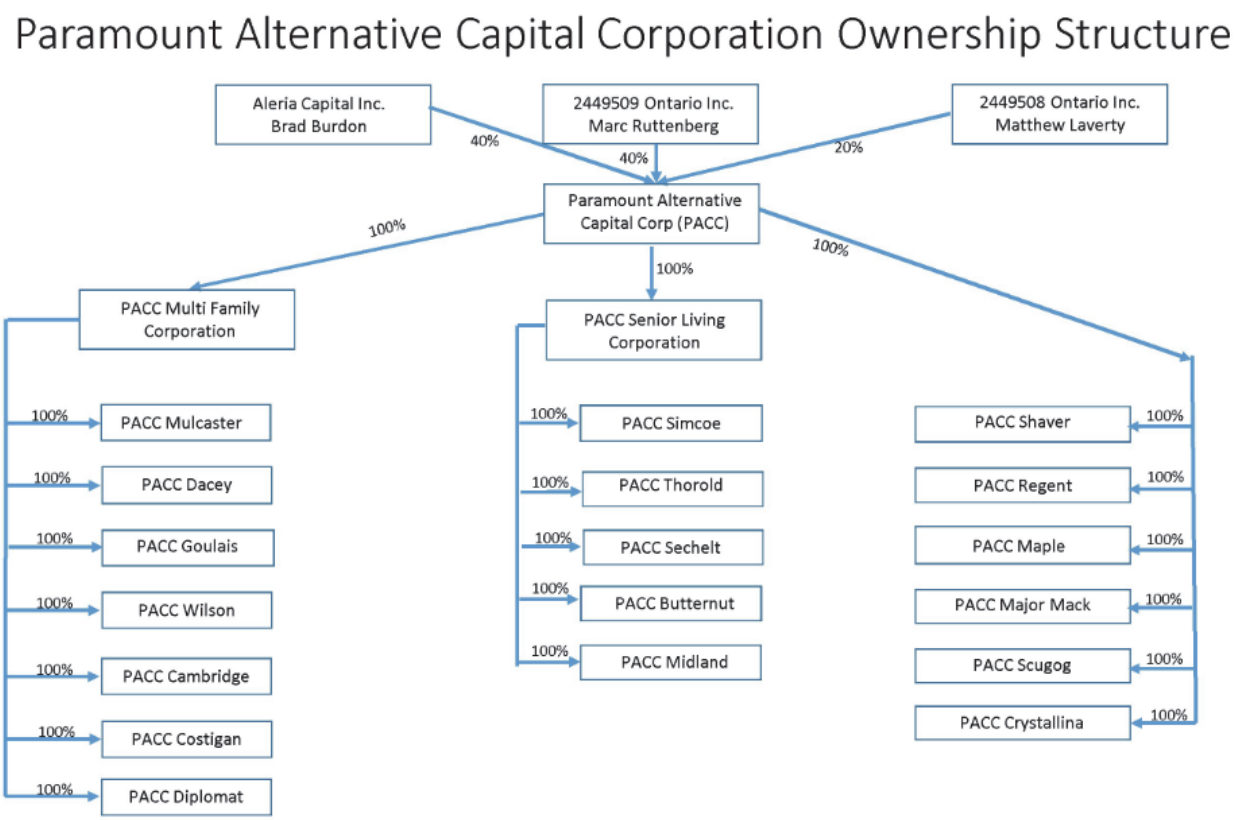
APPENDIX "A"


Paramount Alternative Capital Corporation Ownership Structure
Aleria Capital Inc.
Brad Burdon
2449509 Ontario Inc.
Marc Ruttenberg
2449508 Ontario Inc.
Matthew Laverty
40%
40%
20%
Paramount Alternative Capital Corp (PACC)
100%
100%
100%
PACC Multi Family Corporation
PACC Senior Living Corporation
100% PACC Mulcaster
100% PACC Dacey
100% PACC Goulais
100% PACC Wilson
100% PACC Cambridge
100% PACC Costigan
100% PACC Diplomat
100% PACC Simcoe
100% PACC Thorold
100% PACC Sechelt
100% PACC Butternut
100% PACC Midland
PACC Shaver 100%
PACC Regent 100%
PACC Maple 100%
PACC Major Mack 100%
PACC Scugog 100%
PACC Crystallina 100%

2.2.3 Graham Capital Management, L.P. – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Foreign adviser exempted from the adviser registration requirement in paragraph 22(1)(b) of the CFA where such adviser acts as an adviser in respect of commodity futures contracts or commodity futures options (Contracts) for certain investors in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Contracts are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada.

Terms and conditions of exemption correspond to the relevant terms and conditions of the comparable exemption from the adviser registration requirement available to international advisers in respect of securities set out in section 8.26 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Exemption also subject to a "sunset clause" condition.

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b), 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, ss. 1.1 and 8.26.
Multilateral Instrument 32-102 Registration Exemptions for Non-Resident Fund Managers.
Ontario Securities Commission Rule 13-502 Fees.

March 6, 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
GRAHAM CAPITAL MANAGEMENT, L.P.
(THE FILER)

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Graham Capital Management, L.P. (the **Filer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 80 of the CFA (the **Order**) that the Filer and any individuals engaging in, or holding themselves out as engaging in, the business of advising others as to trading in Contracts (as defined below) on the Filer's behalf (the **Representatives**) be exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA, subject to certain terms and conditions;

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

AND WHEREAS for the purposes of this Order:

"**CFA Adviser Registration Requirement**" means the requirement in the CFA that prohibits a person or company from acting as an adviser with respect to trading in Contracts unless the person or company is registered in the appropriate category of registration under the CFA;

"**CFTC**" means the Commodity Futures Trading Commission of the United States;

"**Contract**" has the meaning ascribed to that term in subsection 1(1) of the CFA;

"**Foreign Contract**" means a Contract that is primarily traded on one or more organized exchanges that are located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada;

"**International Adviser Exemption**" means the exemption set out in section 8.26 of NI 31-103 from the OSA Adviser Registration Requirement;

"**NFA**" means the National Futures Association of the United States;

"**NI 31-103**" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as amended from time to time;

"**OSA**" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

"**OSA Adviser Registration Requirement**" means the requirement in the OSA that prohibits a person or company from acting as an adviser with respect to investing in, buying or selling securities unless the person or company is registered in the appropriate category of registration under the OSA;

"**Permitted Client**" means a client in Ontario that is a "permitted client", as that term is defined in section 1.1 of NI 31-103, except that for purposes of this Order such definition shall exclude a person or company registered under the securities or commodities legislation of a jurisdiction of Canada as an adviser or dealer;

"**SEC**" means the Securities and Exchange Commission of the United States;

"**specified affiliate**" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*;

"**United States**" means the United States of America; and

"**United States Advisers Act**" means the Investment Advisers Act of 1940 of the United States, as amended from time to time.

AND UPON the Filer having represented to the Commission that:

1. The Filer is a limited partnership formed under the laws of the State of Delaware. Its general partner is KGT. Inc., a Delaware corporation. The principal place of business of the Filer is located at 40 Highland Avenue, Rowayton, Connecticut, 06853, United States.

2. The Filer provides investment management services to its clients through: (i) separately managed accounts; (ii) as an adviser to private funds, both funds of its own and funds created by third parties; and (iii) as a sub-adviser to other advisers and their institutional clients, funds and platforms.

3. The Filer is currently (a) registered with the U.S. Securities and Exchange Commission (the **SEC**) as an investment adviser under the U.S. Investment Advisers Act of 1940, as amended (the **U.S. Advisers Act**); (b) registered with the U.S. Commodity Futures Trading Commission (the **CFTC**) as a commodity trading advisor and a commodity pool operator; and (c) a member of the U.S. National Futures Association (the **NFA**).

4. The Filer is not registered in any capacity under the CFA. The Filer has filed to rely on the "international adviser "exemption under section 8.26 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) in the provinces of Ontario, Quebec, British Columbia, Manitoba and Saskatchewan and has filed to rely on the "international investment fund manager" exemption under Multilateral Instrument 32-102 – *Registration Exemptions for Non-Resident Fund Managers* in Ontario and Quebec.

5. Certain institutional investors in Ontario that are Permitted Clients seek to engage the Filer as a discretionary investment manager for purposes of implementing certain specialized investment strategies.

6. The Filer is registered in a category of registration, or operates under an exemption from registration, under the applicable securities legislation or commodity futures legislation of the United States, that permits it to carry on the activities in the United States that registration as an adviser under the CFA in the category of commodity trading manager would permit it to carry on in Ontario.

7. The Filer seeks to act as a discretionary commodity futures advisory manager for Canadian institutional investors that are Permitted Clients. The Filer's advisory services to Permitted Clients would include the use of specialized investment strategies employing Foreign Contracts.

8. Were the proposed advisory services limited to securities, as defined in subsection 1(1) of the OSA, the Filer would be able to rely on the International Adviser Exemption and carry out such activities for Permitted Clients on a basis that would be exempt from the OSA Adviser Registration Requirement.

9. The Filer is not in default of securities legislation, commodity futures legislation or derivatives legislation in any jurisdiction in Canada. The Filer is in compliance in all material respects with securities laws, commodity futures laws and derivatives laws of the United States.

10. 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.

11. By providing the Advisory Services, the Filer 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 Foreign Contracts and, absent the requested relief, would be required to register as an adviser under the CFA.

12. There is currently no exemption from the CFA Adviser Registration Requirement that is equivalent to the International Adviser Exemption. Consequently, in order to advise Permitted Clients as to trading in Foreign Contracts, in the absence of this Order, the Filer would be required to satisfy the CFA Adviser Registration Requirement by applying for and obtaining registration in Ontario as an adviser under the CFA in the category of commodity trading manager.

13. To the best of the Filer's knowledge, the Filer confirms that there are currently no regulatory actions of the type contemplated by the *Notice of Regulatory Action* attached as Appendix "B" to the Order, except as otherwise disclosed to the Commission.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to make this Order;

IT IS ORDERED pursuant to section 80 of the CFA, that the Filer and its Representatives are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of providing advice to Permitted Clients as to the trading of Foreign Contracts provided that:

(a) the Filer provides advice to Permitted Clients only as to trading in Foreign Contracts and does not advise any Permitted Client as to trading in Contracts that are not Foreign Contracts, unless providing such advice is incidental to its providing advice on Foreign Contracts;

(b) the Filer's head office or principal place of business remains in the United States;

(c) the Filer is registered in a category of registration, or operates under an exemption from registration, under the applicable securities or commodity futures legislation of the United States that permits it to carry on the activities in the United States that registration under the CFA as an adviser in the category of commodity trading manager would permit it to carry on in Ontario;

(d) the Filer continues to engage in the business of an adviser, as defined in the CFA, in the United States;

(e) as at the end of the Filer's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the Filer, its affiliates and its affiliated partnerships (excluding the gross revenue of an affiliate or affiliated partnership of the Filer if the affiliate or affiliated partnership is registered under securities legislation, commodities futures legislation or derivatives legislation of a jurisdiction of Canada) was derived from the portfolio management activities of the Filer, its affiliates and its affiliated partnerships in Canada (which, for greater certainty, includes both securities-related and commodity futures-related activities);

(f) before advising a Permitted Client with respect to Foreign Contracts, the Filer notifies the Permitted Client of all of the following:

  (i) the Filer is not registered in Ontario to provide the advice described in paragraph (a) of this Order;

  (ii) the foreign jurisdiction in which the Filer's head office or principal place of business is located;

  (iii) all or substantially all of the Filer's assets may be situated outside of Canada;

  (iv) there may be difficulty enforcing legal rights against the Filer because of the above; and

  (v) the name and address of the Filer's agent for service of process in Ontario;

(g) the Filer has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A";

(h) the Filer notifies the Commission of any regulatory action initiated after the date of this Order with respect to the Filer or, to the best of the Filer's knowledge after reasonable inquiry, any predecessors or the specified affiliates of the Filer by completing and filing Appendix "B" within 10 days of the commencement of each such action, provided that the Filer may also satisfy this condition by filing with the Commission,

(i) within 10 days of the date of this Order, a notice making reference to and incorporating by reference the disclosure made by the Filer pursuant to federal securities laws of the United States that is identified on the Investment Adviser Public Disclosure website, and

(ii) promptly, a notification of any Form ADV amendment and/or filing with the SEC that relates to legal and/or regulatory actions; and

(i) if the Filer is not subject to the requirement to pay a participation fee in Ontario because it is not registered under the OSA and does not rely on the International Adviser Exemption, by December 31st each year, the Filer pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of Ontario Securities Commission Rule 13-502 Fees as if the Filer relied on the International Adviser Exemption; and

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

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

(ii) 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 Filer to act as an adviser to a Permitted Client; and

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

"Cecilia Williams"
Commissioner
Ontario Securities Commission

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

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:

   E-mail address:

   Phone:

   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service and

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Settlement Agreements

Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Disciplinary History

Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

	Yes	**No**
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Ongoing Investigations

Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Authorized Signing Officer or partner

Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

2.2.4 Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam

IN THE MATTER OF
KUBER MORTGAGE INVESTMENT CORPORATION and
SUTHARSAN KUNARATNAM

File No. 2020-6

Timothy Moseley, Vice-Chair and Chair of the Panel

March 16, 2020

ORDER

WHEREAS on March 13, 2020, the Ontario Securities Commission issued a Notice of Hearing announcing that it would hold a hearing in the matter of Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam on March 18, 2020, at 10:00 a.m., at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider whether it is in the public interest for the Commission to approve a settlement agreement between the respondents and Staff of the Commission;

ON CONSIDERING the consent of the parties to conduct the hearing as a written hearing;

IT IS ORDERED THAT the hearing previously scheduled for March 18, 2020 will now proceed in writing.

“Timothy Moseley”

2.4 Rulings

2.4.1 BNP Paribas Securities India PVT. LTD. – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options

Headnote

Application to the Commission pursuant to section 38 of the Commodity Futures Act (Ontario) (CFA) for a ruling that the Applicant be exempted from the dealer registration requirement in paragraph 22(1)(a) and the prohibition against trading on non-recognized exchanges in section 33 of the CFA. As an introducing broker, the Applicant will offer the ability to trade in commodity futures contracts and commodity futures options that trade on exchanges located outside of Canada and that are cleared through clearing corporations located outside of Canada, including block trades, to certain of its clients in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

Application to the Director for an exemption, pursuant to section 6.1 of OSC Rule 91-502 Trades in Recognized Options (OSC Rule 91-502) exempting the Applicant and its Representatives from the proficiency requirements in section 3.1 of OSC Rule 91-502 for trades in commodity futures options on exchanges located outside of Canada.

Applicable Legislative Provisions

Acts Cited

Commodity Futures Act, R.S.O. 1990, c. C20, as am., ss. 22, 33 and 38.
Securities Act, R.S.O. 1990, c. S.5, as am.

Instrument Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.18.

Rule Cited

Ontario Securities Commission Rule 91-502 Trades in Recognized Options, ss. 3.1 and 6.1.

March 10, 2020

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

AND

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

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION RULE 91-502
TRADES IN RECOGNIZED OPTIONS
(Rule 91-502)

AND

IN THE MATTER OF
BNP PARIBAS SECURITIES INDIA PVT. LTD.

RULING & EXEMPTION
(Section 38 of the CFA and Section 6.1 of Rule 91-502)

UPON the application (the **Application**) of BNP Paribas Securities India Pvt. Ltd. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for:

(a) a ruling of the Commission, pursuant to section 38 of the CFA, that the Applicant is not subject to the dealer registration requirements in the CFA (as defined below) or the trading restrictions in the CFA (as defined below) in connection with trades in Exchange-Traded Futures (as defined below) on exchanges located outside Canada (**Non-Canadian Exchanges**) where the Applicant is acting as agent in such trades to, from or on behalf of Permitted Clients (as defined below);

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with Exchange-Traded Futures on Non-Canadian Exchanges, where the Applicant acts in respect of the trades in Exchange-Traded Futures on behalf of the Permitted Client pursuant to the above ruling; and

(c) a decision of the Director, pursuant to section 6.1 of Rule 91-502, exempting the Applicant and its salespersons, directors, officers and employees (the **Representatives**) from section 3.1 of Rule 91-502 in connection with Exchange-Traded Futures.

AND WHEREAS for the purposes of this ruling and exemption (collectively, the **Decision**):

(i) **BSE** means BSE Ltd. (formerly Bombay Stock Exchange Ltd.);

dealer registration requirements in the CFA means the provisions of section 22 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 22 of the CFA;

Exchange-Traded Futures means a commodity futures contract or a commodity futures option that trades on one or more organized exchanges located outside of Canada and that is cleared through one or more clearing corporations located outside of Canada;

IOSCO means International Organization of Securities Commissions;

NI 31-103 means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

NSE means National Stock Exchange of India Ltd.;

Permitted Client means a client in Ontario that is a "permitted client" as that term is defined in section 1.1. of NI 31-103;

SEBI means Securities and Exchange Board of India;

specified affiliate has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*; and

trading restrictions in the CFA means the provisions of section 33 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 33 of the CFA;

(ii) terms used in this Decision that are defined in the OSA, and not otherwise defined in this Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires.

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

AND UPON the Applicant having represented to the Commission and the Director as follows:

1. The Applicant is incorporated in India under the *Indian Companies Act* 1956. Its principal place of business is in Mumbai, India and it has no branches.

2. The Applicant is licensed with SEBI, a member of the IOSCO, as a stockbroker for dealing in listed securities on the NSE and BSE.

3. The Applicant is engaged in the business of a trading member in the cash equities segments of NSE and BSE and as a trading-cum-clearing member in the equity derivatives and the currency derivatives segments of NSE.

4. The Applicant acts as an agency stockbroker in listed cash equities, equity derivatives and currency derivatives for institutional clients (including Foreign Portfolio Investors, banks, local mutual funds, pension funds and insurance

companies), who are generally resident in countries other than Canada, such as Australia, Cayman Islands, France, India, Ireland, the United States, Mauritius and Singapore.

5. The Applicant is an affiliate of BNP Paribas (Canada) Valeurs Mobilières Inc./BNP Paribas (Canada) Securities Inc. (BNP Paribas Securities Canada) and is an indirect wholly-owned subsidiary of BNP Paribas. BNP Paribas Securities Canada is registered under the OSA as a dealer in the category of investment dealer and is a dealer member of the Investment Industry Regulatory Organization of Canada. BNP Paribas Securities Canada is not registered as a dealer under the CFA and does not act as a broker for trades in Exchange-Traded Futures.

6. The Applicant relies on the international dealer exemption under NI 31-103 in Ontario for any trading in securities with Permitted Clients located in Ontario. The Applicant is not registered in any capacity under the OSA or the CFA.

7. The Applicant is not in default of any securities or any commodities futures legislation in any jurisdiction of Canada. The Applicant is in compliance with the applicable securities laws in India.

8. Pursuant to its registrations, the Applicant is authorized to act as a stockbroker in the listed equities and equity derivatives segments of NSE and BSE and in the currency derivatives segment of NSE. The SEBI regulations and the rules, by-laws and regulations of NSE and BSE and their clearing corporations require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to client accounts and transactions, including confirmations and statements, and comply with other forms of customer protection rules, including rules respecting: know-your-client obligations, client identification, account-opening requirements, suitability requirements, anti-money laundering checks and dealing and handling customer orders obligations including managing conflicts of interest. These rules require the Applicant to treat Permitted Clients consistently with the Applicant's customers with respect to transactions made on exchanges in India. In respect of Exchange-Traded Futures, the Applicant provides direct execution services and will give up the trades to the respective clearing member of the Permitted Clients (Third Party Clearing Member) for settlement. In some cases, the Applicant may be the clearing member of NSE Clearing Limited, the NSE's clearing corporation, as the Applicant is licensed as a trading-cum-clearing member and is permitted to act in such capacity if requested by the Permitted Client.

9. The Applicant wishes to offer Permitted Clients the ability to trade in Exchange-Traded Futures through the Applicant. The Applicant shall execute and clear orders for trades in Exchange-Traded Futures on behalf of Permitted Clients in the same manner that it executes and clears orders on behalf of its clients in India. The Applicant shall follow the same know-your-client, suitability and order handling procedures that it follows in respect of its clients in India. Permitted Clients will be afforded the benefits of compliance by the Applicant with applicable statutory and other requirements of the regulators, self-regulatory organizations and exchanges located in India. Permitted Clients in Ontario will have the same contractual rights against the Applicant as clients of the Applicant in India.

10. The Applicant shall not maintain an office, sales force or physical place of business in Ontario.

11. The Applicant shall execute and clear orders for trades in Exchange-Traded Futures in Ontario only from persons who qualify as Permitted Clients.

12. The Applicant shall only offer Permitted Clients of the Applicant the ability to effect trades in Exchange-Traded Futures on Non-Canadian Exchanges, on which the Applicant is licensed to carry out stockbroking activities.

13. The Exchange-Traded Futures to be traded by Permitted Clients shall include, but will not be limited to, Exchange-Traded Futures whose value is determined in reference to equities, currencies or interest rates.

14. India is an interdealer market and any Permitted Client will be a direct client of the Applicant. Permitted Clients of the Applicant will be able to execute orders in Exchange-Traded Futures by directly contacting the Applicant's client order handling desk. The Applicant shall execute a Permitted Client's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange. The Applicant will remain responsible for all trade executions when the Applicant is listed as the executing broker of record on the relevant Non-Canadian Exchange.

15. The Applicant, as an execution broker, shall execute a customer's order on the relevant Exchange in accordance with the rules, by laws and regulations of the relevant exchange and shall be responsible for all trade executions. The Applicant may also be the clearing member of the relevant clearing corporation, acting as the Permitted Client's clearer. Permitted Clients may also be able to "give-up" the transaction for clearing to a Third Party Clearing Member. If the Applicant performs only the execution of a Permitted Client's Exchange-Traded Futures order, then such Third Party Clearing Member shall solely be responsible to comply with the relevant requirements of the exchanges / clearing corporations of which it is a member. The Applicant will not enter into a give-up agreement with any Third Party Clearing Member located in India unless such Third Party Clearing Member is registered with the BSE or NSE.

16. As is customary for all trades of Exchange-Traded Futures, a clearing corporation appointed by the relevant exchange is substituted as a universal counterparty on all trades in Exchange-Traded Futures and Permitted Client orders that are submitted to the exchange by the recognized exchange member. The Permitted Client of the Applicant is

responsible to the Applicant and, when applicable, the Third Party Clearing Member for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Applicant, and when applicable, the Third Party Clearing Member is, in turn, responsible to the clearing corporation for payment. In some cases the Applicant may be the clearing member.

17. Permitted Clients will pay commissions/brokerage/clearing fees for trades executed and / or cleared by the Applicant as per the rates agreed upon mutually from time to time between the Applicant and the Permitted Client.

18. The trading restrictions in Section 33 of the CFA apply unless, among other things, an Exchange-Traded Future is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no Non-Canadian Exchanges have been recognized or registered under the CFA.

19. Absent this Decision, the trading restrictions in the CFA apply unless, among other things, an Exchange-Traded Future is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no Non-Canadian Exchanges have been recognized or registered under the CFA.

20. If the Applicant was registered under the CFA as a "futures commission merchant", it could rely upon certain exemptions from the trading restrictions in the CFA to effect trades of Exchange-Traded Futures to be entered into on certain Non-Canadian Exchanges.

21. Section 3.1 of Rule 91-502 states that any person who trades as agent in, or gives advice in respect of, a recognized option, as defined in section 1.1 of Rule 91-502 is required to successfully complete the Canadian Options Course (which has been replaced by the Derivatives Fundamentals Course and the Options Licensing Course).

22. All Representatives of the Applicant who trade futures or options in India have passed the NISM-Series VIII - Equity Derivatives Certification Examination and / or the NISM - Series I : Currency Derivatives Certification Examination, being the relevant futures and options proficiency examination administered by the National Institute of Securities Markets ("NISM") in India.

AND UPON the Commission and Director being satisfied that it would not be prejudicial to the public interest to grant the exemptions requested;

IT IS RULED, pursuant to section 38 of the CFA, that the Applicant is not subject to the dealer registration requirements set out in the CFA and the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures where the Applicant is acting as agent in such trades to, from or on behalf of Permitted Clients provided that:

(a) each client effecting Exchange-Traded Futures is a Permitted Client;

(b) any Third Party Clearing Member has represented and covenanted to the Applicant that it is appropriately registered or exempt from registration under the CFA;

(c) the Applicant only executes and clears Exchange-Traded Futures for Permitted Clients on Non-Canadian Exchanges;

(d) at the time trading activity is engaged in, the Applicant:

  (i) has its head office or principal place of business in India;

  (ii) is licensed with SEBI, an IOSCO member, as a stockbroker for dealing in Indian listed securities on the NSE and BSE; and

  (iii) engages in the business of a stockbroker in Exchange-Traded Futures in India;

(e) the Applicant has provided to the Permitted Client the following disclosure in writing:

  (i) a statement that the Applicant is not registered in Ontario to trade in Exchange-Traded Futures as principal or agent;

  (ii) a statement that the Applicant's head office or principal place of business is located in Mumbai, India;

  (iii) a statement that all or substantially all of the Applicant's assets may be situated outside of Canada;

  (iv) a statement that there may be difficulty enforcing legal rights against the Applicant because of the above; and

  (v) the name and address of the Applicant's agent for service of process in Ontario;

(f) the Applicant has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A" hereto;

(g) the Applicant notifies the Commission of any regulatory action initiated after the date of this decision in respect of the Applicant, or any predecessors or specified affiliates of the Applicant, by completing and filing with the Commission Appendix "B" hereto within ten days of the commencement of any such action provided that this condition shall not be required to be satisfied for so long as BNP Paribas Securities Canada remains an investment dealer in good standing under Ontario Securities laws;

(h) if the Applicant does not rely on the international dealer exemption in section 8.18 of NI 31-103 (the **IDE**), by December 31st of each year, the Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees* as if the Applicant relied on the IDE;

(i) by December 1st of each year, the Applicant notifies the Commission of its continued reliance on the exemption from the dealer registration requirement granted pursuant to this Decision by filing Form 13-502F4 *Capital Markets Participation Fee Calculation*; and

(j) this Decision will terminate on the earliest of:

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

(ii) 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 dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(ii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with Exchange-Traded Futures on Non-Canadian Exchanges where the Applicant acts in connection with Exchange-Traded Futures on behalf of the Permitted Clients pursuant to the above ruling.

Date: March 10, 2020

“Grant Vingoe”
Vice-Chair or Commissioner
Ontario Securities Commission

“Tim Moseley”
Vice-Chair or Commissioner
Ontario Securities Commission

IT IS THE DECISION of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to the Applicant and its Representatives in respect of Exchange-Traded Futures, provided that:

(a) the Applicant and its Representatives maintain their respective registrations with the SEBI, NSE and BSE which permit them to trade and clear commodity futures options in India; and

(b) this Decision will terminate on the earliest of:

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

(ii) 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 dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

Date: March 10, 2020

“Felicia Tedesco”
Director
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE *COMMODITY FUTURES ACT*, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:

   E-mail address:

   Phone:

   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements*, *Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   [ ] Section 8.18 [*international dealer*]

   [ ] Section 8.26 [*international adviser*]

   [ ] Other

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    (a) a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    (b) an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service; and

    (c) a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

Appendix "B"

Notice of Regulatory Action

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

	Yes	**No**
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 – *Registration Information*.

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal: https://www.osc.gov.on.ca/filings

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
THERE IS NOTHING TO REPORT THIS WEEK.		

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:
CI DoubleLine Core Plus Fixed Income US$ Fund
CI DoubleLine Income US$ Fund
CI DoubleLine Total Return Bond US$ Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Mar 11, 2020
NP 11-202 Preliminary Receipt dated Mar 12, 2020
Offering Price and Description:
ETF C$ Hedged Series, ETF US$ Series, Series A units, Series PH units, Series I units, Series FH units, ETF C$ Unhedged Series, Series F units, Series AH units, Series IH units and Series P units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3027840

Issuer Name:
Foundation Wealth Equity Pool
Foundation Wealth Income Pool
Foundation Wealth Real Alternative Pool
Purpose Cash Management Portfolio
Purpose Money Market Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated Mar 6, 2020
NP 11-202 Final Receipt dated Mar 11, 2020
Offering Price and Description:
Class A units, Class F units, ETF units, Class E units and Class I units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #30277815180

Issuer Name:
Desjardins 1-5 year Laddered Canadian Corporate Bond Index ETF
Desjardins 1-5 year Laddered Canadian Government Bond Index ETF
Desjardins Canada Multifactor-Controlled Volatility ETF
Desjardins Canadian Preferred Share Index ETF
Desjardins Canadian Short Term Bond Index ETF
Desjardins Canadian Universe Bond Index ETF
Desjardins Developed ex-USA ex-Canada Multifactor-Controlled Volatility ETF
Desjardins Emerging Markets Multifactor-Controlled Volatility ETF
Desjardins RI Developed ex-USA ex-Canada - Low CO2 Index ETF
Desjardins RI Emerging Markets - Low CO2 Index ETF
Desjardins USA Multifactor-Controlled Volatility ETF
Principal Regulator – Quebec
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Mar 11, 2020
NP 11-202 Final Receipt dated Mar 13, 2020
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3014837

Issuer Name:
Brompton Global Real Assets Dividend ETF
Brompton North American Low Volatility Dividend ETF
Principal Regulator – Ontario
Type and Date
Preliminary Long Form Prospectus dated Mar 13, 2020
NP 11-202 Preliminary Receipt dated Mar 13, 2020
Offering Price and Description:
USD Units and CAD Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3028816

Issuer Name:
Purpose Structured Equity Yield Portfolio II
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Mar 16, 2020
NP 11-202 Preliminary Receipt dated Mar 16, 2020
Offering Price and Description:
Series F shares, Series A shares and Series I shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3029166

_____

NON-INVESTMENT FUNDS

Kalon Acquisition Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated March 10, 2020
NP 11-202 Preliminary Receipt dated March 11, 2020
Offering Price and Description:
$250,000.00 - $400,000.00
2,500,000 Common Shares
up to a maximum of
4,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Mudit Paliwal
Project #3027571

Issuer Name:
Nutrien Ltd.
Principal Regulator - Saskatchewan
Type and Date:
Preliminary Shelf Prospectus dated March 10, 2020
NP 11-202 Preliminary Receipt dated March 10, 2020
Offering Price and Description:
U.S.$5,000,000,000.00
Common Shares
Preferred Shares
Subscription Receipts
Debt Securities
Share Purchase Contracts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3027476

Issuer Name:
Prismo Metals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated March 10, 2020
NP 11-202 Preliminary Receipt dated March 11, 2020
Offering Price and Description:
Common Shares
2,400,000
$0.125
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
Craig Gibson
Project #3027865

Issuer Name:
SilverCrest Metals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus (NI 44-101) dated
Received on March 11, 2020
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3027787

Issuer Name:
Tetra Bio-Pharma Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated March 16, 2020
NP 11-202 Preliminary Receipt dated March 16, 2020
Offering Price and Description:
$50,000,000.00 - Common Shares, Warrants, Units, Debt Securities Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3029187

Issuer Name:
urban-gro, Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 16, 2020
NP 11-202 Preliminary Receipt dated March 16, 2020
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3029176

Issuer Name:
Bank of Nova Scotia, The
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated March 11, 2020
NP 11-202 Receipt dated March 11, 2020
Offering Price and Description:
$6,000,000,000.00
Senior Notes (Principal at Risk Notes)
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
DESJARDINS SECURITIES INC.
INDUSTRIAL ALLIANCE SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
Promoter(s):
-
Project #3008755

Issuer Name:
Brookfield Infrastructure Corporation
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 12, 2020
NP 11-202 Receipt dated March 13, 2020
Offering Price and Description:
32,800,000 Class A Exchangeable Subordinate Voting Shares of Brookfield Infrastructure Corporation
Up to 46,500,000 Limited Partnership Units of Brookfield Infrastructure Partners L.P.
(issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Subordinate Voting Shares)
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brookfield Infrastructure Partners L.P.
Project #2986176

Issuer Name:
Brookfield Infrastructure Partners L.P.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 12, 2020
NP 11-202 Receipt dated March 13, 2020
Offering Price and Description:
32,800,000 Class A Exchangeable Subordinate Voting Shares of Brookfield Infrastructure Corporation
Up to 46,500,000 Limited Partnership Units of Brookfield Infrastructure Partners L.P.
(issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Subordinate Voting Shares)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2986180

Issuer Name:
Firm Capital American Realty Partners Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 10, 2020
NP 11-202 Receipt dated March 10, 2020
Offering Price and Description:
U.S.$13,038,000.00
1,590,000 Units
Offering Price: U.S.$8.20/$10.90 per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
TD SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
INDUSTRIAL ALLIANCE SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
SCOTIA CAPITAL INC.
DESJARDINS SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
WELLINGTON-ALTUS PRIVATE WEALTH INC.
Promoter(s):
-
Project #3017331

Issuer Name:
Lida Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Amendment dated March 11, 2020 to Final Long Form Prospectus dated November 27, 2019
NP 11-202 Receipt dated March 11, 2020
Offering Price and Description:
7,800,000 Units for $780,000.00 (the "Minimum Offering")
9,000,000 Units for $900,000.00 (the "Maximum Offering")
Price: $0.10 per Unit
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Leonard De Melt
Project #2942482

Issuer Name:
Mawson Resources Limited
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated March 13, 2020
NP 11-202 Receipt dated March 13, 2020
Offering Price and Description:
$25,000,000.00 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3024123

Issuer Name:
Medicenna Therapeutics Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 12, 2020
NP 11-202 Receipt dated March 12, 2020
Offering Price and Description:
$35,000,001.30 (11,290,323 Offered Shares) - Price: $3.10 per Offered Share
Underwriter(s) or Distributor(s):
BLOOM BURTON SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
HAYWOOD SECURITIES INC.
Promoter(s):
Fahar Merchant
Rosemina Merchant
Project #3025238

Issuer Name:
Vitalhub Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 12, 2020
NP 11-202 Receipt dated March 13, 2020
Offering Price and Description:
$13,500,000.00 - 7,500,000 Common Shares
Price: $1.80 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
BEACON SECURITIES LIMITED
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #3020006

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Suspension	RWS Capital Services Inc.	Exempt Market Dealer	March 10, 2020
Consent to Suspension (Pending Surrender)	Global RESP Corporation	Scholarship Plan Dealer	March 10, 2020

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