The Ontario Securities Commission

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The Ontario Securities Commission carries out the powers, duties and functions given to it pursuant to the *Securities Commission Act, 2021* (S.O. 2021, c. 8, Sched. 9).

The Ontario Securities Commission exercises its regulatory oversight function through the administration and enforcement of Ontario's *Securities Act* (R.S.O. 1990, c. S.5) and *Commodity Futures Act* (R.S.O. 1990, c. C.20), and administration of certain provisions of the *Business Corporations Act* (R.S.O. 1990, c. B.16).

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ONTARIO SECURITIES COMMISSION,
File No. 2024-4

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

A copy of the Order dated June 12, 2024 is available at capitalmarketstribunal.ca.

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A.2.2 Ahmed Kaiser Akbar

FOR IMMEDIATE RELEASE
June 12, 2024

AHMED KAISER AKBAR,
File No. 2024-7

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

A copy of the Order dated June 12, 2024 is available at capitalmarketstribunal.ca.

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A.2.3 Troy Richard James Hogg et al.

FOR IMMEDIATE RELEASE
June 17, 2024

TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC.,
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GABLES HOLDINGS INC.,
File No. 2022-20

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

A copy of the Reasons and Decision dated June 14, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.4 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
June 17, 2024

GO-TO DEVELOPMENTS HOLDINGS INC.,
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TORONTO – An additional merits hearing date is scheduled for December 4, 2024 at 10:00 a.m. in the above-named matter.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto.

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

Registrar, Governance & Tribunal Secretariat
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A.3
Orders

A.3.1 Leszek Dziadecki et al.

LESZEK DZIADECKI

AND

CANADIAN INVESTMENT REGULATORY ORGANIZATION

AND

ONTARIO SECURITIES COMMISSION

File No. 2024-4

Adjudicator: Mary Condon

June 12, 2024

ORDER

WHEREAS on June 11, 2024, the Capital Markets Tribunal held a hearing by videoconference in relation to the application brought by Leszek Dziadecki for review of the decisions of the Canadian Investment Regulatory Organization (**CIRO**) of May 16, 2023, and January 30, 2024;

AND WHEREAS Dziadecki made a request to vary deadlines contained in the Tribunal's order dated April 4, 2024 (**April 4 Order**) and to further amend his Application, first amended on April 15, 2024;

ON HEARING the submissions of the representatives for Dziadecki, CIRO and the Ontario Securities Commission (the **Commission**);

IT IS ORDERED THAT:

1. paragraph 3.c. of the April 4 Order is varied as follows:

   a. by June 19, 2024 at 4:00 p.m., Dziadecki shall serve and file his written submissions;

2. paragraph 3.d. of the April 4 Order is varied as follows:

   a. by July 10, 2024 at 4:00 p.m., staff of CIRO shall serve and file responding written submissions;

3. paragraph 3.e. of the April 4 Order is varied as follows:

   a. by July 12, 2024 at 4:00 p.m., the Commission shall serve and file responding written submissions;

4. paragraph 3.f. of the April 4 Order is varied as follows:

   a. by July 19, 2024 at 4:00 p.m., Dziadecki shall serve and file reply written submissions, if any;

5. Dziadecki shall serve and file a further amended application with minor revisions concerning relief sought and without any "Track Changes" markup within the document by June 13, 2024 at 4:00 p.m.; and

6. by June 17, 2024 at 4:00 p.m., CIRO and the Commission shall serve and file any objection to the amended application.

"Mary Condon"

A.3.2 Ontario Securities Commission and Ahmed Kaiser Akbar

ONTARIO SECURITIES COMMISSION

AND

AHMED KAISER AKBAR

File No. 2024-7

Adjudicator: Sandra Blake

June 12, 2024

ORDER

WHEREAS on June 12, 2024, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for the Ontario Securities Commission and for the respondent;

IT IS ORDERED THAT:

1. by July 12, 2024, at 4:30 p.m., the Commission shall disclose to the respondent the non-privileged, relevant documents and things in the Commission's possession or control;

2. by September 20, 2024, at 4:30 p.m., the respondent shall provide notice to the Commission and Tribunal of his intention to bring a motion, if any, regarding the Commission's disclosure or seeking disclosure of additional documents;

3. by September 25, 2024, at 4:30 p.m., the Commission shall:

   a. serve and file a witness list,

   b. serve a summary of each witness's expected testimony, and

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

4. a further case management hearing in this matter is scheduled for September 30, 2024, at 10:00 a.m. by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Sandra Blake"

A.4
Reasons and Decisions

A.4.1 Troy Richard James Hogg et al. – s. 127(1)

Citation: *Hogg (Re)*, 2024 ONCMT 15
Date: 2024-06-14
File No. 2022-20

IN THE MATTER OF
TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC.,
ARBITRADE EXCHANGE INC.,
ARBITRADE LTD.,
T.J.L. PROPERTY MANAGEMENT INC. AND
GABLES HOLDINGS INC.

REASONS AND DECISION
(Subsection 127(1) of the Securities Act, RSO 1990, c S.5)

Adjudicators:	Andrea Burke (chair of the panel) Sandra Blake M. Cecilia Williams
Hearing:	November 21, 22, 30, 2023 and February 7, 2024; final written submissions received February 23, 2024
Appearances:	Erin Hoult — For the Ontario Securities Commission Alvin Qian
	No one appearing for Troy Richard James Hogg, Cryptobontix Inc., Arbitrade Exchange Inc., Arbitrade Ltd., T.J.L. Property Management Inc. and Gables Holdings Inc.

REASONS AND DECISION

1. OVERVIEW

[1] This enforcement case is about the sale and promotion of crypto assets by unregistered parties, without a prospectus. Significant funds were raised from investors based on broadly circulated promotional materials allegedly containing false and misleading statements.

[2] The Ontario Securities Commission makes allegations against six respondents:

a. Troy Richard James Hogg, the only individual respondent, and the alleged directing mind of the five corporate respondents;

b. Cryptobontix Inc., Arbitrade Exchange Inc. and Arbitrade Ltd. (**Arbitrade Bermuda**), all three of which allegedly promoted and sold crypto tokens issued by Cryptobontix, under Hogg's direction; and

c. T.J.L. Property Management Inc. (**TJL**) and Gables Holdings Inc., two other companies of Hoggs', that were not directly involved in the promotion and sale of the crypto tokens, but that allegedly benefited from those activities.

[3] The Commission alleges that between May 2017 and June 2019 (the **Material Time**), Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda promoted and sold Unity Ingot tokens and, later, Dignity tokens (together, the **Tokens**), to investors around the world. They raised approximately US $51 million by selling the Tokens.

[4] The Commission alleges that the Tokens are securities, something that must be established for there to be any breaches of the *Securities Act* (the ***Act***)[1].

[1] RSO 1990, c S.5

[5] The Commission further alleges that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda each:

a. perpetrated a fraud on investors by distributing promotional materials which contained false and misleading statements regarding the acquisition of gold bullion to support the value of the Tokens and regarding the audit of such gold bullion, contrary to s. 126.1(1)(b) of the *Act*;

b. engaged in the business of trading in securities without registration, contrary to s. 25(1) of the *Act*; and

c. traded in securities where the trades were a distribution of securities, without a prospectus, contrary to s. 53(1) of the *Act*.

[6] As well, the Commission alleges that all the respondents perpetrated a fraud on investors, contrary to s. 126.1(1)(b) of the *Act*, by misappropriating investor funds, contrary to representations to investors that the funds would be used to purchase cryptocurrency mining equipment to increase the value of the Tokens.

[7] Finally, the Commission alleges that, in addition to Hogg directly breaching these provisions of the *Act*, Hogg as a director or officer of each of the corporate respondents authorized, permitted or acquiesced in their non-compliance with Ontario securities law and should be deemed liable under s. 129.2 of the *Act*.

[8] For the reasons below, we find that:

a. the sale of Tokens, considering all the surrounding circumstances of the sale, including the related representations made to prospective purchasers, are "investment contracts" and therefore securities under the *Act*;

b. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda acted fraudulently by falsely representing to investors that the Tokens were backed by gold or that gold was acquired and confirmed through an audit;

c. the respondents acted fraudulently by misappropriating funds raised from the sale of Tokens for purposes other than those represented to investors;

d. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in the business of trading in securities without registration and without an exemption from registration; and

e. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the Tokens without complying with the prospectus requirements.

[9] We also find that Hogg, as a director and officer of Arbitrade Bermuda authorized, permitted or acquiesced in all of Arbitrade Bermuda's breaches of Ontario securities law. As a result, Hogg is deemed under s. 129.2 of the *Act* to also have not complied with Ontario securities law in respect of each of Arbitrade Bermuda's breaches. The Commission asked us to make similar findings against Hogg in respect of the other corporate respondents' breaches of the *Act*. We decline to do so because we attributed these other corporate respondents' breaches of the *Act* to Hogg when finding Hogg's direct breaches of the *Act.*

[10] Before moving to outline the background facts, we first address two preliminary issues:

a. our denial of Hogg's and various corporate respondents' request for an adjournment of the merits hearing; and

b. our decision to proceed with the merits hearing despite the respondents' decision not to participate.

2. PRELIMINARY ISSUES

2.1 The Adjournment Motion

2.1.1 Background

[11] The dates for the merits hearing were set in April 2023. The hearing was scheduled for 28 days beginning on November 21, 2023.

[12] On October 20, 2023, we approved a request to withdraw brought by counsel for Hogg, Arbitrade Exchange, TJL and Gables. A week later, Hogg filed notice that he intended to act on his own behalf and on behalf of Arbitrade Exchange, TJL and Gables (but not Cryptobontix and Arbitrade Bermuda).

[13] On October 30, 2023, Hogg, Arbitrade Exchange, TJL and Gables (together, the **Moving Respondents**) moved to adjourn the start of the merits hearing (the **Adjournment Motion**). We heard the motion on November 10, 2023. We were not satisfied that there were exceptional circumstances requiring an adjournment of the merits hearing.

2.1.2 Law on adjournments

[14] Rule 29(1) of the Tribunal's *Rules of Procedure and Forms* (the ***Rules*** that were in place at the time of the Adjournment Motion) provides that every merits hearing in an enforcement proceeding shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment".

[15] That standard is difficult to meet. It reflects the important objective, set out in r. 1 of the *Rules*, that Tribunal proceedings be "conducted in a just, expeditious and cost-effective manner".

[16] That objective must, however, be balanced against the parties' ability to participate meaningfully in hearings and present their case. A determination about whether to grant an adjournment is necessarily dependent on the circumstances of the case.[2]

2.1.3 Analysis

2.1.3.a Introduction

[17] The Moving Respondents requested the adjournment because:

a. their counsel recently withdrew, and they were trying to raise funds to retain their former counsel again or to retain new counsel, who would need time to prepare;

b. Hogg was unable to access files that the Commission had disclosed;

c. the process to compel foreign witnesses on the Moving Respondents' witness list to give evidence in this proceeding was still underway and would take another two to two-and-a-half months; and

d. a civil proceeding by the US Securities and Exchange Commission against some of the same respondents (**SEC proceeding**) was scheduled to be heard in April 2024, and evidence from that hearing would help the Moving Respondents defend this proceeding.

[18] We needed to decide whether any of these grounds, considered alone or together, constituted exceptional circumstances requiring an adjournment of the merits hearing. We considered the following factors:

a. whether the principal delay was caused by unforeseen circumstances;

b. the Moving Respondents' conduct, including whether they tried to delay or manipulate the process;

c. the seriousness of the potential consequences to the Moving Respondents;

d. whether the Moving Respondents needed more time to respond;

e. the Tribunal's interest in making decisions on a full factual record; and

f. any prejudice because of an adjournment.[3]

[19] The allegations against the Moving Respondents, and the potential consequences of this proceeding, are serious. The Commission submitted that while this factor may weigh in favour of an adjournment, there was no evidence that but for an adjournment, these respondents would not receive a fair hearing.

2.1.3.b Withdrawal of counsel

[20] The Commission submitted that counsel's inability to continue to represent the respondents was clearly foreseeable. In their motion asking to be removed from the record, counsel had relied on the non-payment of their accounts dating back to January 2022. The motion materials also included correspondence from counsel advising Hogg that because of non-payment of fees, they were only working on issues related to compelling the attendance of foreign witnesses, and not on other matters related to the merits hearing. The Commission submitted that the Moving Respondents had provided no evidence to prove that they were retaining new counsel or even whether they had the funds to retain new counsel. The Commission further submitted that withdrawal of counsel alone does not meet the exceptional circumstances test.

[21] Because the Moving Respondents were without counsel, Hogg submitted that he needed more time to prepare for the merits hearing. He based this submission on several scenarios.

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2 *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40 (***Money Gate***) at para 54

3 *Pro-Financial Asset Management (Re),* 2018 ONSEC 18 (***Pro-Financial***) at para 29

[22] Hogg submitted that he was trying to secure funds to pay former counsel but that this might take several weeks, and former counsel might become unavailable because they might take on new cases. Hogg advised that if he was self-represented, he would need time to prepare for the merits hearing because he did not understand the Tribunal's processes and the case is complex. Hogg said that he had spoken to several potential new lawyers, all of whom would need additional time (approximately six months) to prepare. Hogg said it was unclear whether and when he might be able to raise funds through family and friends to pay counsel.

[23] This situation is like that in *First Global Data (Re)*.[4] In that case, a respondent lost his counsel and became self-represented. He argued that he was ill-equipped to represent himself, he was close to retaining counsel, and his health issues further delayed his preparation. The Tribunal denied the adjournment request, stating that the right to counsel is not absolute. Respondents in Tribunal proceedings often represent themselves and there are many protections in place to ensure they get a fair hearing.[5]

[24] We decided that in this case, counsel's recent withdrawal did not amount to exceptional circumstances. The withdrawal was reasonably foreseeable, the Moving Respondents were uncertain whether and when they might be able to raise sufficient funds to retain counsel, and they would receive a fair hearing even without counsel.

2.1.3.c Access to disclosure files

[25] Hogg submitted that he had been unable to open thousands of files in the Commission's electronic disclosure because of broken links. Despite getting advice from his lawyer and from the Commission, he had been unable to resolve the issue. He submitted that he had developed a "work around" but that it was a time-consuming process. He therefore needed more time to prepare for the merits hearing.

[26] We did not find this submission compelling. The Moving Respondents and their counsel received the Commission's disclosure on October 27, 2022, more than one year before the scheduled commencement of the merits hearing. Other than an inquiry in November 2022, neither the Moving Respondents nor their counsel complained about the Commission's disclosure or brought a disclosure-related motion. Hogg raised his issue with the Commission for the first time on October 20, 2023, and the Commission promptly helped him.

[27] We were not satisfied that there were any technical issues with the Commission's disclosure that might require an adjournment. Parties do bear some responsibility to be able to access electronic records. At the very least, respondents must promptly raise any issues regarding access to electronic records they receive. The Moving Respondents did not do that.

2.1.3.d Foreign witnesses

[28] In March 2023, the Moving Respondents said they intended to call multiple foreign witnesses at the merits hearing. The hearing dates were set on consent of the parties with that in mind. Hogg submitted that his former counsel told him to "wait" until they had received an order from the Ontario Superior Court of Justice issuing letters of request addressed to foreign courts before making efforts in those foreign jurisdictions to seek to compel the foreign witnesses to provide their evidence. We understood Hogg to be saying that he relied on advice of former counsel to wait before retaining foreign counsel and preparing any materials for the foreign courts. Hogg confirmed that although the Court issued the order on September 21, 2023, he still needed to retain multiple foreign counsel and he had not yet filed anything in the foreign courts seeking to compel the foreign witnesses to provide evidence. Hogg's US lawyer informed him that it would take two to two-and-a-half months from November 10, 2023, to have the foreign courts recognize the letters of request.

[29] The Commission submitted that the Moving Respondents caused the delay in compelling the foreign witnesses and would benefit from delaying the proceeding as a result. In addition, the Commission submitted that the Moving Respondents acknowledged that their lack of funding made it uncertain whether they would even pursue the process to compel foreign witnesses, and even if they did, there was no guarantee that they would succeed.

[30] While compelling foreign witnesses takes time and is not entirely within a party's control, the Moving Respondents failed to take any steps in the seven weeks since the issuance of the letters of request by the Court. That failure is significant. A party seeking an adjournment for this reason must show that they have moved diligently.

[31] Because of the uncertainty as to whether the Moving Respondents would even pursue the process to compel the foreign witnesses, we declined to grant an adjournment on this ground. When we advised the parties of our decision, we told Hogg that because the Commission would present its case first, and given the Commission's proposed timetable for the merits hearing, the Moving Respondents would likely not need to call their witnesses before January 2024, which was two months away. We urged Hogg to take steps to compel the foreign witnesses.

4 2022 ONCMT 23 (***First Global***)
5 *First Global* at para 13

2.1.3.e The SEC proceeding

[32] The Moving Respondents submitted that the SEC proceeding would be critical in telling the full story. They asserted that the SEC proceeding would bring forward evidence that would help their defence in this proceeding. They therefore asked that we adjourn this proceeding until after the disposition of the SEC proceeding.

[33] The Commission explained that the SEC proceeding was commenced on the same day as this proceeding. It arose out of an SEC investigation that was conducted in parallel to the Commission's investigation that resulted in this proceeding. Although many of the same facts will be in issue in both proceedings, the proceedings are not the same. The parties are not identical and different laws apply.

[34] The Moving Respondents had never previously raised the timing of the SEC proceeding as an issue, including when the merits hearing dates were set in April 2023, at which time the hearing for the SEC proceeding had already been scheduled to begin after the merits hearing here. Given that the SEC proceeding was not scheduled to start until April 2024, the requested adjournment until after the disposition of the SEC proceeding could be very lengthy.

[35] Generally, the Tribunal will not stay its proceedings in favour of other proceedings. It is fundamental to properly functioning capital markets that a regulator be able to respond efficiently and effectively to protect the investing public. It is in the public interest for the Tribunal to hear proceedings as soon as possible.[6]

[36] We distinguish this case from *Hollinger Inc. (Re)*,[7] in which the Tribunal stayed a proceeding in favour of a US proceeding. In that case, the US matter was a criminal proceeding with a risk of incarceration. The Tribunal recognized that issues might arise if the Tribunal proceeding went ahead of the US criminal proceeding, given the different approaches to the right to protection against self-incrimination under Canadian and American law. Here, the SEC proceeding is civil and not criminal, and the same concerns are not engaged.

[37] We did not find that the SEC proceeding constituted exceptional circumstances requiring an adjournment.

2.1.3.f Cases cited by the Moving Respondents

[38] The Moving Respondents submitted that the Tribunal has granted adjournments in circumstances that were not as "exceptional" as here. However, every case that Hogg cited is distinguishable because, the adjournment was on consent, did not involve the adjournment of the merits hearing, pre-dated the adoption of r. 29(1) of the *Rules* in 2017, or did meet the high bar of exceptional circumstances.

2.1.3.g Prejudice

[39] Finally, the Moving Respondents submitted that an adjournment would cause no prejudice (*i.e.*, risk of harm to the capital markets) because the courts had frozen all of Hogg's money, and the subject "cryptocurrency" and corporation were no longer operating in Canada or in Hogg's name.

[40] Lack of prejudice arising from an adjournment does not meet or obviate the exceptional circumstances test. In any event, there is generally always prejudice, including time and expense thrown away, that arises as a result of the adjournment of a merits hearing, especially when the adjournment is sought close in time to scheduled hearing dates.

2.1.3.h Conclusion on the adjournment motion

[41] We concluded that many months had passed since this proceeding began, during most of which time the Moving Respondents had the benefit of counsel to navigate securing foreign witnesses and managing the SEC proceeding. In fact, Hogg was still represented by US counsel when we heard the Adjournment Motion. In addition, there was a lengthy scheduled gap between the close of the Commission's case and the start of the Moving Respondents' case. The Moving Respondents had a reasonable opportunity to prepare their defence.

[42] The Moving Respondents failed to demonstrate that any of the grounds advanced, even taken together, amounted to exceptional circumstances that would require an adjournment. We therefore dismissed the motion.

2.2 Proceeding in the absence of the respondents

[43] The respondents chose not to participate in the merits hearing and we proceeded in their absence.

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6 *Robinson (Re)*, (1993) 16 OSCB 5667 at paras 11-14; *David Charles Phillips et al*, 2015 ONSEC 1 at paras 51-59

7 2006 ONSEC 2 (***Hollinger***)

[44] Hogg, Arbitrade Exchange, TJL and Gables participated in earlier hearings in this proceeding and consented to the scheduled merits hearing dates. However, on the first day of the merits hearing, Hogg advised the Tribunal in writing that "under advisement from my attorneys" he would not be attending the hearing.

[45] Neither Cryptobontix nor Arbitrade Bermuda attended any hearings in this proceeding, despite having been given reasonable notice.

[46] Where notice of a hearing has been given to a party to a proceeding and the party does not attend the hearing, the Tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.[8]

[47] All respondents had proper notice of the proceeding. It was appropriate to proceed in their absence.

3. BACKGROUND

3.1 The respondents

3.1.1 Hogg

[48] Hogg was a resident of Ontario at all relevant times. He founded Cryptobontix and was its sole officer and director throughout the Material Time. Hogg was also the company's sole shareholder until he sold his shares to SION Trading FZE in or about June 2019.

[49] Throughout the Material Time, Hogg was also the sole director, officer and shareholder of Arbitrade Exchange.

[50] During the Material Time, Hogg was also the majority shareholder of Arbitrade Bermuda, indirectly owning 67% of its shares through his personal holding company.

3.1.2 Cryptobontix

[51] Cryptobontix is an Ontario company incorporated in 2014.

[52] Cryptobontix developed and issued a family of crypto tokens that were represented as backed by precious metals. These tokens included the Unity Ingot token, which was later replaced with the Dignity token. Both the Unity Ingot token and the Dignity token were represented to be backed by gold bullion.

[53] In 2018 there was a plan that Arbitrade Bermuda would acquire the business or assets of Cryptobontix. Although no evidence established that this happened, Arbitrade Bermuda treated Cryptobontix and the Tokens as part of its business and represented this to be the case.

3.1.3 Arbitrade Exchange

[54] Arbitrade Exchange is an Ontario company incorporated in 2014. Originally a retail business, Hogg later used it for the crypto asset business until Arbitrade Bermuda was established.

[55] In June 2018, counsel for Arbitrade Exchange advised the Commission that Arbitrade Exchange had engaged in promotional activity consisting of the issuance of press releases and emailing business updates to a subscriber list developed by Cryptobontix to raise market awareness of the business intended to be conducted by Cryptobontix (or in Arbitrade Bermuda after its intended acquisition of the business or assets of Cryptobontix).

3.1.4 Arbitrade Bermuda

[56] Arbitrade Bermuda is a Bermuda corporation incorporated on May 30, 2018.

[57] Arbitrade Bermuda was established by Hogg and others with the intention that it acquire or combine with Cryptobontix and Arbitrade Exchange and operate a digital asset business, including a "cryptocurrency exchange".

[58] Hogg was the majority shareholder of Arbitrade Bermuda. Although he was not formally appointed a director or officer of Arbitrade Bermuda, he was to own enough shares of the company to appoint a majority of its board of directors and control it once its organization was completed, which he did. Hogg was also the "technical advisor" to Arbitrade Bermuda. His responsibilities included marketing, and preparing press releases, government documents, white papers, and presentations. Hogg said that his role as a consultant at Arbitrade Bermuda included "all the technical aspects and marketing materials".

3.1.5 TJL and Gables

[8] *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(1); *Rules of Procedure*, r 21(3)

[59] TJL is an Ontario corporation incorporated on April 30, 2014. Throughout the Material Time, Hogg was TJL's sole shareholder, director and officer.

[60] Hogg operates various businesses through TJL, including consulting, advertising, software developing, real estate developments, and restaurants in Grand Bend, Ontario.

[61] Gables is an Ontario corporation incorporated on June 8, 2018. Hogg owns Gables, which holds approximately half of his real property and other local business interests.

[62] From June 8, 2018, to at least April 12, 2019, Hogg was the sole director of Gables.

3.2 Factual background relevant to the Tokens

3.2.1 The development of the Tokens

[63] Hogg developed the concept of the Tokens. At Hogg's direction, Cryptobontix arranged for a developer to create and deploy on the blockchain Unity Ingot tokens (also known as UNY tokens) and, later, the Dignity tokens (also known as DIG tokens), which replaced the Unity Ingot tokens. Cryptobontix described these tokens as "cryptocurrencies based on the Ethereum Smart Contract technology".

[64] Initially, Cryptobontix stated that 10 billion Unity Ingot tokens would be released. This number was later reduced to 3 billion. It is not clear whether this reduction occurred during what Cryptobontix described as a November 2017 "reissuance" or in or about February 2018 when the Unity Ingot tokens were replaced with Dignity tokens which were provided to holders of Unity Ingot tokens on a 1-to-1 exchange basis. Cryptobontix "released" 3 billion Dignity tokens in total. We understand that the "released" figure represented the maximum amount of tokens that were available for purchase. It was not explained whether 3 billion tokens were created.

3.2.2 How the Unity Ingot and Dignity tokens were sold

[65] The Unity Ingot tokens (and, later, the Dignity tokens) were sold on two crypto asset trading platforms: Livecoin and C-CEX. The Unity Ingot tokens first traded on Livecoin and C-CEX on May 2, 2017.

[66] During the Material Time, Hogg engaged two individuals, Stephen Braverman and James Goldberg, to sell the Unity Ingot tokens and Dignity tokens. Braverman and Goldberg both became shareholders of Arbitrade Bermuda. Braverman was its Chief Operating Officer and Goldberg was an assistant to the Chairman and CEO.

[67] The Tokens were generally sold in the following manner:

a. Hogg was responsible for the relationship with Livecoin in connection with the Tokens.

b. Hogg controlled the Unity Ingot tokens (and later the Dignity tokens) in a master account.

c. On request, Hogg would transfer blocks of Tokens to Braverman and Goldberg, each of whom had accounts on the Livecoin and C-CEX crypto asset trading platforms.

d. Braverman and Goldberg, in turn, sold the Tokens to purchasers through Livecoin and C-CEX in exchange for bitcoin (or other cryptocurrency).

e. Braverman sold Tokens on the trading platforms to purchasers who were known to him. According to Hogg, Goldberg sold Tokens to anyone who was willing to buy them on the trading platforms without knowing who the purchaser was. The Commission's evidence about the knowledge of the investors who purchased Tokens from both Braverman and Goldberg was not detailed.

f. Purchasers of Tokens sent their payments (in bitcoin or other cryptocurrency or crypto asset) to accounts on Livecoin controlled by Hogg, or Braverman or Goldberg. In each case, the payments then went from the applicable Livecoin account to an account on the Genesis trading platform held by Braverman's company Rozgold Capital LLC.

g. On the Genesis platform, Rozgold converted the bitcoin (or other cryptocurrency or crypto asset) received from purchasers of the Tokens into US dollars.

h. Upon confirmation of receipt of the purchaser's funds, the purchased Tokens were released to the purchaser either from Hogg directly or through Braverman.

[68] In addition, on a "couple" of occasions Hogg transferred Tokens directly from his master account to purchasers at blockchain addresses or wallets that Braverman identified. He also sold Tokens directly or indirectly to two friends of his.

[69] Below, we analyze the flow of proceeds from Token sales. To summarize, Arbitrade Bermuda received approximately US $41.6 million. In addition, Cryptobontix and Arbitrage Exchange also received proceeds in an amount that the Commission did not establish and used them to develop their respective businesses. Finally, an additional approximately US $10.1 million was transferred by Rozgold to, or used for the personal benefit of, Hogg and his companies TJL and Gables.

3.2.3 The promotion campaign for the Tokens

3.2.3.a How the Tokens were described to potential purchasers

[70] The Commission introduced extensive evidence of the various promotional materials that were created and made available to the public about the Tokens.

[71] Beginning in November 2017, some materials stated that the Tokens operated as a "coupon". Apart from that, though:

a. the materials presented a generally consistent picture as to what purchasers could expect in connection with the Tokens; and

b. the materials gave similar descriptions of the two tokens. Purchasers of the Dignity token, and individuals who exchanged their Unity Ingot tokens for Dignity tokens, would reasonably have understood that the promotional materials referring to the Unity Ingot tokens (including the Cryptobontix White Paper dated November 5, 2017, discussed below) also extended to the Dignity tokens after they were issued as a replacement for the Unity Ingot tokens in February 2018.

[72] From as early as May 8, 2017, the materials included the following representations:

a. **The Tokens are backed by cryptocurrency "mining":** Cryptocurrency mining involves using hardware to run programs and provide computing power needed to generate cryptocurrencies. The miner is rewarded with the cryptocurrency that is supported by the mining activity. A percentage of the proceeds received from selling the Tokens was to go directly into purchasing mining rigs (also referred to as mining servers) and the related infrastructure that would be used to mine other cryptocurrencies and generate earnings.

b. **The earnings from the cryptocurrency mining would be used as follows:**

i. 50% of the mining earnings would be used to purchase physical gold bullion (in earlier materials there was also reference to the purchase of bitcoin in addition to gold bullion) that would "back" the Tokens and create a guaranteed intrinsic "floor value" for each Token;

ii. 15% (later in November 2017 this percentage increased to 20%) would be reinvested into additional mining servers so that the size of the cryptocurrency mining operations backing the Tokens would continue to grow;

iii. 15% would be used to buy back Tokens from sellers in the market (later materials referred to both "buy back" and Token "burning" programs); and

iv. 20% (later in November 2017 this percentage decreased to 15%) would be used for operations, expansions and upkeep, including hydro expenses for mining operations, keeping the mining servers operating, and staffing and insurance costs.

c. **The Tokens were consistently touted as a "store of wealth" (due to the gold bullion backing) with a "growth component" (due to the cryptocurrency mining activities and related earnings as well as the growth in investment in gold bullion):** Descriptions of the Tokens like the following were repeatedly used:

i. "a compounding interest model in the way that it grows both daily mining abilities and the store of wealth on reserve";

ii. "will grow in a physical asset value of 35% or greater per year and never dropping [*sic*] below its initial value";

iii. "it exponentially grows in value with every passing day. Many are viewing this strategy as the most attractive compound growth strategy ever introduced to the investment community to date";

iv. "operates on a model that 'exponentially' scales";

v. "the potential for this token is into the billions. Those that are investment savvy and can buy and hold should prove to make substantial returns"; and

vi. "exponential earnings are predicted by bringing new mining rigs online daily in the cryptocurrency mining facilities. Thus, as the daily purchase volume of bullion and additional mining rigs grows, the net holding that each token represents makes the Cryptobontix tokens the most secure and valuable cryptocurrency in the sector".

d. **Beginning in the Cryptobontix White Paper, the Tokens were also described as a "coupon" for the physical bullion backing them.** It was explained that "after year two", holders of the Tokens could liquidate their position and exchange the Tokens for the physical bullion that backs the Tokens.

3.2.3.b The extensive public promotion of the Tokens

[73] The above representations about the investment opportunity, and periodic updates about the Tokens, were extensively and repeatedly made available to the public and to prospective purchasers of the Tokens. Some updates related to cryptocurrency mining, the acquisition of mining rigs, and efforts to acquire and audit gold bullion. The representations and updates were made in many forms, including the following:

a. between May 8, 2017, and May 30, 2019, the Bitcoin Talk Forum at bitcointalk.org contained a dedicated page and discussion thread entitled "[ANN] DIGNITY (DIG) Official Page – Formerly Unity Ingot." The thread was authored by a user who self-identified as the "admin for Cryptobontix and the UNY/DIG token". That user began the thread by posting promotional materials regarding the Unity Ingot token on May 8, 2017. The thread was later updated to clarify that it also applied to the Dignity token;

b. between May 28, 2017, and June 15, 2018, Livecoin made several paid email announcements regarding the Tokens;

c. Braverman gave several prospective investors a PowerPoint presentation about the Unity Ingot token, prepared by Hogg around July 11, 2017;

d. Braverman provided the Cryptobontix White Paper to potential institutional investors as early as November 7, 2017. The White Paper was circulated to subscribers to the Cryptobontix website by February 12, 2018, and made available to the public via a website link on cryptobontix.com in 2018;

e. during the Material Time the Cryptobontix website and the "Arbitrade" website, purporting to speak for Arbitrade Exchange and then, later, Arbitrade Bermuda, allowed members of the public to subscribe for email newsletters regarding the Tokens. These were sent to over 3,800 subscribers to those websites, including in newsletters between March 7, 2018, and May 22, 2019;

f. between February 26, 2018, and January 11, 2019, multiple press releases were issued on behalf of Cryptobontix, Arbitrade Exchange, the prospective Arbitrade Bermuda entity and Arbitrade Bermuda. The press releases issued between February 26, 2018, and June 23, 2018, were distributed to various worldwide regions, including the United States and Canada;

g. during February to May 2018, the Cryptobontix Twitter social media account posted several tweets and the Cryptobontix Telegram Channel disseminated messages, which contained links to many of the email newsletters and press releases noted above;

h. during the period between May 2018 and May 2019, the Arbitrade Twitter social media account posted several tweets and the Arbitrade Telegram Channel disseminated messages, which contained links to many of the email newsletters and press releases noted above;

i. an Arbitrade Bermuda June 28, 2018, telephone press conference was open to the public and was announced via some of the press releases and email newsletters noted above; and

j. an analyst report on the Unity Ingot token (recommending a "buy") from an analyst that Hogg, Braverman and Goldberg hired to prepare such a report. On February 10, 2018, the analyst sent the report to his subscribers, more than 360 of whom purchased the Dignity token.

3.2.4 Sales of the Tokens

3.2.4.a Number of Tokens sold and amount raised

[74] We find that at least 1.5 billion Tokens were sold between May 2017 and November 2018. There was insufficient evidence for us to find, on a balance of probabilities, the total number of Tokens that were sold during the Material Time.

[75] Arbitrade Exchange and Cryptobontix confirmed to the Commission during its investigation that they used an unspecified amount of capital raised from Token sales to develop their businesses.

[76] The Commission introduced a memorandum titled, "Cryptobontix Tax Planning" dated March 25, 2019, that was prepared by Arbitrade Bermuda and shared with Hogg at the time (**Arbitrade Memorandum**). The Arbitrade Memorandum specifies that Arbitrade Bermuda received US $41,622,965.27 from Cryptobontix in 2018. Based upon the Arbitrade Memorandum and other related evidence, we find that in 2018 Arbitrade Bermuda received US $41,622,965.27 in Cryptobontix "token sale proceeds", and that all or nearly all this amount was proceeds from the sale of the Tokens.

[77] Further, as we find below, additional Tokens were sold, resulting in a further US $10,109,038 of proceeds from Token sales not identified in the Arbitrade Memorandum that was transferred to or used for the benefit of Hogg, TJL and Gables. In making this finding, we reject the evidence provided by Hogg and Cryptobontix to the Commission during its investigation that all US dollars from Rozgold's conversion of the proceeds received from purchasers of the Tokens were forwarded to Arbitrade Bermuda.

[78] These two amounts combine to establish that the proceeds of Token sales were at least US $51,732,003.27. Some evidence suggested there may have been additional sales, but that evidence does not meet the balance of probabilities standard.

3.2.4.b The purchasers of the Tokens

[79] Hogg said he knew the identity of two purchasers and knew that Braverman and Goldberg had sold Tokens. However, apart from that, the only other evidence and information about purchasers of the Tokens introduced by the Commission was contained in nine completed questionnaires of individuals who self-identified as purchasers of Tokens during the Material Time, and email correspondence the Commission received from twenty-one additional individuals who also self-identified as purchasers of Tokens.

[80] Other than the above, the Commission introduced no evidence that confirmed the total number of purchasers of Tokens, how many each purchased, when they purchased them, or their identities.

4. ISSUES AND ANALYSIS

[81] The issues before us are as follows:

a. Are the alleged breaches in relation to securities?

b. Did the respondents engage in fraud contrary to s. 126(1)(b) of the *Act*?

c. Did Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda engage in the business of trading securities without registration contrary to s. 25(1) of the *Act*?

d. Did Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda illegally distribute securities contrary to s. 53(1) of the *Act*?

e. Should Hogg be deemed under s. 129.2 of the *Act* to have violated Ontario securities law for permitting, authorizing or acquiescing in the corporate respondents' breaches?

[82] Our analysis and conclusions on each of these issues is set out below.

4.1 Are the alleged breaches in relation to securities?

[83] All the Commission's allegations of breaches of the Act are predicated on the Commission first establishing that the alleged breaches were in relation to securities.

[84] The Commission submits that the Tokens are securities by virtue of being "investment contracts".[9] The Commission submits alternatively that if the Tokens are not investment contracts, they are securities by virtue of being "other evidence of indebtedness"[10] or "any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company".[11]

[85] We find that the Tokens considered alone are not "investment contracts". However, we do find that the initial sale transactions of the Tokens to purchasers, considering all the surrounding circumstances of the sales, including how the Tokens were represented to prospective purchasers, are "investment contracts" and therefore securities under the Act.

9 *Act*, s 1(1), "security" para (n)
10 *Act*, s 1(1), "security" para (e)
11 *Act*, s 1(1), "security" para (b)

[86] As the Commission need only satisfy one definition of "security", we need not consider whether the other two categories of securities invoked by the Commission, namely "evidence of indebtedness" or "evidence of title or interest", are established on the facts.

4.1.2 "Security" must be interpreted broadly and purposively

[87] The Act defines "security" to include 16 enumerated categories of instruments. The Commission principally relies on one of those categories, "investment contracts", to establish that this case involves securities.

[88] In deciding whether an instrument is a security, we must give the term a broad and purposive meaning, given that the Act is remedial legislation intended to protect the investing public. The Act must be "read in the context of the economic realities to which it is addressed" and "[s]ubstance, not form, is the governing factor".[12] Investor protection is the "overarching lens" through which we should view the attributes of an alleged security.[13]

[89] This Tribunal has previously noted that crypto assets, such as the Tokens in this case, are "unique and complex, extremely difficult to objectively value and subject to significant volatility" and that "few retail investors would have much, if any, experience with these complex and risky products".[14]

4.1.3 Is the "investment contract" test met in this case?

[90] The *Act* provides that "any investment contract" is a security.[15] The term "investment contract" is not defined in the *Act*.

[91] The Supreme Court of Canada's decision in *Pacific Coast Coin* considered two approaches to the interpretation of "investment contract" developed in two American cases: *Howey* and *Hawaii*.[16] The Supreme Court adopted a modified version of the *Howey* test (the **Common Enterprise Approach**) and also found that the *Hawaii* test (the **Risk Capital Approach**) applied in the circumstances.[17]

[92] In *Pacific Coast Coin*, the Court held that any definition of investment contract must embody "a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."[18] The Court emphasized the role of policy and legislative choice over a buyer-beware approach or any recently formed judicial test that had outlived its usefulness.[19]

[93] An investment contract may be a "contract, transaction or scheme".[20] Many investment contract cases in the securities context involve one or more written or oral common law contracts. The sales of Tokens in this case raise various factual issues that may be relevant to whether a common law contract was formed with each of the purchasers of Tokens, including that: a) the identities of some of the purchasers were not known, b) some representations about the Tokens changed over time and each purchaser may not have heard each representation, and c) the "obligations" of Crytobontix or Arbitrade Bermuda might be unclear.

[94] We considered whether there must be a technically valid and enforceable written or oral common law contract in relation to each of the sale transactions for the Tokens for us to find that there is an "investment contract". We are satisfied that this is not necessary. By stating that "transactions" and "schemes" – and not just contracts—can qualify as investment contracts, the Supreme Court made this clear. US courts have taken a similar approach.[21] *Pacific Coast Coin* itself is an example where a representation in marketing materials external to the written contract (and even contrary to the written contract's express terms) was important to establishing the existence of an investment contract.[22] *Hawaii*'s emphasis on an offeree being induced to advance value to the enterprise by the offeror's "promises or representations" also confirms this point.[23]

[95] On a separate note, we asked the Commission whether a security (including an investment contract) can exist when some or all the relevant facts are either untrue when they are represented to investors or the promises to investors do not materialize. We accept the Commission's submissions in this regard—namely that, consistent with the *Act*'s policy of protecting the investing public against securities fraud, analysis about the existence of a security must consider what is

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12 *Pacific Coast Coin Exchange v Ontario Securities Commission*, [1978] 2 SCR 112 (***Pacific Coast Coin***) at 127; see also *VRK Forex & Investments Inc (Re)*, 2022 ONSEC 1 (***VRK***) at paras 22, 24, 33, aff'd 2023 ONSC 3895 (Div Ct) (***VRK Appeal***)

13 *VRK* at para 24; *VRK Appeal* at para 15

14 *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32 at para 55 (***Polo***)

15 *Act*, s 1(1), "security" para (n)

16 *Pacific Coast Coin* at 127-132, citing *SEC v W J Howey Co,* 328 US 293 (1946) (***Howey***) and *State of Hawaii, Commissioner of Securities v Hawaii Market Center, Inc*, 485 P 2d 105 (1971) (***Hawaii***)

17 *Pacific Coast Coin* at 127-131

18 *Pacific Coast Coin* at 127

19 *Pacific Coast Coin* at 132

20 See *Re Pacific Coast Coin Exchange of Canada Ltd et al v Ontario Securities Commission*, 1975 CanLII 686 (ONSC) (***Pacific Coin (Div Ct)***), citing Howey at 298-299

21 *SEC v Terraform Labs Pte Ltd,* 2023 US Dist LEXIS 132046 at 33-34.

22 *Pacific Coast Coin* at 125 and 129

23 *Pacific Coast (Div Ct*), citing *Hawaii*

offered or promised to investors, and not what happens or materializes. For example, in this case, we considered the representations made to potential investors in relation to the gold bullion backing and cryptocurrency mining operations.

4.1.3.a What is the "investment contract" in this case?

[96] Before we turn to consider whether the Commission has established that the elements of an investment contract are met, we consider the issue of what the "investment contract" is in this case.

[97] The Commission submits that the Tokens themselves are the investment contract, as opposed to the overall transaction or scheme for the offer and sale of the Tokens, including the representations made to investors, considered together.

[98] In support of this submission, the Commission references this Tribunal's approval of a settlement in Coinlaunch Corp. (Re),[24] where the Tribunal found that two crypto tokens were securities on the basis that they were investment contracts.[25] The Commission also notes that some US decisions conclude that particular crypto assets are securities on the basis that they are investment contracts.[26]

[99] The Commission submits that the Tokens are the investment contract here because they are a "smart contract", "contract", the equivalent of a "written document", "the embodiment of the contract", and also the "investment instrument" (analogous to a share certificate) by which investors' interests are made manifest. According to the Commission, the Tokens have "features and functions embedded within them" and the "terms" embedded in them are based on the representations made to investors that the Tokens could be exchanged for gold during the coupon redemption periods and the Tokens could be traded and sold to others.

[100] The Commission argues that the Tokens are therefore analogous to the commodity account agreement found to be a security in *Pacific Coast Coin*. That commodity account agreement was a written contract between each of the investors and Pacific Coast Coin. The subject of the commodity account agreement was bags of silver coins. The commodity account agreement included multiple terms governing the investment relationship between Pacific Coast Coin and the investors who were essentially investing in silver coins on margin and relying on Pacific Coast Coin to make a market for their investment when they wanted to close out their account.[27]

[101] The Commission also submits that because the Tokens are the things being traded, the application of an investor protection lens warrants a finding that that the Tokens themselves are the investment contract and therefore the securities, as otherwise there may be ramifications for secondary market purchasers. This case does not involve secondary market purchases, and the Commission did not substantiate its submission on this point, so while we do not exclude the possibility that the submission is correct, we cannot give effect to it.

[102] We are not satisfied that the Tokens can themselves be an investment contract.

[103] Determining whether something is a security by virtue of being an investment contract depends on the relevant facts. The Tribunal's decision in *Coinlaunch* does not stand for the proposition that crypto tokens are always securities. Further, we give that decision little weight, because it was a settlement approval and nothing on the face of the decision indicates that the parties made submissions about whether a crypto token is itself the investment contract or whether it is simply the subject of an investment contract. Although the US cases cited by the Commission involve findings that the crypto assets in those cases were investment contracts and therefore securities, we note that once those decisions find that the elements of the *Howey* test for an investment contract are met, they contain little to no analysis as to why the crypto assets are themselves the securities.

[104] We were not convinced by the Commission's assertion that the Tokens here are a "smart contract", "contract", "equivalent of a written document", or that they have "terms" embedded within them. The Commission relied on a single line in the Cryptobontix White Paper indicating that the Tokens are "based on the Ethereum Smart Contract technology, otherwise known as ERC20 tokens". The Commission did not satisfactorily explain why this was significant. There was no evidence supporting these assertions of the Commission. In contrast to the commodity account agreement in *Pacific Coast Coin*, the Tokens, considered alone, do not incorporate or reflect what purchasers of the Tokens might reasonably expect from their investments. As we find below, purchasers' reasonable expectations, based upon the representations that were made to them in promotional materials, are an essential element of what we find to be the investment contract.

[105] We were also not satisfied that the Tokens here are an investment instrument like a share certificate. It was not established that there is anything inherent in them that gives investors any interest in Cryptobontix or a business.

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[24] 2019 ONSEC 26 (***Coinlaunch***)

[25] *Coinlaunch* at paras 7-11

[26] *SEC v LBRY, Inc* (2022), 639 F Supp 3d 211 (***LBRY***) at 220-221; *SEC v Terraform Labs Pte Ltd*, 2023 US Dist LEXIS 230518 (***Terraform***) at 42, 45-48; *United States SEC v Kik Interactive Inc* (2020), 492 F Supp 3d 169 at 177-178; *In the Matter of Munchee Inc*, 2017 SEC LEXIS 4005 (***Munchee***) at 2-3; *In re BitConnect Securities Litigation*, 2019 US Dist LEXIS 231976 at 27-28

[27] *Pacific Coast Coin* at 123-125

[106] On this question of what is the "investment contract", we prefer the approach and analysis taken in the US decision in *SEC v. Ripple Labs, Inc*.,[28] namely that the subject of a "contract, transaction or scheme" can be a variety of tangible or intangible assets. The subject itself is not necessarily a security by virtue of being an investment contract. Although the Tokens are the subject of the transaction or scheme in this case, we find that the Tokens (like the bags of silver coins in *Pacific Coast Coin* and the citrus groves in *Howey,* involving contracts in which investors bought citrus groves and essentially leased them back to a service provider to harvest, pool and market the produce), in and of themselves, do not embody the elements of an investment contract.

[107] Instead, we find, as detailed below, that the investment contract (and therefore the security) here is the transaction or scheme for the offer and sale of the Tokens, including the economic reality of all the surrounding circumstances and, in particular, the representations made to investors (the **Cryptobontix Security**). Without those representations, there is no investment contract in this case.

[108] For avoidance of any doubt, our decision should not be taken to mean that in no circumstances can a crypto token ever be a security either by reason of it being an "investment contract" or satisfying another of the enumerated categories of instruments that are securities. Every case will depend on its facts. We also note that because there was no need for us to consider whether one of the alternate definitions of a security (i.e. "evidence of indebtedness" or "evidence of title or interest") was satisfied in this case by virtue of the Tokens being represented to be a "coupon" that could be exchanged for gold bullion, we have also not considered the corresponding question of whether the Tokens themselves might be a security had one of those alternate definitions of a security been satisfied.

4.1.3.b Application of the Common Enterprise Approach

[109] We now apply the Common Enterprise Approach to the transaction or scheme involving the sale of the Tokens. The Common Enterprise Approach provides that an investment contract is made up of four elements:

a. an investment of money;

b. with a view to a profit;

c. in a common enterprise where the success or failure of the enterprise is interwoven with, and dependent on, the efforts of persons other than the investors; and

d. the efforts made by those others significantly affect the success or failure of the enterprise.[29]

[110] Below we find that the facts of this case satisfy the Common Enterprise Approach. Therefore, we need not also consider the Risk Capital Approach.

4.1.3.b.i Investment of money

[111] The Commission submits that the first element of the test (an investment of money) can be satisfied if there was a payment.[30] The Commission submits that because investors paid for the Tokens with cryptocurrencies, such as bitcoin, this element of the test is clearly satisfied.

[112] We agree. The payment need not be in fiat currency. It can be in crypto assets. In at least two prior decisions, this Tribunal accepted that the payment or deposit of crypto assets can satisfy this element of the test.[31] In this case, the bitcoin (and other cryptocurrency or crypto assets) that purchasers used to buy the Tokens was valuable and readily convertible into fiat currency. The Commission confirmed that this case is restricted to the initial sales of Tokens by or on behalf of Cryptobontix. Thus, all the proceeds raised through Token sales were available for use by the enterprise (Cryptobontix and Arbitrade Bermuda). The economic reality was that the sale proceeds were available for use by the enterprise offering the Tokens.

4.1.3.b.ii View to a profit

[113] We must adopt a broad approach in deciding whether an investment of money is made "with a view to a profit". This element of the test has been interpreted to include "all types of economic return, financial benefit or gain."[32]

[114] We agree with the Commission's submission that this element of the test is established where an investor shares in an enterprise's profits. We go further and find that this element of the test can also be established where an investor invests money with the reasonable expectation that they will share in an enterprise's profits.

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28 2023 US Dist LEXIS 120486 (SDNY July 13, 2023) (***Ripple***) at 22-24
29 *Pacific Coast Coin* at 128-130
30 *Edward Furtak et al*, 2016 ONSEC 35 (***Furtak***) at para 78, aff'd *Furtak v Ontario (Securities Commission)*, 2018 ONSC 6616 (Div Ct); *Polo* at para 44
31 *Mek Global Limited (Re)*, 2022 ONCMT 15 (***Mek Global***) at para 43; *Polo* at para 44
32 See *Furtak* at para 82, citing *Kustom Design Financial Services Inc (Re)*, 2010 ABASC 179

[115] During the Material Time, the potential to profit from the Tokens was repeatedly represented to potential investors through various materials that were widely available. As a result, investors would have reasonably expected that they would share in the profits of Cryptobontix (or Arbitrade Bermuda) including: a) by virtue of the Tokens growing in value based on the promised gold bullion reserves and earnings from the cryptocurrency mining program "backing" the Tokens, and b) through Token-holders' ability to sell or swap the Tokens on trading platforms that support the Tokens.

[116] We considered whether the Commission needed to establish that each individual purchaser of the Tokens had that expectation. We concluded that the Commission need not do so. The Commission need only establish that given all the circumstances, investors would have reasonably had that expectation.

[117] In coming to that conclusion, we applied an investor protection lens, and placed emphasis on the representations and offers made in connection with the Tokens. Those were fundamental to defining the relevant transaction or scheme. We also emphasized the scope of publication of the representations and offers, rather than a search for each purchaser's precise motivation or expectation. This approach also addresses the reality that the sale of crypto assets, by its very nature, can make it difficult to identify individual purchasers.

[118] The SEC and US courts have taken a similar approach in cases involving crypto assets and the question of whether they are securities by virtue of being "investment contracts" under US securities law, including the *Howey* test. The decisions focus on what purchasers or potential purchasers "would reasonably believe or expect" or "would understand" based on statements made in white papers, blog posts, social media, podcasts, interviews and other public statements.[33]

4.1.3.b.iii "Common Enterprise" and "Efforts of Others"

[119] The third and fourth elements of the test are interwoven and frequently considered together.[34] We do so here.

[120] A common enterprise "exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter)."[35] The third and fourth elements are satisfied where there is a common enterprise where the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties.[36]

[121] These elements of the test are met in this case. The investors' role was limited to advancing money to the Cryptobontix or Arbitrade Bermuda enterprise. Based on the representations made to investors, they would reasonably have expected that the profitability of their investment depended upon the efforts of others to increase the value of the Tokens by:

a. using investor funds to acquire and operate cryptocurrency mining equipment; and

b. using the proceeds of cryptocurrency mining to:

i. acquire gold to "back" the Tokens;

ii. acquire and operate further cryptocurrency mining equipment and thereby generate additional returns; and

iii. buy back and "burn" Tokens.

4.2 Other Preliminary Matters

[122] Before moving to consider the alleged breaches of the *Act*, we address two additional matters:

a. Cryptobontix's, Arbitrade Exchange's and Arbitrade Bermuda's the roles and involvement in the matters in issue; and

b. the basis for our jurisdiction over the respondents and, in particular, Arbitrade Bermuda.

4.2.1 The roles and involvement of Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda

[123] There appears to have been a shift during the Material Time regarding the involvement and role of various entities in the "business" related to the promotion and sale of the Tokens and the related cryptocurrency mining and gold bullion backing activities.

[124] Initially, and into 2018, Arbitrade Exchange and Cryptobontix issued and sold the Tokens and used capital raised through the sale of the Tokens to develop their businesses. Arbitrade Exchange conducted marketing and advertising for the

33 *Munchee* at paras 14-24; *LBRY* at 216-219; *Ripple* at 11-13 and 29-33; *Terraform* at 46
34 *Pacific Coast Coin* at 128-129; *Polo* at para 49
35 *Pacific Coast Coin* at 129
36 *Pacific Coast Coin* at 128-129

Cryptobontix business (as well as for Arbitrade Bermuda's business in anticipation of its acquisition of Cryptobontix or its assets) and Cryptobontix engaged a public relations firm to promote awareness of Cryptobontix. Braverman and Goldberg were also "consultants" to Arbitrade Exchange.

[125] Later, Hogg, along with others, incorporated Arbitrade Bermuda. The stated intention was that Arbitrade Bermuda would acquire Cryptobontix or its assets and maybe also the business of Arbitrade Exchange. Although there is no evidence that this happened, Arbitrade Bermuda nevertheless treated Cryptobontix and the Tokens as part of its business and represented this to be the case.

4.2.2 Jurisdiction

[126] Hogg, Cryptobontix, Arbitrade Exchange, TJL and Gables all reside in Ontario. As a result, the Tribunal has jurisdiction over them and their activities.

[127] The Commission submits that we have jurisdiction over Arbitrade Bermuda on multiple grounds:

a. Hogg, a resident of Ontario, was the directing mind of Arbitrade Bermuda and Arbitrade Bermuda was his alter ego. Hogg conducted some of his activities that breached Ontario securities laws through Arbitrade Bermuda;

b. Arbitrade Bermuda engaged in its Token-related promotional activities through Hogg in Ontario; and

c. Arbitrade Bermuda's Token-related promotional activities were widely targeted and available to Ontario residents.

[128] We do not agree that Arbitrade Bermuda was Hogg's alter ego. However, we accept the other submissions, with the caveat that Hogg was one of several directing minds of Arbitrade Bermuda. We note that Hogg had power to control the board and represent the company, and he was responsible for the technical operations and marketing. Furthermore, several of the newsletters circulated on behalf of Arbitrade Bermuda are signed "Arbitrade Management" with a related address in Grand Bend, Ontario.

[129] These factors provide a sufficient nexus for us to conclude that we have jurisdiction over Arbitrade Bermuda.

4.3 Did the respondents engage in a fraud contrary to s. 126.1(1)(b) of the *Act*?

[130] The Commission submits that the respondents engaged in or participated in a course of conduct regarding the Tokens that they knew or ought to have known perpetrated a fraud, contrary to s. 126.1(1)(b) of the *Act*. The Commission alleges two frauds. The first relates to the acquisition of gold to back the Tokens and the audit of that gold. The second relates to the use of investor funds. We first address the law relating to fraud before turning to the two alleged frauds.

4.3.1 Law on fraud

[131] The prohibition against fraud in the *Act* provides that a person or company shall not, either directly or indirectly, engage in a course of conduct relating to securities that the person or company knows or reasonably ought to know perpetrates a fraud on any person or company.[37]

[132] Fraud is not defined in the *Act.* The Tribunal relies on the test for fraud developed in the criminal context as set out by the Supreme Court of Canada in *R v Théroux*.[38] The elements for determining fraud are:

a. a prohibited act and deprivation caused by that act (*actus reus*); and

b. knowledge of the prohibited act and that the act could have as a consequence the deprivation of another (*mens rea*).[39]

4.3.1.a *Actus reus*

[133] There are two elements to the *actus reus*:

a. a prohibited or dishonest act, which can be an act of:

i. deceit;

ii. falsehood; or

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37 *Act*, s 126.1(1)(b)
38 1993 CanLII 134 (SCC) (***Théroux***)
39 *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11 (***Al-Tar***) at paras 215-217, citing *Théroux; Feng (Re)*, 2023 ONCMT 12 (***Feng***) at para 37; *First Global* at para 346

iii. other fraudulent means; and

b. deprivation, which includes detriment, prejudice, or risk of prejudice to the financial interests of the victim.[40]

[134] The *actus reus* is assessed objectively, except in limited circumstances not relevant in this proceeding.[41]

[135] The Supreme Court of Canada has stated that to prove deceit or falsehood, "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not."[42]

[136] "Other fraudulent means" broadly encompasses all other means, beyond deceit or falsehood, that could be considered dishonest. The concept has, "at its heart, the wrongful use of something in which another person has an interest, in such a manner that the other's interest is extinguished or put at risk."[43] The types of conduct that have been found to constitute "other fraudulent means" include:

a. the use of investors funds in an unauthorized manner;

b. the use of corporate funds for personal purposes;

c. non-disclosure of important facts;[44]

d. exploiting the weakness of another;

e. unauthorized diversion of funds; and

f. unauthorized appropriation of funds or property.[45]

[137] When determining if there was fraud, we need not find that the investors relied on the dishonest act. It is sufficient if the respondent undertook the dishonest act voluntarily, causing a deprivation.[46]

[138] Proof of actual economic loss is not necessary to establish the "deprivation" portion of the *actus reus* of fraud. "Deprivation" is established by proof of:

a. actual loss to a victim;

b. prejudice to a victim's economic interests; or

c. risk of prejudice to a victim's economic interests.[47]

[139] A risk of prejudice may be established where investors are induced, by dishonest means, to purchase or hold an investment.[48] The "mere creation of a financial risk to another by a dishonest act is sufficient to establish deprivation."[49]

[140] The Tribunal has held in past decisions that where there is an unauthorized diversion of funds, investors are exposed to risks for which they did not bargain, which also causes a risk of prejudice to their economic interests.[50]

4.3.1.b *Mens rea*

[141] To establish the *mens rea* of fraud there must be proof of knowledge, by the respondent:

a. of the prohibited act; and

b. that the prohibited act could have as a consequence deprivation of another (which may be knowledge that the other's economic interests are put at risk).[51]

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40 *Al-Tar* at paras 215-217, citing *Théroux; Feng* at para 37; *First Global* at para 346
41 *First Global* at para 346; *Feng* at para 38; *Théroux* at 15-16
42 *Théroux* at 17
43 *R v Zlatic*, 1993 CanLII 135 (SCC) (***Zlatic***); *Solar Income Fund Inc (Re)*, 2022 ONSEC 2 (***Solar Income Fund***) at 86
44 *Money Gate* at para 223
45 *Quadrexx et al (Re)*, 2017 ONSEC 3 (***Quadrexx***) at para 20, aff'd 2020 ONSC 4392 (Div Ct); *Théroux* at 16; *Zlatic* at 44
46 *First Global* at para 371
47 *Feng* at 39; *Théroux* at 15-16
48 *First Global* at para 375; *Quadrexx* at para 21
49 *Feng* at para 58
50 *First Global* at para 376; *Feng* at para 61
51 *Théroux* at 19-20; *Feng* at para 64

[142] To establish knowledge of the act, it is sufficient to prove that the respondent knowingly undertook the prohibited act. It is not necessary to prove that the respondent knew the act was prohibited.[52]

[143] For example, for an alleged unauthorized diversion of funds, the Tribunal has found that knowledge will be established by proof that the respondent was aware of:

a. the representations made; and

b. the diversion of the funds contrary to the representations made.[53]

[144] Knowledge of the consequences can be inferred from the act itself.[54] Where a respondent tells a lie knowing that others will act on it, the inference of subjective knowledge that the property of another would be put at risk is clear.[55]

[145] A change in risk, even if not an increase in risk, may be sufficient to find fraud.[56]

[146] Maintaining that one did not think that the acts were wrong, or that one hoped that deprivation would not occur is not a defence.[57]

[147] *Mens rea* under s. 126.1(1)(b) of the *Act* can be established where a respondent knew or reasonably ought to have known that the impugned act, practice, or conduct perpetrated a fraud.[58] Where a respondent is a corporation, a fraud will have been committed under s. 126.1(1)(b) of the *Act* where its directing mind knew or ought reasonably to have known that the corporation perpetrated a fraud.[59]

4.3.2 Gold title and audit fraud

4.3.2.a Overview

[148] The Commission submits that during the Material Time, Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda made, or caused to be made, false and misleading statements in promotional materials. The promotional materials said that the Tokens issued by Cryptobontix were backed by gold and that the existence of the gold had been verified through an audit.

[149] For the reasons below, we find that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda all knew, or ought to have known, that their representations were false or misleading and could cause deprivation to investors. These respondents failed to disclose the truth to investors. They acted fraudulently.

4.3.2.b *Actus reus* – the prohibited act

[150] The Commission submits that initial promotional materials about the gold bullion backing the Tokens included:

a. postings by Hogg on the Bitcoin Talk Forum;

b. the Cryptobontix White Paper issued by Cryptobontix and provided by Hogg to investors through Braverman and the Cryptobontix website;

c. sponsored announcements coordinated by Hogg on Livecoin;

d. press releases by Arbitrade Exchange and Cryptobontix; and

e. email newsletters issued through the Cryptobontix and Arbitrade Exchange websites (which were controlled by Hogg).

[151] We find that these initial promotional materials focused on the features of the Tokens, including that gold bullion backing the Tokens would be a significant feature that would drive their value. The materials said that the Tokens would "create a store of wealth", that the "tokens have a floor price" and further, the "tokens will be redeemable into their physical precious metal forms."

52 *First Global* at paras 386, 390; *Théroux* at 19-20; *Feng* at para 64
53 *First Global* at para 391; *Feng* at paras 66-70
54 *Théroux* at 18; *First Global* at para 820
55 *Théroux* at 20-21
56 *First Global* at para 421
57 *Théroux* at 19, 23-24; *Feng* at 65
58 *First Global* at para 388
59 *First Global* at para 347; *Feng* at para 64; *Solar Income Fund* at para 82

[152] We also find that later promotional materials elaborated on the acquisition and audit of the gold. These materials included statements prepared or reviewed by Hogg and others at Arbitrade Bermuda and issued on behalf of Cryptobontix and Arbitrade Bermuda as well as statements attributable directly to Hogg at a press conference:

a. an email newsletter issued through the Cryptobontix website controlled by Hogg on behalf of "Cryptobontix/Arbitrade" and "Arbitrade Management" and written on behalf of both Cryptobontix and Arbitrade Bermuda or the soon-to-be-incorporated Arbitrade Bermuda. The newsletter referenced an Asset Pledge Agreement entered between Arbitrade Bermuda and SION, touted as one of the only licensed gold traders on the Dubai gold exchange and the company that ultimately purchased Hogg's shares of Cryptobontix. The newsletter stated that the gold acquisition "is similar to that of a house purchase with a mortgage" and that "everyday, a certain amount of the bullion becomes wholly owned by the tokens";

b. a June 2018 Arbitrade Bermuda press release and telephone press conference, July 2018 Arbitrade Bermuda newsletter, and November 2018 Arbitrade Bermuda press release announcing that Arbitrade Bermuda had secured the gold to back its tokens. Hogg stated at the press conference that in partnership with SION, Arbitrade Bermuda would be granted US $10 billion worth of physical gold. Hogg said that Arbitrade Bermuda was receiving title to the gold, agreements were in place and signed, and the gold would be held at Brinks; and

c. a July 2018 Arbitrade Bermuda newsletter issued through the Cryptobontix website announcing the intended audit and a November 2018 Arbitrade Bermuda press release announcing the completed audit by an accounting firm verifying the existence of the gold. The December 2018 Arbitrade Bermuda email newsletter stated "finally, the company recently announced receiving full title and audit of gold bullion holdings stored at independent security facilities in the amount of 395,000 kgs with a current market value in excess of US $10 billion."

[153] We find that Cryptobontix was not a party to any of the agreements referenced above to back the Tokens with gold bullion during the Material Time. There is no evidence that there was any gold backing the Tokens. This by itself is sufficient to establish fraud. However, we outline below other misrepresentations about the acquisition and auditing of gold.

[154] In June 2018, Arbitrade Bermuda and SION entered into an Asset Pledge Agreement, which stated:

a. SION arranged for sufficient bullion (US $3 billion) to be pledged to the Tokens as collateral;

b. this collateral gold would be secured at a location agreed to by the parties with Arbitrade Bermuda to have title to the full US $10 billion of gold;

c. a third party would maintain custody of the reserve gold, to be evidenced by a safe-keeping receipt;

d. the agreement had an initial term of three years and was renewable for up to 15 years;

e. Arbitrade Bermuda would purchase the gold over the 15-year period; and

f. Arbitrade Bermuda would pay SION an annual fee of .125% of the bullion value, payable on a monthly basis.

[155] In September 2018, the Asset Pledge Agreement was amended and restated to say that SION pledged a safe-keeping receipt (a document acknowledging that an agent is safe-keeping your assets), not the physical bullion. SION and Arbitrade Bermuda also entered into an Assignment Agreement. The agreement stated that SION would transfer its ownership rights in relation to the US $10 billion of gold, provided that Arbitrade Bermuda remained liable for the payment obligations under the terms of the Asset Pledge Agreement.

[156] The Commission submits and we find that:

a. The Asset Pledge Agreement and Assignment Agreement did not pledge or transfer title in any physical gold. The agreements only pledged a safe-keeping receipt held in a vault at G4S (a security company).

b. Arbitrade Bermuda never purchased any gold from SION. The payments made under the Asset Pledge Agreement were fee payments for the pledge only.

c. SION did not own any gold that it purportedly pledged. A third party owned the gold. This fact is further supported by the facts and claims pleaded by Hogg in a lawsuit he commenced against SION and others.

d. Hogg confirmed to the Commission that no audit of physical gold was performed. All the firms that Arbitrade Bermuda approached about conducting an audit were simply asked to confirm that G4S issued the safe-keeping receipt. The firm that was retained only confirmed the issuance of the safe-keeping receipt.

[157] As a result of these additional findings, we conclude that Arbitrade Bermuda's and Hogg's further representations about the gold acquisition were also false or misleading.

[158] We find that each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda made various false or misleading statements directly. We also find that where Cryptobontix and Arbitrade Exchange made various false or misleading statements, such statements are also attributable directly to Hogg because Hogg was the sole officer, director and shareholder of these companies during the Material Time and essentially acted through them. We also find that the Commission established that Hogg was either involved in preparing or approving Arbitrade Bermuda's false and misleading statements, or was aware in advance of each of Arbitrade Bermuda's false and misleading statements.

[159] Thus, we conclude that the Commission has established the first part of the *actus reus* component of the alleged gold and audit fraud as against each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda. All of them made false or misleading statements to potential and existing investors about the Tokens being backed by gold or that the gold had been secured, stored and verified through a third-party audit. These false and misleading statements were falsehoods that satisfy the first component of the *actus reus* test articulated in *Théroux*.

4.3.2.c *Actus reus* – deprivation

[160] Some investors contacted the Commission and said that they had lost money. We find that some investors were harmed.

[161] Additionally, some of these investors said they invested in the Tokens because they were told that the Tokens were backed by gold. The misrepresentations that the Tokens were backed by gold created a risk to investors' economic interests for which they did not bargain. The gold backing for the Tokens was one of the key elements touted to potential investors in the promotional materials for the Tokens.

4.3.2.d *Mens rea*

[162] The Commission submits, and we find, that each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda:

a. had subjective knowledge of various representations identified above regarding the acquisition of gold bullion to back the Tokens and the audit of that gold; and

b. knew that those representations were false or misleading.

[163] As the sole director and officer of Cryptobontix and Arbitrade Exchange, Hogg was the directing mind of both companies. As a result, we can determine the *mens rea* of Cryptobontix and Arbitrade Exchange based on Hogg's *mens rea*.

[164] Similarly, we can determine Arbitrade Bermuda's *mens rea* based on Hogg's *mens rea*, as he was a directing mind of the company, as well as on the *mens rea* of the formally appointed directors of the company.

[165] Except for Hogg's posting on the Bitcoin Talk Forum and statements at the June 2018 Arbitrade Bermuda telephone press conference, none of the false or misleading statements related to gold were directly attributed to Hogg. However, Hogg was aware of all of these statements. He was directly involved in their preparation, approval or dissemination. He:

a. controlled the account that posted promotional materials on the Bitcoin Talk Forum;

b. contributed to the drafting of the Cryptobontix White Paper and disseminated it to investors;

c. was involved in preparing and coordinating the Livecoin announcements;

d. controlled both the cryptobontix.com and arbitrade.io websites through which email newsletters were distributed to existing and potential investors, and was involved in sending the newsletters and in drafting or reviewing all the newsletters before they were sent; and

e. he drafted or received drafts of nearly all press releases issued by or on behalf of Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda.

[166] Hogg, Cryptobontix and Arbitrade Exchange (through Hogg) and Arbitrade Bermuda were therefore also each aware of the following facts:

a. Cryptobontix was not a party to any agreement backing the Tokens with gold. Its knowledge can be inferred because Hogg knew there was no such agreement. Additionally, Hogg asked the owner of SION to sign new agreements for gold under the name of Cryptobontix like those signed with Arbitrade Bermuda;

b. the Asset Pledge Agreement and Assignment Agreement pertained to a document held in a vault at G4S, as opposed to physical gold. Arbitrade Bermuda as a party to the agreements would certainly have been aware. Hogg received a copy of the July Asset Pledge Agreement, and was copied on various other documents and on related correspondence that discussed holding a document (rather than physical gold) in a vault with G4S;

c. Arbitrade Bermuda did not purchase any gold from SION. Arbitrade Bermuda's knowledge can be inferred. Hogg was aware because he received the Arbitrade Memorandum from Arbitrade Bermuda that only referred to fee payments and no gold purchases under the Asset Pledge Agreement;

d. SION did not own US $10 billion in gold bullion. There is no evidence of any due diligence performed on SION as a company that would have significant gold holdings. The Asset Pledge Agreement refers to SION *arranging* for sufficient bullion holdings, which suggests that at the time of the agreement SION did not own gold. Hogg had ongoing concerns about the existence of gold, as is evident from his communications with the principal of SION. The communications raised red flags about the existence of gold, but instead of addressing those red flags, Hogg continued to work with the principal of SION with the aim of convincing the public that the gold-related representations were true in order to raise more money through the sale of Tokens;

e. the Asset Pledge Agreement and Assignment Agreement did not give full title to 395,000 kg of gold bullion. A Gold Memorandum of Understanding referred to "nominal title", Hogg described the Asset Pledge Agreement as providing Arbitrade Bermuda with "contractual title", Arbitrade Bermuda never treated the alleged entitlement to gold bullion as an asset, and Hogg conceded to the Commission that Arbitrade Bermuda never owned any amount of gold close to 395,000 kg; and

f. the gold bullion purportedly pledged or assigned to Arbitrade Bermuda by SION was not verified or audited. Arbitrade Bermuda was aware of the limitations of the audit, including that the audit would not confirm the existence of any physical gold. Hogg knew that the verification was limited to the safe-keeping receipt at G4S.

[167] We conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda knew or ought to have known about each of the facts outlined above, which rendered the various representations relating to gold ascribed to each of them false or misleading. We also find that they knew that these false and misleading representations could have as a consequence deprivation of another by inducing investors to assume risk they did not bargain for. The Commission has therefore established the *mens rea* component of the allegation that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda committed fraud related to the acquisition, storing and auditing of gold.

[168] The requisite *actus reus* and *mens rea* have been established. We therefore find that the respondents' false and misleading statements in relation to gold backing the Tokens amounted to fraud.

4.3.3 Misappropriation of investor funds fraud

4.3.3.a Overview

[169] The Commission alleges that during the Material Time, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda made or caused to be made false and misleading statements about the use of proceeds from the sale of the Tokens, when they knew that they had used a significant amount of investor funds for unrelated purposes.

[170] The Commission submits that investors were told their funds would be used to purchase cryptocurrency mining equipment to create growth in the value of the Tokens. Instead, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda knew that investor funds were directed to unrelated purposes. Some investor funds were directed to or for the benefit of:

a. Hogg and his companies, TJL and Gables. The Commission submits that neither entity had a legitimate reason to receive or benefit from investor funds. In addition, the Commission submits both entities knew or ought reasonably to have known that by participating in a scheme of diverting investor funds for purposes unrelated to the Tokens they participated in a course of conduct that perpetrated a fraud on investors; and

b. Arbitrade Bermuda for its operations, including the purchase of a property. The Commission submits that Arbitrade Bermuda knew or ought reasonably to have known that by participating in a scheme that diverted investor funds for purposes unrelated to the Tokens it participated in a course of conduct that perpetrated a fraud on investors.

[171] For the reasons below, we find that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda made false and misleading statements about the use of proceeds from the sale of Tokens. We also find that the respondents knowingly diverted investor funds from the purposes represented to investors, and that the respondents knew or ought reasonably to have known that by doing so they could cause a deprivation to investors. The respondents therefore acted fraudulently.

4.3.3.a *Actus reus* – the prohibited act

[172] We find that beginning as early as May 2017 a series of representations were made by Hogg and Cryptobontix to potential investors in the Tokens about the use of their funds. These representations were that investor funds would be under the control of Cryptobontix and would be used to acquire cryptocurrency mining equipment that would generate funds to

acquire gold bullion and additional cryptocurrency mining equipment. These representations were repeated and made as follows:

a. in the White Paper provided to investors by Hogg and through the Cryptobontix website;

b. in a May 2017 Bitcoin Talk Forum hosted by Hogg on behalf of Cryptobontix;

c. in Livecoin announcements in May and July of 2017 arranged by Hogg on behalf of Cryptobontix; and

d. in a July 2017 PowerPoint presentation created by Hogg.

[173] In addition, later promotional materials disseminated by or on behalf of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda provided updates on the acquisition and operation of cryptocurrency mining equipment. These later promotional materials include:

a. email newsletters, disseminated through websites that Hogg controlled, issued on behalf of Cryptobontix, Cryptobontix and Arbitrade Exchange jointly, Arbitrate Bermuda, and Cryptobontix and Arbitrade Bermuda jointly;

b. sponsored announcements on Livecoin coordinated by Hogg; and

c. press releases of:

   i. Arbitrade Exchange which Hogg was involved in drafting or which Hogg received in advance of their dissemination; and

   ii. Arbitrade Bermuda provided by Hogg to other senior management of Arbitrade Bermuda or which Hogg received in advance of their dissemination.

[174] There is no evidence that potential and existing investors were told that their funds would be used for any other purpose. There are some instances of disclosure by or on behalf of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda about the acquisition of other properties, but that disclosure does not mention that investor funds would be used to purchase those properties.

[175] The Commission submits and we find that contrary to these representations, significant amounts of investor funds were used not only for purchasing cryptocurrency mining equipment, but also for other purposes entirely unrelated to the acquisition or operation of mining equipment:

a. out of the US $41,622,965.27 in “token sales proceeds” identified in the Arbitrade Memorandum, all or nearly all which was from the sale of Tokens:

   i. US $6,666,666.34 was used to pay fees that Arbitrade Bermuda owed to SION under the Asset Pledge Agreement; and

   ii. at least US $15,940,605.23 was used by Arbitrade Bermuda to make payments related to the operation of Arbitrade Bermuda (e.g. purchase of a building and art, directors’ and officers’ fees, travel, and business meals, etc.); and

b. US $4,141,700 was used to acquire 3,400 S9 mining rigs, of which 3,300 mining rigs were transferred to Hogg by Cryptobontix on June 7, 2019; and

c. an additional US $10,109,038 of investor funds from the sale of Tokens was transferred to or used for the benefit of Hogg and his companies TJL and Gables, in particular:

   i. US $7,008,023 was used for the purchase of real properties and related businesses in Grand Bend, Ontario by TJL and Gables;

   ii. US $2,010,015 was transferred to bank accounts at BMO and TD held by TJL and Gables; and

   iii. US $1,091,000 was transferred to third parties for the benefit of Hogg and TJL.

[176] The Commission has therefore established the first component of the *actus reus* of the alleged fraud. Hogg, Arbitrade Exchange, Cryptobontix and Arbitrade Bermuda made false and misleading statements to investors that their funds would be used to acquire and operate cryptocurrency mining equipment to enhance the value of the Tokens. In fact, some of the investor funds were provided to or for the benefit of Hogg, TJL, Gables and Arbitrade Bermuda and used for other purposes.

[177] Similarly, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda failed to disclose that some of the investor funds were used to pay for Arbitrade Bermuda's expenses, and for Arbitrade Bermuda's acquisition of assets that were unrelated to the mining of cryptocurrencies.

[178] We also conclude, for the same reasons noted above, that where Cryptobontix and Arbitrade Exchange made various false or misleading statements, those statements are also attributable directly to Hogg and Hogg was either involved in preparing or approving Arbitrade Bermuda's false and misleading statements or was aware in advance of each of Arbitrade Bermuda's false and misleading statements. Further, we find that the unauthorized diversion of investor funds to or for the benefit of TJL and Gables is also attributable directly to Hogg who owned and controlled them.

[179] These false and misleading statements were falsehoods that satisfy the first component of the *actus reus* test articulated in *Théroux*. The unauthorized diversion of investor funds and property and the unauthorized use of investor funds was "other fraudulent means" that also satisfies the first component of the test.

4.3.3.b *Actus reus* – deprivation

[180] The various representations made about use of investor funds provided to potential and existing investors, as discussed in more detail above, linked the growth in the value of the Tokens to the enterprise's cryptocurrency mining activities.

[181] Hogg, Cryptobontix, Arbitrade Exchange, Arbitrade Bermuda, TJL and Gables knew or ought to have known that by using investor funds for their own use and diverting them for uses unrelated to buying cryptocurrency mining equipment, they were putting the economic interests of the Token investors at risk. Also, Hogg and Cryptobontix knew or ought to have known that by transferring ownership of a large portion of the mining equipment that had been purchased to Hogg, they were subjecting the investors to risks for which they had not bargained.

4.3.3.c *Mens rea*

[182] The respondents were all aware of the various representations that investor funds would be used to buy cryptocurrency mining equipment:

a. Hogg was aware because he prepared and finalized the Cryptobontix White Paper and made it available to investors;

b. Cryptobontix, Arbitrade Exchange, Arbitrade Bermuda, TJL and Gables were all aware through Hogg's knowledge as he was a directing mind of each entity;

c. Cryptobontix was also aware as it made the representations including through the Cryptobontix White Paper that it released; and

d. Arbitrade Bermuda was aware because individuals who later became directors and officers of Arbitrade Bermuda were provided with draft and final copies of the Cryptobontix White Paper by Hogg.

[183] Further, each respondent knew that significant amounts of investor funds were used for purposes other than the acquisition of mining equipment as represented:

a. Hogg and Arbitrade Bermuda were aware that investor funds were used for expenditures by or for Arbitrade Bermuda, including to maintain the Asset Pledge Agreement and to make other payments for Arbitrade Bermuda, including the purchase of an office building;

b. Arbitrade Exchange and Cryptobontix were generally aware that investor funds were used to pay for expenditures by or for Arbitrade Bermuda, given Hogg's knowledge and his status as a directing mind of those entities;

c. Hogg, Cryptobontix and Arbitrade Bermuda were aware that ownership of crypto mining rigs purchased with investor funds was transferred to Hogg personally, because Cryptobontix issued a resolution to that effect which was signed by Hogg, and Hogg, Cryptobontix and Arbitrade Bermuda all signed an agreement authorizing the transfer;

d. Arbitrade Exchange was aware of the transfer of the mining rigs to Hogg, given Hogg's knowledge and his status as the directing mind of Arbitrade Exchange;

e. Hogg was aware that investor funds from the sale of the Tokens were used or transferred to or for the benefit of Hogg, TJL and Gables, because:

    i. Hogg directed Braverman to transfer funds to the lawyer taking care of Hogg's real estate transactions;

ii. it can be inferred that Hogg was aware funds transferred to accounts at BMO and TD held by TJL and Gables were from Braverman because Hogg controlled the accounts, and the funds came from Rozgold, which Hogg knew was Braverman's company;

iii. Hogg directed Braverman to make payments to third parties to benefit Hogg and TJL by giving Braverman the wire details and supporting documents indicating the payments were made at Hogg's direction; and

iv. Hogg knew that the funds from Braverman or Rozgold came from the sale of the Tokens because:

- Hogg knew that cryptocurrency from the sale of Tokens to investors was sent to the Rozgold account at Genesis that was controlled by Braverman and where it was converted into US dollars;

- as far as Hogg knew, Braverman had no meaningful employment other than selling Tokens and Hogg could not identify any other sources of funds in the Rozgold account other than from the sale of Tokens; and

- there was no other reason for Braverman to give Hogg or Hogg's companies money other than in relation to the Tokens.

f. TJL and Gables were aware that investor funds from the sale of Tokens were transferred to or used for the benefit of Hogg and themselves because of Hogg's knowledge and his role as the directing mind of these entities;

g. Cryptobontix and Arbitrade Exchange were aware that investor funds from the sale of Tokens were transferred to or used for the benefit of Hogg, TJL and Gables because of Hogg's knowledge and his role as the directing mind of those entities; and

h. Arbitrade Bermuda was aware that investor funds from the sale of Tokens were transferred to or used for the benefit of Hogg, TJL and Gables because of Hogg's knowledge and his role as a directing mind of Arbitrade Bermuda, and because of Braverman's knowledge as the sender of the funds and his role as the Executive VP and Chief Operations Officer of Arbitrade Bermuda.

[184] All of the respondents were also aware that the misuse of investor funds could cause deprivation. We therefore conclude that the Commission has established the *mens rea* component of the allegation that the respondents committed fraud in relation to a misuse of investor funds contrary to s. 126.1(1)(b) of the *Act*.

[185] As we have already concluded that the respondents engaged in conduct constituting falsehoods and "other fraudulent means" and exposed investors to risks other than what they had bargained for, thereby satisfying both components of the *actus reus* of the alleged fraud, we find that the Commission has established that the respondents committed fraud in relation to a misuse of investor funds contrary to s. 126.1(1)(b) of the *Act.*

4.4 Did Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda engage in the business of trading securities without registration contrary to s. 25(1) of the Act?

[186] The Commission alleges that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in the business of trading in securities without registration and without an exemption from registration, contrary to s. 25(1) of the *Act*. We agree.

4.4.1 Law

[187] Registration is a cornerstone of the *Act*. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity, and solvency on those who seek to be in the business of trading in securities.[60]

[188] The *Act* requires those engaged in the business of trading to be registered.[61] The *Act* defines "trade" or "trading" to include:

a. any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, installment or otherwise,

[60] *Limelight Entertainment Inc et al*, 2008 ONSEC 4 (***Limelight***) at paras 135-136; *Meharchand (Re)* 2018 ONSEC 51 (***Meharchand)*** at para 107
[61] *Act*, s 25(1)

….

e. any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.[62]

[189] The Tribunal determines whether a person or company has engaged in the business of trading by looking at the events as a whole, in the circumstances in which they took place, while also assessing the impact on those towards whom the acts were directed.[63]

[190] The Tribunal has found a wide range of activities to constitute acts in furtherance of a trade, including distributing promotional materials concerning potential investments.[64] Direct solicitation or direct contact with an investor is not required for an act to constitute an act in furtherance of a trade. Nor is it necessary for an actual trade to occur.[65]

[191] The requirement in s. 25 of the *Act* to be registered applies to anyone who engages in or holds themselves out as engaging in the business of trading.

[192] The Tribunal has consistently used the criteria set out in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to determine whether a person or company is engaged in the business of trading for the purposes of s. 25(1) of the *Act* (referred to as the "business trigger" test).[66]

[193] Those criteria include:

a. engaging in activities like a registrant, including stating in any way that the firm will buy or sell securities, or setting up a company to sell securities or promoting the sale of securities;

b. acting as a market maker;

c. carrying on the activity with repetition, regularity or continuity, whether or not that activity is the sole or even the primary endeavour;

d. receiving or expecting to receive compensation for carrying on the activity, regardless of the form of compensation; and

e. directly or indirectly soliciting securities transactions.[67]

4.4.2 Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda traded securities

[194] The Commission submits that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda traded securities during the Material Time. We agree:

a. Hogg traded the Cryptobontix Securities (which, as explained above were the transaction or scheme for the offer and sale of the Tokens, including the economic reality of all of the surrounding circumstances and the representations made to investors) during the Material Time, given that he:

i. was heavily involved in choosing and contacting Livecoin and C-CEX, the crypto asset trading platforms where the Tokens were sold;

ii. retained Braverman and Goldberg to sell the Tokens;

iii. provided training instructions to Goldberg (and through Goldberg to Braverman), including on setting up accounts on Livecoin and C-CEX for trading;

iv. transferred blocks of Tokens from his master account to Goldberg and Braverman for them to sell them to investors;

v. maintained an account on Livecoin which received bitcoin and other cryptocurrency from investors for the purchase of the Tokens;

vi. released Tokens to investors upon confirmation of the investor funds;

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62 *Act*, s 1(1)
63 *Sandy Winick et al*, 2013 ONSEC 31 (***Winick***) at para 98; *Money Gate* at para 160
64 *Winick* at para 99
65 *Winick* at para 101; *Momentas Corporation et al*, 2006 ONSEC 15 (***Momentas***) at para 78
66 *Mek Global* at paras 70–72; *VRK* at paras 124-126
67 Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, s 1.3 "Factors in determining business purpose" (**CP 31-103**)

vii. sold Tokens directly to at least two investors and communicated with investors and potential investors on around 30 phone calls to explain "the technical side of things";

viii. prepared and/or disseminated numerous related promotional materials; and

ix. together with Braverman and Goldberg, hired a firm to prepare an analyst report on the Unity Ingot token with the intention that the report would be disseminated to potential investors and, to that end, provided the firm with materials;

b. Cryptobontix traded the Cryptobontix Securities during the Material Time, given that it:

i. created the Tokens and deployed them on the blockchain;

ii. sold the Tokens, through Hogg, Braverman and Goldberg; and

iii. disseminated, directly or indirectly, related promotional materials, including through announcements on Livecoin it paid for, email newsletters and a press release;

c. Arbitrade Exchange traded the Cryptobontix Securities during the Material Time, given that:

i. Arbitrade Exchange and Cryptobontix sold Tokens; and

ii. Arbitrade Exchange disseminated, directly or indirectly, related promotional materials, including a sponsored announcement on Livecoin, emails and press releases; and

d. Arbitrade Bermuda traded the Cryptobontix Securities during the Material Time, given that:

i. it received investor funds from the sale of the Tokens;

ii. two of its directors and officers kept track of how much was earned from the sale of the Tokens; and

iii. it disseminated, directly or indirectly, related promotional materials, including a sponsored announcement on Livecoin, email newsletters, press releases and a press conference.

4.4.3 Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda engaged in the business of trading

[195] We have concluded that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda traded in securities. We must now decide whether they engaged in the business of trading in securities. We conclude that they did, based on the factors in the business trigger test.

4.4.3.a Engaging in activities like a registrant

[196] Like a registrant, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda promoted the Cryptobontix Securities and solicited investors.

[197] The Cryptobontix White Paper stated that part of Cryptobontix's business would be managing the crypto mining equipment. However, the evidence shows that this responsibility was delegated to a third party and its principal. That third party's principal was in turn a consultant of Arbitrade Exchange and Arbitrade Bermuda and worked with a director of Arbitrade Bermuda to oversee mining operations during the Material Time. Hogg, Cryptobontix's sole employee during the Material Time, was focused primarily on marketing and selling the Tokens.

[198] Arbitrade Exchange and Arbitrade Bermuda purported to have other lines of business such as mining and exchange. However, there is no evidence that either entity pursued those other businesses or that their directors, officers, and employees devoted any time to such businesses. In fact:

a. Arbitrade Exchange did not carry on any active business other than marketing and advertising primarily related to the Tokens;

b. by July 2019, Arbitrade Bermuda had no other assets than a building in Bermuda that it never occupied or used;

c. Arbitrade Bermuda had been winding down business since the second or third quarter of 2019; and

d. Braverman and Goldberg, who had significant roles with Arbitrade Bermuda, were primarily responsible for selling the Tokens during the Material Time.

[199] Because Cryptobontix was the issuer of the Cryptobontix Securities, there is no basis for concluding that Arbitrade Exchange's and Arbitrade Bermuda's trading activities were ancillary to the business of the issuer.

[200] We therefore conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in activities like those of a registrant.

4.4.3.b Acting as a market maker

[201] Hogg retained Braverman and Goldberg to make the market for the Tokens. According to Hogg, Braverman made a market by putting supporting bids for Tokens into the market. Hogg was Cryptobontix's sole employee during the Material Time. Braverman and Goldberg were later also employed by Arbitrade Bermuda during the period when Arbitrade Bermuda was receiving proceeds from sales of the Tokens. We therefore conclude that Hogg, Cryptobontix and Arbitrade Bermuda engaged in market making activities.

4.4.3.c Repetitive, regular, or continuous activity

[202] During the Material Time, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda regularly and continuously promoted and solicited investments in the Cryptobontix Securities.

4.4.3.d Receiving or expecting to receive compensation

[203] Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda received investor funds from the sale of the Tokens. While some of those funds were used to acquire cryptocurrency mining equipment, a significant amount of those funds were used by Hogg (and his companies TJL and Gables) and by Arbitrade Bermuda for unrelated purposes. Some of the investor funds were used by Cryptobontix and Arbitrade Exchange to develop their respective businesses. We conclude that this constitutes a form of compensation received by Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda from the sale of the Tokens.

4.4.3.e Soliciting securities transactions

[204] Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda solicited securities transactions through the promotional materials described above.

4.4.4 Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda were not registered

[205] None of Hogg, Cryptobontix, Arbitrade Exchange or Arbitrade Bermuda was registered to trade securities during the Material Time.

4.4.5 No exemptions were available

[206] The onus of establishing that an exemption from the registration requirement is available lies with the respondents. None of the respondents alleged to have breached s. 25(1) claimed any such exemption and there is no evidence before us to support a claim that an exemption was available. We therefore conclude that no exemption from the registration requirement was available to them.

4.4.6 Conclusion regarding s. 25(1) of the *Act*

[207] We conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda traded the Cryptobontix Securities and were engaged in the business of trading the Cryptobontix Securities without being registered and without an exemption, in breach of s. 25(1) of the *Act*. In finding that Hogg breached s. 25(1) of the *Act,* we have also considered, and attributed to him personally, the breaches by Cryptobontix and Arbitrade Exchange through which companies Hogg was acting.

4.5 Did Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda illegally distribute securities contrary to s. 53(1) of the *Act*?

[208] The Commission submits that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the Cryptobontix Securities without complying with the prospectus requirements, contrary to s.53(1) of the *Act*. We agree.

4.5.1 Law

[209] No person or company may trade in a security, if the trade would be a distribution, without a preliminary prospectus and a prospectus being filed and receipts issued by the Commission.[68]

[68] *Act*, s 53(1)

[210] The prospectus requirement is another cornerstone of Ontario's securities regulatory regime. A prospectus ensures that investors have full, true, and plain disclosure of information to properly assess the risks of an investment and to make an informed decision.[69] The prospectus is therefore fundamental to the protection of investors rights.

[211] "Distribution" is defined by the *Act* to include "a trade in securities of an issuer that have not been previously issued."[70] As discussed above, "trade" is defined to include "acts in furtherance of a trade". The Commission submits that, therefore, "distribution" includes "acts in furtherance of trade". We agree.

[212] Each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda was actively engaged in promoting the Cryptobontix Securities and soliciting investors. They were also actively engaged in trading or acts in furtherance of trading. Counsel for Cryptobontix and Arbitrade Exchange confirmed to the Commission that the Tokens were sold by Cryptobontix and Arbitrade Exchange. Braverman and Goldberg were retained by Hogg to solicit and make a market in the Tokens. They later became employees of Arbitrade Bermuda and continued to sell the Tokens to raise money. Proceeds from the sale of Tokens went to the benefit of all of the respondents.

4.5.2 No prospectus was filed and no exemptions were available

[213] Cryptobontix was the issuer of the Cryptobontix Securities. Cryptobontix did not file a prospectus, and there is no evidence of an exemption being available to Cryptobontix.

4.5.3 Conclusion regarding s. 53(1) of the *Act*

[214] We conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the Cryptobontix Securities without a prospectus and without an exemption contrary to s. 53(1) of the *Act*. In finding that Hogg breached s. 53(1) of the *Act,* we have also considered, and attributed to him personally, the breaches by Cryptobontix and Arbitrade Exchange through which companies Hogg was acting.

4.6 Did Hogg permit, authorize or acquiesce in the corporate respondents' breaches?

[215] The Commission alleges that Hogg, as a director or officer of Cryptobontix, Arbitrade Exchange, TJL and Gables and as a *de facto* director and officer of Arbitrade Bermuda, authorized, permitted, or acquiesced in the breaches of the *Act* by those entities and therefore should be deemed to have breached the *Act* under s. 129.2 in respect of each of the corporate respondents' breaches.

[216] Section 129.2 of the *Act* provides that "if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to have also not complied with Ontario securities law."

[217] The *Act* defines "director" and "officer" to include, respectively, individuals performing or occupying a similar position to a director and individuals who perform functions like those normally performed by an officer.[71] We concluded earlier that Hogg was a director and officer of Cryptobontix, Arbitrade Exchange, TJL and Gables, and a directing mind of Arbitrade Bermuda. Having regard to numerous factors that the Tribunal has previously identified as relevant to determine whether someone is a carrying on a function like that of a director or officer,[72] we also conclude that Hogg was a director and officer of Arbitrade Bermuda.

[218] Recent Tribunal decisions have concluded that where an individual has been found directly liable for a breach of the *Act* it is not necessary to consider whether the individual is also "deemed liable" under s. 129.2 of the *Act*. The Commission submits that we should not take that approach. The Commission has alleged that Hogg is accountable under s.129.2 of the *Act* for the corporate respondents' breaches of the *Act*. The Commission submits that the principles of justification and transparency require us to address the allegation.

[219] These recent Tribunal decisions appear to be applying, without directly referring to, the principle from *Kienapple v R*[73] or a similar concept. We asked the Commission for further written submissions about the application of *Kienapple* to Tribunal proceedings and about jurisprudence from other Canadian securities commissions regarding the application of provisions like s.129.2 of the *Act* in circumstances where a direct breach of securities laws by an individual has been found.

[220] We conclude that because *Kienapple* is a criminal law decision, it is not binding on the Tribunal. However, the decision does provide useful guidance. Where the Tribunal finds that an individual acting through a corporation has directly breached Ontario securities law, we do not need to also deem the individual liable for a corporate breach.

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69 *Limelight* at para 139
70 *Act*, s 1(1) "distribution"
71 *Act*, s.1(1) "director" and "officer"
72 *Winick* at para 120; *Momentas* at paras 100-102
73 [1975] 1 SCR 729 (***Kienapple***)

[221] We also conclude that:

a. had we not found Hogg directly liable for the breaches of the *Act* by Cryptobontix, Arbitrade Exchange, TJL and Gables, we would have deemed him liable under s. 129.2 for those respondents' breaches; and

b. Hogg is deemed liable under s. 129.2 of the *Act* in respect of the breaches of the *Act* by Arbitrade Bermuda.

4.6.1 The principle in *Kienapple*

[222] The principle in *Kienapple* is a criminal law concept that prohibits multiple convictions for the same "cause, matter or delict".[74] The principle only applies when there is a sufficient factual and legal nexus between the offences in question. Even if the same act grounds multiple offences, the legal nexus requires that there be no additional and distinguishing element that goes to guilt.[75] The legal nexus will not be demonstrated if the offences target different societal interests or victims or prohibit different consequences.[76]

[223] The Commission submits that it is unsettled law whether *Kienapple* applies generally to Tribunal proceedings. We are not aware of any binding authority that the principle does apply. The Tribunal has discussed *Kienapple* on limited occasions with limited analysis.[77] The Commission submits that Tribunal proceedings are administrative rather than civil or criminal. The Tribunal has held that criminal principles are not necessarily applicable to administrative proceedings.[78]

[224] The Commission further submits that it would be preferable for us to reject *Kienapple* as being unsuited to s. 127 proceedings for several other reasons. Given our conclusion that *Kienapple* is not binding on the Tribunal it is not necessary for us to consider those submissions.

[225] *Kineapple* is a criminal case. The Court's reasons speak only to the criminal context and not to administrative proceedings. The Tribunal is an administrative and regulatory body, not a criminal or quasi-criminal body. There is nothing in the *Kineapple* decision that suggests the principle should apply in the administrative context.[79]

[226] We note that in *Carruthers v. College of Nurses of Ontario*[80] the Ontario Divisional Court held that *Kienapple* applies in disciplinary proceedings taken against members of a self-regulated profession and that there is "no reason in principle to permit the application of the doctrine in respect of "regulatory" offences under provincial law, yet deny it to members of self-regulated professions in the case of prosecutions for alleged misconduct."[81] However, in subsequent decisions involving appeals of findings of professional misconduct by the Law Society of Upper Canada, the Divisional Court has concluded that *Kienapple* does not apply.[82] In the context of the Law Society decisions, the Court states that the complaint about professional misconduct "was not in the form of an indictment and should not be approached in an overly technical manner". We do not take from these Divisional Court decisions that *Kienapple* must apply to Tribunal proceedings.

[227] A review of the relevant decisions of this Tribunal supports a conclusion that while *Kienapple* is not binding on the Tribunal, the Tribunal has found the guidance in that decision, namely the idea of not finding multiple breaches of laws based on the same facts and wrongdoing or not punishing someone twice for the same matter, useful where the circumstances warrant it. On occasion the Tribunal has, either with or without reference to *Kienapple*, applied the principle that having found a respondent directly liable for breaches of Ontario securities law there is no need to also consider whether they are also deemed to have breached the law under s. 129.2.[83] We think this is the correct approach.

4.6.1.a Should Hogg be deemed to have breached the *Act* in respect of each of the corporate respondents' respective breaches of the *Act*?

[228] We decline to find that Hogg is deemed to have breached the *Act* under s.129.2 for TJL's and Gables's breaches of s. 126(1)(b). This is because our finding that Hogg directly breached s. 126(1)(b) is based upon, among other things, the very same misconduct that underlies the breaches by TJL and Gables. In this case, because Hogg was the sole shareholder and director of both TJL and Gables and these companies' knowledge and actions were entirely through Hogg, we have already attributed these companies' misconduct to Hogg as part of our finding of Hogg's direct breach.

[229] Similarly, we decline to find that Hogg is deemed under s. 129.2 to have breached the *Act* because of each of Arbitrade Exchange's and Cryptobontix's breaches of the *Act*. Given Hogg's role with each of these companies, we consider that Hogg made the false and misleading statements and is responsible for the other misconduct ascribed to these companies

74 *R v Prince* [1986] 2 SCR 480 (***Prince***) at paras 14-15, 17
75 *Prince* at para 32
76 *R v Kinnear* 2005 CanLII 212092 (ONCA) (***Kinnear***) at para 39
77 *Coventree Inc. et al (Re)*, 2011 ONSEC 38 at paras 64-66; *Axcess Automation LLC et al (Re)*, 2012 ONSEC 34 at para 136; *Irwin Boock et al (Re)*, 2013 ONSEC 33 at apras 106-109; *Natural Beeworks Apiaries Inc (Re)*, 2019 ONSEC 23 at para 146
78 *Bridging Finance Inc (Re),* 2023 ONCMT 21 (***Bridging***) at paras 10, 14
79 *Bridging* at paras 10, 14
80 1996 CanLII 11803 (ONSC) (***Carruthers***)
81 *Carruthers* at para 87
82 *Stevens v Law Society of Upper Canada*, 1979 CanLII 1749 (Div Ct), cited in *Law Society of Ontario v von Achten* (***Achten***), 2022 ONLSTH 117
83 *Stinson (Re),* 2023 ONCMT 26 at para 78; *Feng* at paras 72-73; *Mughal (Re),* 2023 ONCMT 39 at paras 104-108.

and we have already found that these companies' knowledge of their fraud was based, in part, upon Hogg's knowledge (or *mens rea*). We also attributed Arbitrade Exchange's and Cryptobontix's misconduct underlying their breaches of s. 25 and s. 53 to Hogg in finding that Hogg breached those provisions.

[230] We do, however, find that Hogg is deemed under s. 129.2 to have violated Ontario securities laws for permitting, authorizing or acquiescing in Arbitrade Bermuda's breaches of Ontario securities laws. Despite finding Hogg was significantly involved with Arbitrade Bermuda during the Material Time, we do not attribute the breaches by Arbitrade Bermuda directly to Hogg, and Hogg alone. Given our factual findings about Hogg's role with Arbitrade Bermuda, including his knowledge of and involvement in Arbitrade Bermuda's breaches of the *Act*, we find that he permitted, authorized and acquiesced in such breaches.

5. CONCLUSION

[231] For the above reasons, we conclude that:

a. the transaction or scheme for the offer and sale of the Tokens, including the economic reality of all the surrounding circumstances and, in particular, the representations made to investors constitute "investment contracts" and are therefore securities under the *Act*;

b. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda acted fraudulently by falsely representing to investors that the Tokens were backed by gold and that gold was acquired and confirmed through an audit, contrary to s. 126.1(1)(b) of the *Act*;

c. the respondents acted fraudulently by misappropriating funds raised from the sale of Tokens for purposes other than those represented to investors, contrary to s. 126.1(1)(b) of the *Act*;

d. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in the business of trading in securities without registration and without an exemption from registration, contrary to s. 25(1) of the *Act*;

e. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the securities without complying with the prospectus requirements, contrary to s.53(1) of the *Act*; and

f. Hogg is deemed under s. 129.2 of the *Act* to have not complied with Ontario securities law in relation to each of Arbitrade Bermuda's breaches of the *Act*.

[232] We decline to deem Hogg liable under s. 129.2 for the breaches of the *Act* by Arbitrade Exchange, Cryptobontix, TJL and Gables due to our attribution to Hogg of such breaches in our finding that Hogg directly breached ss. 126.1(1)(b), 25(1), and 53(1) of the *Act*.

[233] We therefore require that the parties contact the Registrar by 4:30 p.m. on July 2, 2024, to arrange an attendance, to schedule a hearing regarding sanctions and costs, and the delivery of materials in advance of that hearing. The attendance is to take place on a mutually convenient date that is fixed by the Governance & Tribunal Secretariat, and that is no later than July 19, 2024.

[234] If the parties are unable to present a mutually convenient date to the Registrar, each party may submit to the Registrar, for consideration by a panel of the Tribunal, a one-page written submission regarding a date for the attendance. Any such submission shall be submitted by 4:30 p.m. on July 2, 2024.

Dated at Toronto this 14th day of June, 2024

"Andrea Burke"

"Sandra Blake"

"M. Cecilia Williams"

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B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Notice Regarding Coordinated Blanket Order 31-930 Exemption to allow Exempt Market Dealer Participation in Selling Groups in Offerings of Securities under a Prospectus

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA NOTICE REGARDING
COORDINATED BLANKET ORDER 31-930 *EXEMPTION TO ALLOW EXEMPT MARKET DEALER PARTICIPATION IN SELLING GROUPS IN OFFERINGS OF SECURITIES UNDER A PROSPECTUS*

June 20, 2024

On June 20, 2024, the securities regulatory authorities in Alberta, British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan (the **participating jurisdictions**) published a temporary exemption from the restrictions set out in subsection 7.1(2)(d) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* so that exempt market dealers may participate in prospectus offerings as members of selling groups. The participating jurisdictions have implemented the relief through local blanket orders that are substantively harmonized across the participating jurisdictions (collectively, the **Blanket Orders**).

The securities regulatory authority in New Brunswick anticipates publishing a similar local blanket order in the coming weeks.

Description of Blanket Orders

The Blanket Orders provide that an exempt market dealer may act as a dealer in a distribution of securities made under a prospectus, provided that certain conditions are satisfied, including the following:

(a) the exempt market dealer acts in accordance with the terms of the selling group agreement with the issuer or investment dealer acting as the lead underwriter in the distribution of the securities made under the prospectus;

(b) the exempt market dealer acts as a dealer only to a person or company in respect of whom an exemption from the prospectus requirement would be available if the distribution of securities had been made under an exemption from the prospectus requirement;

(c) the exempt market dealer does not act as an underwriter in connection with the distribution of the securities under the prospectus and limits its interest in the transaction to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer such that it comes within the exemption for selling group members in the definition of an "underwriter" under the securities legislation;[1] and

(d) the total compensation to the exempt market dealer does not exceed 50% of the lowest total compensation paid or payable to any selling group member that is an investment dealer.

Details on these conditions, as well as the other terms and conditions necessary to be satisfied, are included in the Blanket Orders.

Although the outcome of any coordinated Blanket Order is the same in the participating jurisdictions, the language of the Blanket Order issued by each province may not be identical because each jurisdiction's Blanket Order must fit within the authority provided for in local securities legislation.

[1] See clause 1(kkk)(iii) of the *Securities Act* (Alberta); paragraph (d) of the definition of "underwriter" in the *Securities Act* (British Columbia); clause 2(1)(at)(i) of the *Securities Act* (Nova Scotia); paragraph (a) of the definition of "underwriter" in the *Securities Act* (Ontario); and clause 2(1)(ww)(iii) of the *Securities Act* (Saskatchewan).

Reasons for the Blanket Orders

The participating jurisdictions understand that start-up and small businesses are an important part of our provincial economies, serving as key contributors to employment, quality of life and income within communities. Exempt market dealers play a key role in assisting start-ups and small- and medium- sized issuers raise capital. Exempt market dealers help these issuers by acting as dealers or underwriters for the issuers' securities and distributing the issuers' securities under an exemption from the prospectus requirement.

As the issuers grow and mature, the issuers may seek financing through the distribution of their securities under a prospectus. Exempt market dealers are often unable to continue to support these businesses as exempt market dealers are limited to acting in respect of distributions of securities under a prospectus exemption. In particular, exempt market dealers are not able to participate as a member of a selling group in prospectus offerings.

Generally, the appropriate dealer registration category for participating in distributions of securities under a prospectus is the investment dealer category. However, allowing exempt market dealers to participate as a member of a selling group in prospectus offerings may make available additional channels of potential sources of capital to issuers, may provide investors with more investment opportunities, and allows exempt market dealers to participate in an issuer's entire lifecycle (i.e., from early to growth/maturity stage).

Exempt market dealers that intend to rely on the Blanket Orders are required under National Instrument 33-109 *Registration Information* to report a change in business activity by filing a Form 33-109F5 *Change of Registration Information* indicating that they will be participating as a member of selling groups in prospectus offerings.

Day on which the Blanket Orders Cease to Have Effect

The Blanket Orders come into effect on June 20, 2024, and remain in effect until December 20, 2025, unless extended by the participating jurisdictions.

Questions

If you have any questions regarding the Blanket Orders, please contact any of the following:

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B.2
Orders

B.2.1 Indigo Books & Music Inc.

Headnote

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

Applicable Legislative Provisions

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

June 11, 2024

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

AND

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

AND

IN THE MATTER OF
INDIGO BOOKS & MUSIC INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0341

B.2.2 Ontario Securities Commission – Coordinated Blanket Order 31-930

ONTARIO SECURITIES COMMISSION

COORDINATED BLANKET ORDER 31-930

Citation: Exemption to allow Exempt Market Dealer Participation in Selling Groups in Offerings of Securities under a Prospectus

Date: June 20, 2024

Interpretation

1. Terms defined in the *Securities Act* (Ontario) (the **Act**), National Instrument 14-101 *Definitions*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and National Instrument 41-101 *General Prospectus Requirements* have the same meanings in this Order, unless otherwise defined in this Order or the context otherwise requires.

2. In this Order:

   "selling group" means a group of investment dealers and exempt market dealers

   (a) that was formed in connection with an offering of securities under a prospectus;

   (b) in which all of the members of the group have entered into an agreement with either the issuer or an investment dealer acting as the lead underwriter in connection with the offering to distribute the securities being offered under the prospectus through the members of such selling group; and

   (c) in which at least one member of the group

      (i) is registered in the category of investment dealer,

      (ii) acts as an underwriter in connection with the distribution of the securities being offered under the prospectus, and

      (iii) with respect to the distribution of the securities under the prospectus, signs a certificate of the underwriter in accordance with the requirements of Ontario securities law.

Background

3. Exempt market dealers play an important role in assisting start-ups and small- and medium- sized issuers raise capital. Exempt market dealers help these issuers by acting as dealers or underwriters for the issuers' securities and distributing the issuers' securities under an exemption from the prospectus requirement (such as the accredited investor exemption or the offering memorandum exemption).

4. As the issuers grow and mature, the issuers may seek financing through offerings of their securities under a prospectus. Exempt market dealers are often limited in their ability to continue to support these issuers at this stage because exempt market dealers can only participate in a distribution of securities to investors if the distribution is made in reliance on an exemption from the prospectus requirement. Exempt market dealers are not permitted to participate in a distribution of securities if the distribution is made under a prospectus. In particular, exempt market dealers are not able to participate as members of selling groups in prospectus offerings.

5. Generally, the appropriate dealer registration category for a dealer participating in a distribution of securities made under a prospectus is the investment dealer category. However, allowing exempt market dealers to participate as members of selling groups in prospectus offerings may make available additional channels of potential sources of capital to issuers.

6. On January 22, 2021, the Capital Markets Modernization Taskforce published its final report, which acknowledged the importance of capital formation for businesses and included a recommendation that the Commission consider allowing exempt market dealers to act as "selling group members" in the distribution of securities made under a prospectus offering, subject to reasonable conditions.

7. On April 27, 2021, the Ontario government amended the Commission's legislative mandate to include fostering competitive capital markets and capital formation. This expanded mandate provides additional areas of focus for the Commission's operational and policy development activities, as well as its approach to regulatory decisions.

8. In order to promote capital formation, the Commission intends to explore a regulatory response to the Capital Markets Modernization Taskforce recommendation to allow exempt market dealers to participate in prospectus offerings as a member of a selling group and, in the interim, considers that it would be appropriate to permit such activity by exempt market dealers.

Order

9. The Commission, considering that to do so would not be prejudicial to the public interest, orders under subsection 143.11(2) of the Act that an exempt market dealer is exempt from the restrictions set out in subsection 7.1(2)(d) of NI 31-103 to act as a dealer in a distribution of securities made under a prospectus provided that all of the following apply:

   (a) the exempt market dealer acts as a dealer only in accordance with the terms of a selling group agreement with the issuer or an investment dealer acting as the lead underwriter in the distribution of the securities made under the prospectus;

   (b) the exempt market dealer acts as a dealer only to a person or company in respect of whom an exemption from the prospectus requirement would have been available if the distribution of securities had been made under an exemption from the prospectus requirement;

   (c) the exempt market dealer does not act as an underwriter in connection with the distribution of the securities under the prospectus and limits its interest in the transaction such that it comes within the exemption for selling group members in clause (a) of the definition of "underwriter" in the Act; and

   (d) the total compensation paid or payable to the exempt market dealer does not exceed 50% of the lowest total amount of compensation paid or payable in connection with the distribution of the securities under the prospectus to any selling group member that is an investment dealer.

Effective Date and Term

10. This Order comes into effect on June 20, 2024.

11. This Order will expire on December 20, 2025.

For the Commission:

"D. Grant Vingoe"
Chief Executive Officer
Ontario Securities Commission

B.2.3 Enerplus Corporation

Headnote

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

Applicable Legislative Provisions

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

Citation: *Re Enerplus Corporation*, 2024 ABASC 109

June 14, 2024

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

AND

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

AND

IN THE MATTER OF
ENERPLUS CORPORATION
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2024/0339

B.2.4 E Ventures Inc. – s. 144

Headnote

National Policy 12-202 Revocation of Certain Cease Trade Orders – Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up to date – cease trade order revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.
National Policy 12-202 Revocation of Certain Cease Trade Orders

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

AND

IN THE MATTER OF
E VENTURES INC.
(the Issuer)

ORDER
(section 144 of the Act)

WHEREAS the securities of the Issuer are subject to a temporary cease trade order of the Director dated May 23, 2003 made under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, as extended by a further order of the Director dated June 4, 2003 made under subsection 127(8) of the Act (collectively, the **Cease Trade Order**), ordering that all trading in the securities of the Issuer cease until the Cease Trade Order is revoked by a further order of revocation;

AND WHEREAS the Cease Trade Order was made on the basis that the Issuer was in default of certain filing requirements under Ontario securities law as described in the Cease Trade Order and below;

AND WHEREAS the Issuer has applied to the Ontario Securities Commission (the **Commission**) for revocation of the Cease Trade Order pursuant to section 144 of the Act;

AND WHEREAS the Issuer has represented to the Commission that:

1. The Issuer was incorporated as "Copper Prince Mines Limited" under the laws of Ontario on February 5, 1951 and is now a corporation existing under the *Business Corporations Act* (Ontario). The articles were amended to change the name to "Copper Prince Resources Inc." on June 29, 1981, to "Churchill Growth AA Industrial/Communications Inc." on July 3, 1986, to "The Telecommerce Corporation on June 29, 1987, and finally to "E Ventures Inc." on February 25, 1999.

2. The Issuer's registered head office and principal place of business is located at 155-2 Merchant Lane, Toronto, Ontario, Canada, M6P 4J6.

3. The Issuer is a reporting issuer in Ontario under the Act. The Issuer is not a reporting issuer in any other jurisdiction of Canada. The Issuer's principal regulator is the Commission.

4. The Issuer's authorized capital consists of an unlimited number of common shares (the **Common Shares**) and an unlimited number of preference shares, of which approximately 116,118,352 Common Shares are issued and outstanding.

5. Other than the issued and outstanding Common Shares, the Issuer has no other securities, including debt securities or options, issued and outstanding.

6. No securities of the Issuer are traded in Canada or any other country on a marketplace, as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

7. Previously, the Issuer was listed on the Canadian Unlisted Board (the **CUB**), under the trading symbol EVTR. Trading in the securities of the Issuer was halted following the issuance of the Cease Trade Order. The Issuer was subsequently delisted from the CUB.

8. The Cease Trade Order was issued as a result of the Issuer's failure to file audited annual financial statements for the year ended December 31, 2002 (the **Unfiled Documents**).

9. The Issuer's failure to file the Unfiled Documents was a result of the Issuer's financial difficulties at the time. The Issuer has not been in operation since that time.

10. The Issuer is not subject to a cease trade order in any other jurisdiction.

11. After the issuance of the Cease Trade Order, the Issuer subsequently failed to file other continuous disclosure documents with the Commission within the prescribed timeframe in accordance with the requirements of Ontario securities law, including the following:

    a. all audited annual financial statements for the years ended December 31, 2003 to December 31, 2022;

    b. all unaudited interim financial statements for the interim periods ended March 31, 2003 to June 30, 2023;

    c. after the applicable requirement for all reporting issuers came into force on March 30, 2004, accompanying management's discussion and analysis (**MD&A**) for the years ended December 31, 2004 to December 31, 2022 and for the interim periods ended June 30, 2004 to June 30, 2023;

    d. after the applicable requirement came into force on March 30, 2004, related CEO and CFO certificates required by National Instrument 52-109 (or its predecessor) (**NI 52-109 Certificates**) for the years ended December 31, 2004 to December 31, 2022 and for the interim periods ended June 30, 2004 to June 30, 2023;

    e. after the requirement for a stand-alone statement of executive compensation in section 11.6 of National Instrument 51-102 (**NI 51-102**) came into force on December 31, 2008, disclosure required by either Form 51-102F6 *Statement of Executive Compensation* (**Form 51-102F6**) or (after June 30, 2015) Form 51-102F6V *Statement of Executive Compensation - Venture Issuers* (**Form 51-102F6V**) for the years ended December 31, 2008 to December 31, 2022;

    f. after the applicable requirement came into force on March 30, 2004, the audit committee disclosure required by Form 52-110F2 *Disclosure by Venture Issuers* (**Form 52-110F2**), for the years ended December 31, 2004 to December 31, 2022; and

    g. after the applicable requirement came into force on June 30, 2005, the corporate governance disclosure required by Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)* (**Form 58-101F2**), for the years ended December 31, 2005 to December 31, 2022.

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

12. However, in connection with the application for the revocation the Cease Trade Order, the Issuer has now filed the following continuous disclosure documents on the System for Electronic Document Analysis and Retrieval + (**SEDAR+**):

    a. audited annual financial statements, accompanying MD&A and related NI 52-109 Certificates for the years ended December 31, 2021, December 31, 2022 and December 31, 2023;

    b. unaudited interim financial statements, accompanying MD&A and related NI 52-109 Certificates for the interim periods ended March 31, 2023, June 30, 2023, September 30, 2023 and March 31, 2024;

    c. the executive compensation disclosure required by Form 51-102F6V for the years ended December 31, 2021, December 31, 2022 and December 31, 2023;

    d. the audit committee disclosure required by Form 52-110F2 for the years ended December 31, 2021, December 31, 2022 and December 31, 2023 (this disclosure was included in the applicable annual MD&A); and

    e. the corporate governance disclosure required by Form 58-101F2 for the years ended December 31, 2021, December 31, 2022 and December 31, 2023 (this disclosure was included in the applicable annual MD&A).

13. The Issuer has not filed the following documents on SEDAR+:

    a. audited financial statements for the years ended December 31, 2002 to December 31, 2020;

b. unaudited interim financial statements for the interim periods ended March 31, 2003 to September 30, 2022;

c. after the applicable requirement for all reporting issuers came into force on March 30, 2004, accompanying MD&A for the years ended December 31, 2004 to December 31, 2020 and for the interim periods ended June 30, 2004 to September 30, 2022;

d. after the applicable requirement came into force on March 30, 2024, related NI 52-109 Certificates for the years ended December 31, 2004 to December 31, 2020 and for the interim periods ended June 30, 2004 to September 30, 2022;

e. after the requirement for a stand-alone statement of executive compensation in section 11.6 of NI 51-102 came into force on December 31, 2008, the disclosure required by either Form 51-102F6 or (after June 30, 2015) Form 51-102F6V for the years ended December 31, 2008 to December 31, 2020;

f. after the applicable requirement came into force on March 30, 2004, the audit committee disclosure required by Form 52-110F2, for the years ended December 31, 2004 to December 31, 2020; and

g. after the applicable requirement came into force on June 30, 2005, the corporate governance disclosure required by Form 58-101F2, for the years ended December 31, 2005 to December 31, 2020.

(collectively, the **Outstanding Filings**). The Issuer has requested that the Commission exercise its discretion, in accordance with sections 6 and 7 of National Policy 12-202 *Revocation of Certain Cease Trade Orders* (**NP 12-202**), to elect not to require the Issuer to file the Outstanding Filings.

14. The Issuer's existing articles for purposes of the OBCA consist of the certificate and articles of continuance dated July 3, 1986, the certificate and articles of amendment dated July 3, 1986, the certificate and articles of amendment dated June 29, 1987, the certificate and articles of revival dated February 3, 1999, the certificate and articles of amendment dated February 25, 1999, and the certificate and articles of revival dated February 26, 2013. Copies of these documents have been filed on SEDAR+. The Issuer has no by-laws for purposes of the OBCA.

15. The Issuer has filed with the Commission all continuous disclosure that it is required to file under Ontario securities law, except for the Outstanding Filings and any other continuous disclosure that the Commission elected not to require as contemplated under sections 6 and 7 of NP 12-202.

16. The Issuer is not in default of securities legislation of Ontario or any other jurisdiction, except for (i) the circumstances of the Cease Trade Order and (ii) failure to file the Outstanding Filings. In particular, the Issuer is not in default of its obligations under the Cease Trade Order or the Partial Revocation Order (as defined below).

17. As of the date hereof, the Issuer has paid all outstanding activity, participation and late filing fees that are required to be paid to the Commission and has filed all forms associated with such payments.

18. As of the date hereof, the Issuer's profile on SEDAR+ and the Issuer's profile supplement on the System for Electronic Disclosure by Insiders (**SEDI**) are current and accurate.

19. Effective April 12, 2023, Edward Murphy and Ray Kolynchuk were appointed as directors of the Issuer. Jon Bridgman (since February 3, 1999) and Keith Roberts (since November 30, 1999) remain as directors of the Issuer. Previous directors of the Issuer (Joel Wagman, Edward Newell, Georganne Greenstein, David Luciuk, Robert Moore and George Berger) all resigned effective December 24, 2007. Joel Wagman resigned as CEO effective December 24, 2007. The current CEO of the Issuer is Jon Bridgman (effective February 26, 2013) and the current CFO of the Issuer is Keith Roberts (since November 30, 1999).

20. On March 23, 2023, the Commission issued a partial revocation of the Cease Trade Order (the **Partial Revocation Order**) to permit the Private Placement (as defined below).

21. On May 18, 2023, the Issuer completed a non-brokered private placement for aggregate gross proceeds of $221,000.00 through the issuance of 110,500,000 Common Shares at a price of $0.002 per Common Share (the **Private Placement**).

22. Since the issuance of the Cease Trade Order, there have been no material changes in the business, operations or affairs of the Issuer except for the Partial Revocation Order, the Private Placement and the changes of executive officers and directors of the Issuer described in paragraph 19. The Partial Revocation Order and the Private Placement were disclosed in a news release and material change report filed on SEDAR+.

23. Other than the Cease Trade Order, the Issuer has not previously been subject to a cease trade order issued by any securities regulatory authority.

24. The Issuer is not involved in any discussions relating to a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

25. The Issuer has given the Commission a written undertaking that:

    (a) the Issuer will hold an annual meeting of shareholders within three months after the date on which the Cease Trade Order is revoked; and

    (b) the Issuer will not complete:

        i. a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada,

        ii. a reverse takeover with a reverse takeover acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada, or

        iii. a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada,

        unless

            1. the Issuer files a preliminary prospectus and a final prospectus with the Commission and obtains receipts for the preliminary and final prospectus from the Director under the Act,

            2. the Issuer files or delivers with the preliminary prospectus and the final prospectus the documents required by Part 9 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) including a completed personal information form and authorization in the form set out in Appendix A of NI 41-101 for each current and incoming director, executive officer and promoter of the Issuer, and

            3. the preliminary prospectus and final prospectus containing the information required by applicable securities legislation, including the information required for a probable restructuring transaction, reverse takeover or significant acquisition (as applicable).

26. Upon the revocation of the Ontario Cease Trade Order, the Issuer will issue a news release and concurrently file a material change report on SEDAR+ announcing the revocation of the Cease Trade Order and outlining the Issuer's future plans.

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

AND UPON the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 144 of the Act that the Cease Trade Order is revoked.

DATED at Toronto this 17th day of June 2024.

"Erin O'Donovan"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0655

B.2.5 Fusion Pharmaceuticals Inc.

Headnote

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

Applicable Legislative Provisions

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

June 14, 2024

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

AND

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

AND

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

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0331

B.2.6 Permian Resources Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act, s. 88 – Cease to be a reporting issuer in BC – The issuer's securities are traded only on a market or exchange outside of Canada; Canadian residents own less than 2% of the issuer's securities and represent less than 2% of the issuer's total number of security holders. The issuer does not intend to do a public offering of its securities to Canadian residents, will not be a reporting issuer in a Canadian jurisdiction, is subject to the reporting requirements of U.S. securities laws, and all shareholders receive the same disclosure.

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – application by a reporting issuer for an order that it is not a reporting issuer in Ontario, Alberta and British Columbia – based on diligent inquiry, residents of Canada (i) do not directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the issuer worldwide, and (ii) do not directly or indirectly comprise more than 2% of the total number of securityholders of the issuer worldwide – issuer is subject to U.S. securities law requirements – issuer has provided notice through a press release that it has submitted an application to cease to be a reporting issuer in the relevant jurisdictions.

Applicable Legislative Provisions

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

Citation: 2024 BCSECCOM 268

June 14, 2024

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

AND

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

AND

IN THE MATTER OF
PERMIAN RESOURCES CORPORATION
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

1. the Filer is incorporated under and is governed by the laws of the State of Delaware;

2. the Filer's head office and registered office is located in the State of Texas;

3. none of the Board of Directors or management of the Filer are residents of Canada;

4. the Filer became a reporting issuer in the Jurisdictions on November 1, 2023 due to Filer's acquisition of Earthstone Energy Inc., a reporting issuer, and its subsidiaries by way of a merger and securities exchange;

5. British Columbia is the principal regulator of the Filer because British Columbia was the principal regulator of Earthstone Energy Inc.;

6. the Filer's shares of Class A common stock, par value $0.0001 (the Common Stock), are listed only on the New York Stock Exchange (the NYSE);

7. the shares of Common Stock are registered under section 12 of the U.S. *Securities Exchange Act of 1934*, as amended;

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

9. the Filer has conducted diligent inquiries to ascertain its Canadian beneficial securityholder data with its transfer agent and Broadridge Financial Solutions, Inc.;

10. based on the Filer's inquiries, the Filer understands that, as of April 3, 2024 there were:

    (a) 385,353,065 shares of Common Stock issued and outstanding that were held by 86,034 beneficial securityholders worldwide;

    (b) a total of 1,247 beneficial Canadian resident securityholders representing approximately 1.45% of the total number of securityholders worldwide; and

    (c) 4,496,839 shares of Common Stock held by beneficial Canadian resident securityholders representing approximately 1.17% of the issued and outstanding shares of Common Stock;

11. the Filer has determined that residents of Canada do not, directly or indirectly:

    (a) beneficially own more than 2% of any class or series of outstanding securities, including debt securities, of the Filer worldwide; or

    (b) comprise more than 2% of the total number of securityholders of the Filer worldwide;

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

13. in the past 12 months, the Filer has not taken any steps that indicate there is a market for its securities in Canada, including conducting a prospectus offering in Canada, establishing or maintaining a listing on an exchange in Canada, or having its securities traded on a marketplace or any other facility in Canada for bringing together buyers and sellers where trading data is publicly reported;

14. the Filer has no current intention to seek public financing by way of an offering of its securities in Canada;

15. on May 24, 2024, the Filer issued a news release announcing, among other things, that it applied for an order to cease to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer, and that if the Order Sought is granted, the Filer will no longer be a reporting issuer in any jurisdiction of Canada; the Filer did not receive any complaints from its securityholders regarding this news release;

16. the Filer undertakes to concurrently deliver to its securityholders in Canada all disclosure materials that it is required to deliver to securityholders resident in the United States, in the manner required by the securities laws of the United States and the applicable requirements of the NYSE;

17. the Filer qualifies as an SEC foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) and, as such, relies on and complies with the exemptions from Canadian continuous disclosure requirements afforded to SEC foreign issuers under Part 4 of NI 71-102;

18. the Filer files continuous disclosure reports under United States securities laws, which are publicly available on EDGAR;

19. the Filer is not in default of any requirements of United States federal or state securities or corporate legislation, or the rules and policies of the NYSE;

20. the Filer is a reporting issuer under the laws of each of the Jurisdictions;

21. the Filer is not in default of securities legislation in any jurisdiction of Canada; and

22. 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.

Order

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

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

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

OSC File #: 2024/0248

B.3
Reasons and Decisions

B.3.1 BMO Asset Management Inc. and The Top Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from conflict-of-interest investment restrictions in paragraphs 111(2)(b) and (c) and subsection 111(4) of the Securities Act (Ontario) to permit pooled fund to invest substantially all of its assets in an underlying investment that is not an investment fund and that is managed by a third-party asset manager, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c), 111(4), and 113.

June 14, 2024

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

AND

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

AND

IN THE MATTER OF
BMO ASSET MANAGEMENT INC.
(the Filer)

AND

THE TOP FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each of the Filer and any affiliate of the Filer acting as portfolio manager, and on behalf of BMO Carlyle Private Equity Strategies Fund, a mutual fund trust to be formed under the laws of the Province of Ontario (the **Top Fund**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Top Fund from the restrictions in the Legislation which prohibit:

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

(b) an investment fund from knowingly making an investment in an issuer in which

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

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

has a significant interest; and

(c) an investment fund, its management company or its distribution company from knowingly holding an investment described in paragraph (a) or (b) above

(collectively, the "**Related Issuer Relief**"),

to permit the Top Fund to invest substantially all of its assets in securities of Carlyle AlpInvest Private Markets Sub-Fund – I, a sub-fund of Carlyle AlpInvest Private Markets SICAV – UCI Part II, an investment company with variable capital (*société d'investissement à capital variable*) established as a public limited liability company (*société anonyme*) in accordance with the Luxembourg law of 10 August 1915 on commercial companies and registered under Part II of the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment and in which an affiliate of the Filer will have a significant interest (the **Underlying Investment**).

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

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

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

Representations

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

The Filer

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

2. The Filer is registered as an investment fund manager (**IFM**) in each of Ontario, Québec and Newfoundland and Labrador, as a portfolio manager (**PM**) and an exempt market dealer in each of the Jurisdictions, as a derivatives portfolio manager in Québec and as a commodity trading manager in Ontario.

3. The Filer is the IFM and PM of the Top Fund.

4. An affiliate of the Filer may initially hold a significant interest in the Underlying Investment.

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

The Top Fund

6. The Top Fund will be a trust formed under the laws of Ontario.

7. The Top Fund will be a "mutual fund" under the Legislation.

8. Units of the Top Fund will be offered only on a private placement basis pursuant to available exemptions from the prospectus requirements under Canadian securities legislation.

9. The Top Fund will not be a reporting issuer in any of the Jurisdictions.

10. The Top Fund intends to invest, directly or indirectly, in securities of the Underlying Investment, provided the investment is consistent with the Top Fund's investment objectives and strategies.

11. The Top Fund qualifies to invest in securities of the Underlying Investment pursuant to applicable exemptions from the prospectus requirement under National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and/or the Legislation.

12. The Top Fund is not in default of securities legislation in any Jurisdiction.

The Underlying Investment

13. The Underlying Investment will be an alternative investment fund (within the meaning of such term under Luxembourg law) established as a SICAV under the laws of Luxembourg.

14. Securities of the Underlying Investment, if distributed to investors in Canada, will be distributed to such investors solely pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 and the Legislation and may be sold by way of prospectus or private placement in other jurisdictions. The Underlying Investment may be distributed globally.

15. The Underlying Investment will not be a reporting issuer in any of the Jurisdictions.

16. The Underlying Investment will not be an "investment fund" under the Legislation.

17. The Underlying Investment will have a prospectus which will be provided to investors in the Top Fund.

18. The Underlying Investment will produce audited financial statements on an annual basis, in accordance with applicable generally accepted accounting principles, and with a qualified auditing firm as the auditor of those financial statements.

19. The investment objective of the Underlying Investment will be to achieve superior returns principally through long-term capital appreciation by pursuing an evergreen private equity investment strategy, primarily investing in private equity secondary investments, co-investments and primary investments. The Underlying Investment will allocate its assets across a global portfolio of private markets investments (including direct investments in portfolio companies, secondary purchases of interests in funds and direct subscriptions for interests in funds). Under normal circumstances, the Underlying Investment intends to invest and/or make capital commitments of at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in private markets investments. As part of its liquidity management strategy, the Underlying Investment intends to maintain a portion of its net asset value in liquid investments, including, but not limited to, broadly syndicated term loans and other fixed income investments, which may account for approximately 5 to 15% of the net asset value of the Underlying Investment from time to time (subject to fluctuations based on the Underlying Investment's cash requirements). The Top Fund will not participate in the business or operations of the Underlying Investment.

20. The Top Fund will not actively participate in the business or operations of the Underlying Investment.

21. AlpInvest Partners B.V., a third-party asset manager, is the investment fund manager and portfolio manager of the Underlying Investment. The Underlying Investment will calculate a net asset value that is used for the purposes of determining the purchase and redemption price of the securities of the Underlying Investment.

Investments by the Top Fund in the Underlying Investment

22. An investment by the Top Fund in the Underlying Investment will only be made if the Underlying Investment is compatible with the investment objectives and investment strategy of the Top Fund.

23. The Filer believes that an investment by the Top Fund in the Underlying Investment will provide the Top Fund with an efficient and cost-effective manner of pursuing portfolio, asset class, and strategy diversification. The Top Fund will also gain access to the investment expertise of the portfolio manager of the Underlying Investment and the Underlying Investment's investment strategy, which would otherwise not be available to the Top Fund or to the investors in the Top Fund.

24. Investments by the Top Fund in the Underlying Investment will be effected at an objective price. The Filer's policies and procedures provide that an objective price, for this purpose, will be the net asset value per security of the applicable class or series of the Underlying Investment.

25. The Underlying Investment will be valued and redeemable at least as frequently as, and contemporenously with, the Top Fund.

26. The Underlying Investment will be valued and redeemable monthly, provided that redemptions are permitted during the first 12 months of an investor's investment subject to an early redemption fee of 2% of the relevant redemption price. The Underlying Investment will be subject to a redemption limitation of 1.667% of the aggregate outstanding shares per month and 20% of the average number of shares in issue per annum (or such other higher limit that may be set from time to time).

27. The value of the assets of the Underlying Investment will be calculated by an independent fund administrator that has been appointed by the investment fund manager of the Underlying Investment. The net asset value of the Underlying Investment will be calculated monthly as the value of the total assets of the Underlying Investment, less all of its liabilities, including accrued fees and expenses, each determined as of the relevant valuation date. The investment fund manager of the Underlying Investment may also engage independent external valuation advisors in the future to provide positive assurance or other forms of valuation support for the Underlying Investment's valuations. Furthermore, the regulatory regime applicable to the Underlying Investment requires that the valuation of its assets be conducted separately and independent from the portfolio management function.

28. The Filer or an affiliate of the Filer will manage the liquidity of the Top Fund having regard to the redemption features of the Underlying Investment to ensure that it can meet redemption requests from investors of the Top Fund. The Filer expects that liquidity management will be achieved through the use of structuring and terms to manage its liquidity, which may include establishing cash reserves, establishing a basket of liquid investments, setting off subscription proceeds against redemptions and/or utilizing credit facilities. The approach taken will depend on, among other things, the liquidity profile of the Underlying Investment and the anticipated needs of the Top Fund.

29. An investment by the Top Fund in the Underlying Investment will only be made if such investment represents the business judgment of a responsible person uninfluenced by considerations other than the best interests of the Top Fund.

Generally

30. The amount invested from time to time in the Underlying Investment by the Top Fund may exceed 20% of the outstanding voting securities of the Underlying Investment. As a result, the Top Fund could be deemed to be a "substantial security holder" of the Underlying Investment within the meaning of section 110 of the Legislation, contrary to paragraph 111(2)(b) of the Legislation.

31. An officer or director of the Filer or of an affiliate of the Filer may have a "significant interest" in the Underlying Investment and/or a person or company who is a substantial security holder of the Top Fund, the Filer or an affiliate of the Filer may have a "significant interest" in the Underlying Investment within the meaning of section 110 of the Legislation, which under paragraph 111(2)(c) of the Legislation, would prohibit the Top Fund from investing in the Underlying Investment.

32. Since the Underlying Investment will not be an "investment fund" as defined in the Legislation, the Top Fund is unable to rely on the exemption from the investment restrictions of section 111 of the Act that is provided under subsection 2.5.1(2) of NI 81-102 for non-reporting issuer investment funds that purchase or hold securities of another non-reporting issuer investment fund (**Codified Exemption**).

33. No fees or sales charges will be incurred, directly or indirectly, by the Top Fund with respect to an investment in the Underlying Investment that, to a reasonable person, would duplicate a fee payable by the Top Fund to the Filer or its investors.

34. In respect of an investment by the Top Fund in the Underlying Investment, no management fees or incentive fees will be payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Investment for the same service.

35. The offering memorandum of the Top Fund will be provided to prospective investors in such Top Fund prior to the time of investment, and will disclose: (a) that the Top Fund will invest, directly or indirectly, all, or substantially all, of its assets in securities of the Underlying Investment; (b) the fees, expenses and any performance or special incentive distributions payable by the Underlying Investment; (c) the process or criteria used to select the Underlying Investment, if applicable; (d) that the Filer, an affiliate of Filer or a substantial security holder of the Filer may have a significant interest in the Underlying Investment, and the potential conflicts of interest which may arise from such relationships; and (e) for each officer, director and/or substantial security holder of the Filer or its affiliate, or of the Top Fund, that has a significant interest in the Underlying Investment, and for the officers and directors and substantial security holders who together in aggregate hold a significant interest in the Underlying Investment, the approximate amount of the significant interest they hold, on an aggregate basis, expressed as a percentage of the Underlying Investment's net asset value, and the potential conflicts of interest which may arise from such relationship.

36. The Top Fund's investment in the Underlying Investment will be disclosed to investors in the Top Fund's offering memorandum and, where applicable, periodic reports and financial statements.

37. The Underlying Investment will produce audited financial statements on an annual basis, in accordance with applicable generally accepted accounting principles, and with a qualified auditing firm as the auditor of those financial statements. The Filer will have access to audited financial statements prepared in respect of the Underlying Investment made by the Top Fund.

38. The Filer believes that a meaningful allocation to private equity and other alternative investments provides Top Fund investors with unique diversification opportunities and represents an appropriate investment tool for the Top Fund in achieving that diversification.

39. Securities of the Underlying Investment are not qualified investments for investment by tax-free savings accounts (**TFSAs**), and trusts governed by registered retirement savings plans, registered retirement income funds, registered education savings plans, deferred profit sharing plans registered disability savings plans and other similar plans, each a defined term under the *Income Tax Act* (Canada) (collectively, **Tax Deferred Plans**).

40. The Top Fund will be formed as a trust for the purpose of accessing a broader base of investors, including TFSAs, Tax Deferred Plans and other investors that may not be able to, nor wish to, invest directly in the Underlying Investment.

41. The Top Fund's investment in the Underlying Investment will represent the business judgment of a responsible person uninfluenced by considerations other than the best interests of the Top Fund.

42. Absent the Related Issuer Relief, the Top Fund would be precluded from purchasing and holding securities of the Underlying Investment due to the investment restrictions contained in the Legislation. Specifically, the Top Fund would be prohibited from (i) becoming a substantial securityholder of the Underlying Investment and (ii) investing in an Underlying Investment in which an officer or director of a Filer, or a person or company who is a substantial securityholder of the Top Fund or a Filer, has a significant interest.

Decision

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

The decision of the principal regulator under the Legislation is that the Related Issuer Relief is granted provided that:

(a) the securities of the Top Fund and the Underlying Investment, if distributed in Canada, are distributed in Canada solely to accredited investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106;

(b) any direct or indirect investment by the Top Fund in the Underlying Investment is compatible with the fundamental investment objectives of the Top Fund;

(c) at the time of the purchase by the Top Fund, directly or indirectly, of securities of the Underlying Investment, the Underlying Investment holds no more than 10% of its net asset value in securities of other investment funds, unless the Underlying Investment:

  (i) is a "clone fund" (as defined in NI 81-102); or

  (ii) purchases or holds securities:

    (A) of a "money market fund" (as defined in NI 81-102); or

    (B) that are "index participation units" (as defined in NI 81-102) issued by an investment fund;

(d) no management fees or incentive fees will be payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Investment for the same service;

(e) no sales or redemption fees will be payable as part of the investment by the Top Fund in the securities of the Underlying Investment, unless the Top Fund redeems its securities of the Underlying Investment during a lock-up period, in which case an early redemption fee may be payable by the Top Fund;

(f) the securities of the Underlying Investment held by the Top Fund will not be voted at any meeting of the security holders of the Underlying Investment, except that the Top Fund may arrange for the securities of the Underlying Investment it holds to be voted by the beneficial holders of securities of the Top Fund;

(g) the Top Fund's investment in the Underlying Investment will be disclosed to investors in the Top Fund's offering memorandum and, where applicable, periodic reports and financial statements;

(h) at the time of investment by the Top Fund in the Underlying Investment, the aggregate amount of assets directed to the third party investment fund manager of the Underlying Investment will not represent more than 20% of the total assets under management of such third party investment fund manager as part of its overall asset management business;

(i) the Underlying Investment will produce audited financial statements on an annual basis, in accordance with applicable generally accepted accounting principles, and with a qualified auditing firm as the auditor of those financial statements;

(j) the Underlying Investment has an investment fund manager that meets the due diligence criteria established by the Filer for third party investment fund managers;

(k) the offering memorandum of the Top Fund will be provided to prospective investors in the Top Fund prior to the time of investment, and will disclose:

(i) that the Top Fund will invest, directly or indirectly, all, or substantially all, of its assets in securities of the Underlying Investment;

(ii) the fees, expenses and any performance or special incentive distributions payable by the Underlying Investment in which the Top Fund invests;

(iii) the process or criteria used to select the Underlying Investment, if applicable;

(iv) that the Filer, an affiliate of Filer or a substantial security holder of the Filer may have a significant interest in the Underlying Investment, and the potential conflicts of interest which may arise from such relationships;

(v) for each officer, director and/or substantial security holder of the Filer or its affiliate, or of the Top Fund, that has a significant interest in the Underlying Investment, and for, the officers and directors and substantial security holders who together in aggregate hold a significant interest in the Underlying Investment, the approximate amount of the significant interest they hold, on an aggregate basis, expressed as a percentage of the Underlying Investment's net asset value, and the potential conflicts of interest which may arise from such relationship;

(vi) that investors in the Top Fund are entitled to receive from the Filer, on request and free of charge, a copy of the offering memorandum or other similar disclosure document of the Underlying Investment; and

(vii) that investors are entitled to receive from the Filer, on request and free of charge, the annual financial statements of the Underlying Investment in which the Top Fund invests its assets.

(l) where an investment is made by the Top Fund in the Underlying Investment, the records of portfolio transactions maintained by the Top Fund will include the name of the Underlying Investment, as the case may be, being a related person in which an investment is made; and

(m) the Top Fund will, directly or indirectly, invest in, and redeem, the Underlying Investment at an objective price, which, for this purpose, will be the net asset value per security of the applicable class or series of the Underlying Investment. For greater certainty, the net asset value of the Underlying Investment is based on the valuation of the applicable portfolio assets to which the Underlying Investment has exposure, independently determined by an arm's length third party.

"Darren McKall"
Manager, Investment Management
Ontario Securities Commission

Application File #: 2024/0046
SEDAR Project File #: 6076327

B.3.2 Sprott Asset Management LP and Sprott Physical Copper Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from qualification criteria in paragraph 2.2(d) of NI 44-101 to permit a fund that has not completed a financial year to use a short form prospectus under NI 44-101 or a shelf prospectus under NI 44-102 for subsequent offerings – relief subject to conditions.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus, ss. 2.2(d) and 8.1.

June 14, 2024

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

AND

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

AND

IN THE MATTER OF
SPROTT ASSET MANAGEMENT LP
(the Filer)

AND

IN THE MATTER OF
SPROTT PHYSICAL COPPER TRUST
(the Trust)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Trust for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting an exemption to the Trust from paragraph 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) to permit the Trust to file a short form prospectus pursuant to NI 44-101 or a shelf prospectus pursuant to National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) even though the Trust does not have current annual financial statements or a current AIF (the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, National *Instrument 81-106 Investment Fund Continuous Disclosure* (**NI 81-106**), MI 11-102, NI 44-101 or NI 44-102 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

1. The Filer is a limited partnership formed and organized under the laws of the Province of Ontario. The general partner of the Filer is Sprott Asset Management GP Inc., a corporation incorporated under the laws of the Province of Ontario. The head office of the Filer is located in Ontario.

2. The Filer is registered under the securities legislation: (i) in Ontario as an adviser in the category of portfolio manager; (ii) in Ontario, Newfoundland and Labrador and Quebec as an investment fund manager; and (iii) in British Columbia, Alberta, Quebec, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador as a dealer in the category of exempt market dealer.

3. The Filer is the investment fund manager and portfolio manager of the Trust.

4. Neither the Filer nor the Trust is in default of securities legislation in any of the Jurisdictions.

The Trust

5. The Trust is (i) a trust established under a trust agreement dated April 12, 2024, as amended and restated on May 10, 2024 (the **Trust Agreement**), (ii) is an "investment fund" and a "non-redeemable investment fund" each as defined in the Legislation, and (ii) a "reporting issuer" as defined in the securities legislation of each of the Jurisdictions.

6. The Trust's financial year end is December 31.

7. The Trust is authorized to issue an unlimited number of units of the Trust ("**Units**").

Reasons for the Exemption Sought

8. On May 31, 2024, the Trust filed a final long form prospectus with the securities regulatory authority in each of the provinces and territories of Canada (the "**IPO Prospectus**") in connection with an initial public offering of the Units (the "**IPO**"). The Trust became a reporting issuer in each of the Jurisdictions on May 31, 2024. The Trust completed the IPO on June 7, 2024.

9. Accordingly, the Trust has not had its first-year end as a reporting issuer and since commencing operations and, therefore, the Trust (i) has no audited financial statements in respect of a period ending on a year end, and (ii) has no current AIF.

10. As of June 7, 2024, there were 10,000,000 Units issued and outstanding. The Units are listed on the Toronto Stock Exchange under the symbols "CUP.UN" (Canadian dollar denominated trading) and "COP.U" (U.S. dollar denominated trading).

11. The Trust wishes to be in a position to file a short form prospectus in accordance with NI 44-101 or a shelf prospectus in accordance with NI 44-102 in order to expedite future offerings of additional Units to the public.

12. For the Trust, filing a short form prospectus in accordance with NI 44-101 or a shelf prospectus in accordance with NI 44-102 is an efficient, expedient, and cost-effective alternative to filing a long form prospectus in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**).

13. Absent the Exemption Sought, the Trust would be required to file a long form prospectus in accordance with NI 41-101 and Form 41-101F2 as the Trust has yet to complete a financial year end as a reporting issuer and since commencing operations and therefore does not have current annual financial statements.

14. The Trust intends to file, in accordance with NI 81-106, audited annual financial statements of the Trust for the year ended December 31, 2024 (the "**2024 Annual Financial Statements**"), prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises.

15. The Trust intends to file, in accordance with NI 81-106, unaudited interim financial statements of the Trust for the period ended June 30, 2024 (the "**2024 Interim Financial Statements**"), prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises.

16. The IPO Prospectus includes audited financial statements presenting the financial results of the Trust for the period from April 12, 2024 to April 19, 2024 (the "**IPO Financial Statements**").

17. In the event that the Trust wishes to file a short form prospectus in accordance with NI 44-101 or a shelf prospectus in accordance with NI 44-102 prior to filing the 2024 Annual Financial Statements, the Trust proposes to incorporate by reference into such prospectus:

(a) the IPO Financial Statements, or, if April 19, 2024 is more than 90 days before the date of such prospectus, audited financial statements filed by the Trust presenting the financial results of the Trust for the period from April 12, 2024 to a date after April 19, 2024 that is not more than 90 days before the date of such prospectus, prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises (the "**Initial Financial Statements**");

(b) if such prospectus incorporates by reference the Initial Financial Statements, a management report of fund performance for the period covered by the Initial Financial Statements; and

(c) if such prospectus is filed more than 60 days after June 30, 2024:

(i) the 2024 Interim Financial Statements; and

(ii) a management report of fund performance for the period covered by the 2024 Interim Financial Statements.

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) in any short form prospectus or shelf prospectus filed by the Trust,

(i) the Trust incorporates by reference the IPO Financial Statements or, if April 19, 2024 is more than 90 days before the date of such prospectus, the Initial Financial Statements;

(ii) if such prospectus incorporates by reference the Initial Financial Statements, a management report of fund performance for the period covered by the Initial Financial Statements;

(iii) the Trust includes or incorporates by reference the disclosure that would have been required in a current AIF, had the Trust been required to prepare a current AIF; and

(iv) the Trust includes disclosure regarding this decision in accordance with the requirements of section 19.1 of Form 44-101F1 *Short Form Prospectus*; and

(b) the Exemption Sought will expire on the earlier of

(i) the date upon which the Trust files the 2024 Annual Financial Statements; and

(ii) June 7, 2025.

"Darren McKall"
Manager, Investment Management
Ontario Securities Commission

Application File #: 2024/0348
SEDAR+ File #: 6143991

B.3.3 Evolve Funds Group Inc. and High Interest Savings Account Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement to obtain the approval of securityholders for fund reorganization and approval of fund reorganization under paragraph 5.5(1)(b) of NI 81-102 – reorganization was undertaken in connection with external regulatory changes deemed to be in the best interests of securityholders – required to send written notice at least 60 days before the effective date of the reorganization describing the reorganization and redemption rights – tax impact to securityholders expected to be immaterial – relief subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Fund, ss. 5.1(1)(f) and 5.5(1)(b) and 19.1.

June 14, 2024

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

AND

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

AND

IN THE MATTER OF
EVOLVE FUNDS GROUP INC.
(the Filer)

AND

HIGH INTEREST SAVINGS ACCOUNT FUND
(HISA)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of HISA, for a decision under the securities legislation of the Jurisdiction (the **Legislation**):

(a) exempting HISA from the requirement in subsection 5.1(1)(f) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to obtain the prior approval of its unitholders for the proposed reorganization of HISA (the **Reorganization**) which will result in HISA being split into two separate mutual fund trusts: (1) a newly created mutual fund trust (the **New Mutual Fund**) and (2) HISA which will be an exchange-traded mutual fund trust (the **Existing ETF**) (the **Unitholder Approval Relief**); and

(b) approving of the Reorganization pursuant to subsection 5.5(1)(b) of NI 81-102 (the **Reorganization Approval**, together with the Unitholder Approval Relief, the **Requested Relief**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

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

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

Representations

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

The Filer

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

2. The Filer is registered as (i) a portfolio manager and a commodity trading manager in Ontario and (ii) an investment fund manager under the securities legislation of each of Ontario, Quebec and Newfoundland and Labrador.

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

4. The Filer is the manager of HISA and will be the manager and trustee of the New Mutual Fund.

HISA

5. HISA is an investment fund established under the laws of the Province of Ontario.

6. HISA is a money market fund (within the definition set out in NI 81-102) which seeks to maximize monthly income while preserving capital and liquidity by investing primarily in high interest Canadian dollar deposit accounts.

7. HISA is comprised of a single class of the ETF units (the **Existing ETF Units**) and three classes of the mutual fund units (the **Existing Mutual Fund Units**) which are currently qualified for distribution in the Jurisdictions under a prospectus and fund facts or ETF facts document (as applicable) dated August 16, 2023.

8. HISA is a reporting issuer under the applicable securities legislation of each of the Jurisdictions.

9. The Existing ETF Units are currently listed and trading on Cboe Canada (**Cboe**) under the symbol “HISA” and will continue to be listed and trading on Cboe following the Reorganization.

10. HISA is subject to, among other laws and regulations, NI 81-102, National Instrument 81-106 *Investment Fund Continuous Disclosure* and National Instrument 81-107 *Independent Review Committee for Investment Funds*.

11. HISA is not in default of applicable securities legislation in any of the Jurisdictions.

The New Mutual Fund

12. The New Mutual Fund is expected to be established under the laws of Ontario.

13. The New Mutual Fund will be a money market fund (within the definition set out in NI 81-102) and organized as a newly formed mutual fund trust which will seek to maximize monthly income while preserving capital and liquidity by investing primarily in high interest Canadian dollar deposit accounts.

14. The New Mutual Fund will offer corresponding classes of mutual fund units which will have the same terms as the corresponding class of the Existing Mutual Fund Units currently offered by HISA.

15. The New Mutual Fund is expected to be a reporting issuer under the applicable securities legislation in each of the Jurisdictions and subject to NI 81-102.

The Reorganization

16. The Reorganization is being undertaken in response to certain changes to the liquidity treatment of high interest savings account exchange traded funds resulting from an October 31, 2023 announcement from the Office of the Superintendent of Financial Institutions and in an effort to improve the yield for holders of the Existing Mutual Fund Units.

17. The Filer has determined that the Reorganization is in the best interest of unitholders of HISA as the Filer expects that the Reorganization will result in unitholders of the New Mutual Fund Units earning a higher yield than if they remained investors in HISA and unitholders of the Existing Mutual Fund Units.

18. The Filer intends to merge the assets attributable to the Existing Mutual Fund Units into the New Mutual Fund with the result of the Reorganization being that holders of the Existing Mutual Fund Units will cease to be unitholders of HISA and will become unitholders of the New Mutual Fund.

19. The disposition of the Existing Mutual Fund Units in connection with the Reorganization will be a taxable disposition for purposes of the Tax Act; however, due to the structure of the Reorganization, no significant tax consequences to the holders of Existing Mutual Fund Units and New Mutual Fund Units is expected to result from the Reorganization.

20. HISA will continue following the Reorganization and holders of Existing ETF Units will remain unitholders of HISA (i.e., the Existing ETF) with no changes made with respect to the Existing ETF Units.

21. The Existing ETF will only offer ETF units following the Reorganization.

22. The Reorganization is expected to have no adverse impact on the holders of the Existing ETF Units as the holders of the Existing ETF Units will remain unitholders of the Existing ETF following the Reorganization.

23. HISA will issue a press release and holders of the Existing Mutual Fund Units will receive a written notice (the **Notice**) which will describe the Reorganization and their right to redeem the Existing Mutual Fund Units prior to the close of business on the effective date of the Reorganization (the **Effective Date**) if they wish to do so. Holders of the Existing Mutual Fund Units will also be reminded of their right to redeem the New Mutual Fund Units at anytime following the Effective Date.

24. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Filer will present the terms of the Reorganization to the independent review committee of HISA (the **IRC**) for its review. The Filer will only move forward with the Reorganization if the IRC determines that the Reorganization, if implemented, will achieve a fair and reasonable result for HISA.

25. The assets of HISA to be acquired by the New Mutual Fund: (i) may be acquired by the New Mutual Fund in compliance with NI 81-102; and (ii) are acceptable to the portfolio adviser of the New Mutual Fund and are consistent with the New Mutual Fund's investment objectives.

26. The costs of effecting the Reorganization (consisting primarily of legal and regulatory fees and printing and mailing costs) will be borne by the Filer.

27. The consideration offered to holders of the Existing Mutual Fund Units will have a value that is equal to the net asset value per Existing Mutual Fund Unit calculated on the Effective Date.

28. No sales charges will be payable by the unitholders of the Existing Mutual Fund Units in connection with the Reorganization.

29. The fundamental investment objectives of the New Mutual Fund will not be changed from those of HISA and the terms of each class of the New Mutual Fund Units will be the same as the terms of the corresponding class of the Existing Mutual Fund Units.

Steps to the Proposed Reorganization

30. The specific steps to implement the Reorganization are expected to be as follows:

    (i) The Filer will amend the declaration of trust of HISA to allow the Filer to undertake the Reorganization without unitholder approval.

    (ii) The Filer will issue a press release and mail the Notice to unitholders of Existing Mutual Fund Units not less than 60 days' prior to the Effective Date. This Notice shall describe the Reorganization, the amendments made to the declaration of trust of HISA, the terms of exemptions granted by the OSC with respect to the Reorganization, the New Mutual Fund, the tax consequences of the Reorganization and various ways in which unitholders can obtain a copy of the prospectus and Fund Facts document of HISA and the New Mutual Fund and remind unitholders of the Existing Mutual Fund Units of their right to redeem their Existing Mutual Fund Units at any time prior to the close of business on the Effective Date.

    (iii) Existing Mutual Fund Units will be redeemed and exchanged for the New Mutal Fund Units of the corresponding class. The number of New Mutual Fund Units to be received will be determined by multiplying the number of the Existing Mutual Fund Units outstanding at the close of business on the Effective Date by an exchange ratio (which will be equal to the net asset value (**NAV**) per Existing Mutual Fund Unit as of the close of business on the Effective Date divided by the NAV per New Mutual Fund Unit as of the close of business on the Effective Date).

    (iv) All of the assets of HISA attributable to the Existing Mutual Fund Units notionally allocated to HISA will become assets that are notionally allocated to the New Mutual Fund.

(v) All the assets of HISA attributable to the Existing ETF Units will continue to remain assets of HISA (i.e., the Existing ETF) and the holders of the Existing ETF Units will be the sole unitholders of the Existing ETF following the Reorganization.

Pre-Approval

Securityholder Pre-Approval Criteria

31. The Reorganization satisfies the pre-approval criteria set out in section 5.3(2) of NI 81-102 (the **Securityholder Pre-Approval Criteria**) other than:

(i) The Reorganization will be implemented on a taxable basis and not as a "qualifying exchange" within the meaning of the *Income Tax Act* (Canada) (the **Tax Act**) or otherwise as a tax-deferred transaction under the Tax Act as required by subparagraph 5.3(2)(a)(iii)(B);

(ii) HISA will not be wound-up following the Reorganization as required by subparagraph 5.3(2)(a)(iii)(C), as it will continue to operate in the ordinary course of business as an exchange-traded mutual fund; and

(iii) the Filer will send the Notice to the holders of the Existing Mutual Fund Units at least 60 days prior to the Effective Date as required by paragraph 5.3(2)(a)(v).

32. Except as noted above, the Reorganization will otherwise comply with the Securityholder Pre-Approval Criteria.

Securities Regulatory Authority Criteria

33. The Reorganization satisfies the pre-approval criteria set out in section 5.6 of NI 81-102 (the **Regulatory Authority Pre-Approval Criteria**) other than:

(i) the Reorganization will be implemented on a taxable basis and not as a "qualifying exchange" within the meaning of the Tax Act or otherwise as a tax-deferred transaction under the Tax Act and while the Filer reasonably believes that the Reorganization is in the best interests of HISA despite the tax treatment of the Reorganization, the Filer proposes to include the information required by subparagraph 5.6(1)(b)(ii)(B) in a written notice (and not a circular) as the Filer will not hold a securityholder meeting to approve the Reorganization so no circular will be mailed;

(ii) HISA will not be wound-up following the Reorganization as required by subparagraph 5.6(1)(c), as it will continue to operate in the ordinary course of business as an exchange-traded mutual fund;

(iii) the Reorganization will not be approved by the securityholders of HISA as required by subparagraph 5.6(1)(e)(i); and

(iv) the information required to be included in a circular as required by subparagraph 5.6(1)(f)(i) will be included in the Notice to unitholders of the Existing Mutual Fund Units.

34. Except as noted above, the Reorganization will otherwise comply with the Regulatory Authority Pre-Approval Criteria.

Requested Relief

35. The Filer has concluded that the Reorganization is not a material change to HISA, and, accordingly, there is no intention to convene a meeting of the holders of the Existing Mutual Fund Units to approve the Reorganization pursuant to paragraph 5.1(1)(f) of NI 81-102.

36. The tax implications of the Reorganization will be described in the Notice which HISA will send to the holders of the Existing Mutual Fund Units. This Notice will allow such securityholders to make an informed decision whether to retain their Existing Mutual Fund Units through the Reorganization.

37. The Notice to unitholders of the Existing Mutual Fund Units will also describe the Reorganization, the amendments made to the declaration of trust of HISA, the terms of exemptions granted by the OSC with respect to the Reorganization, the New Mutual Fund and various ways in which unitholders can obtain a copy of the prospectus and Fund Facts document of HISA and the New Mutual Fund and remind unitholders of the Existing Mutual Fund Units of their right to redeem their Existing Mutual Fund Units at any time prior to the close of business on the Effective Date.

38. The IRC will have determined that the Reorganization, if implemented, will achieve a fair and reasonable result for HISA.

39. Without this exemptive relief order, HISA would be required to obtain the approval of the holders of the Existing Mutual Fund Units prior to effecting the Reorganization, which could cause confusion, undue expense and potential delay; notwithstanding the benefits of the Reorganization.

40. The Filer believes that the Reorganization is in the best interests of the holders of the Existing ETF Units, the Existing Mutual Fund Units and the New Mutual Fund as the Reorganization would result in the holders of Existing Mutual Fund Units being unitholders of the Continued Mutual Fund which provides an opportunity for higher yield for such unitholders.

41. The Filer has determined that it will not be prejudicial to the public interest to grant the Requested Relief.

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 Requested Approval is granted provided that:

1. the Reorganization is approved by the IRC;

2. the Filer sends the Notice to the holders of Existing Mutual Fund Units at least 60 days before the Effective Date which will include information necessary for the securityholder to understand the Reorganization, including:

    (a) a brief description of the Reorganization;

    (b) a description of the New Mutual Fund;

    (c) the IRC's determination with respect to the Reorganization;

    (d) the tax consequences of the Reorganization;

    (e) disclosure stating that holders of the Existing Mutual Fund Units will receive the corresponding class of units of the New Mutual Fund;

    (f) a statement that securityholders may obtain, free of charge, the most recent annual and interim financial statements, the current prospectus, fund facts and the most recent management report of fund performance that have been made public by contacting the Filer or by accessing the website of the Filer or SEDAR+; and

    (g) a statement that securityholder may obtain, free of charge, the prospectus and fund facts for the New Mutual Fund by contacting the Filer or by accessing the website of the Filer or SEDAR+.

"Darren McKall"
Manager, Investment Management Division
Ontario Securities Commission

Application File #: 2023/0607
SEDADR+ File #: 6059873

B.4
Cease Trading Orders

B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Quetzal Copper Corp.	June 5, 2024	June 11, 2024
Pasinex Resources Limited	June 11, 2024	
Amcomri Entertainment Inc.	June 12, 2024	
E Ventures Inc.	May 23, 2003	June 17, 2024
New Frontier Ventures Inc.	May 7, 2024	June 17, 2024
Interfield Global Software Inc.	April 8, 2024	June 17, 2024

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Pasinex Resources Limited	May 8, 2024	June 12, 2024
POSaBIT Systems Corporation	June 3, 2024	June 17, 2024

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	

Company Name	Date of Order	Date of Lapse
Payfare Inc.	April 3, 2024	
Perk Labs Inc.	April 4, 2024	
XTM Inc.	April 30, 2024	
Cybeats Technologies Corp.	April 30, 2024	
Powerband Solutions Inc.	April 30, 2024	
Organto Foods Inc.	May 8, 2024	
Magnetic North Acquisition Corp.	May 8, 2024	
Pasinex Resources Limited	May 8, 2024	June 12, 2024
Mydecine Innovations Group Inc.	May 9, 2024	
FRX Innovations Inc.	May 10, 2024	
Nickel 28 Capital Corp.	May 31, 2024	
POSaBIT Systems Corporation	June 3, 2024	June 17, 2024

B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Arrow EC Income Advantage Alternative Fund
Arrow Global Multi-Asset Alternative Fund
Arrow Long/Short Alternative Fund
Arrow Opportunities Alternative Fund
Exemplar Global Growth and Income Fund
Exemplar Growth and Income Fund
Exemplar Performance Fund
Wavefront Global Diversified Investment Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jun 7, 2024
NP 11-202 Final Receipt dated Jun 12, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06116633

Issuer Name:
TruX Exogenous Risk Pool
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated June 10, 2024
NP 11-202 Final Receipt dated Jun 14, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06074167

Issuer Name:
Purpose Ether Staking Corp. ETF
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 14, 2024
NP 11-202 Final Receipt dated Jun 14, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06133238

Issuer Name:
Forstrong Global Balanced ETF
Principal Regulator – British Columbia
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Jun 14, 2024
NP 11-202 Preliminary Receipt dated Jun 17, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06146138

Issuer Name:
Harvest Banks & Buildings Income Fund
Harvest Canadian Income & Growth Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 14, 2024
NP 11-202 Final Receipt dated Jun 14, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06132849

Issuer Name:
IA Clarington Global Equity Exposure Fund
IA Clarington Target Click 2025 Fund
IA Clarington Target Click 2030 Fund
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus dated Jun 14, 2024
NP 11-202 Final Receipt dated Jun 17, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06128268

Issuer Name:
IA Clarington Global Equity Advantage Fund
IA Clarington Global Fixed Income Advantage Fund
IA Clarington Global Macro Advantage Fund
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus dated Jun 14, 2024
NP 11-202 Final Receipt dated Jun 17, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06128296

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NON-INVESTMENT FUNDS

Issuer Name:
Solaris Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated June 10, 2024
NP 11-202 Preliminary Receipt dated June 10, 2024
Offering Price and Description:
$200,000,000 - Common Shares, Debt Securities, Subscription Receipts, Share Purchase Contracts, Units, Warrants
Filing # 06144349

Issuer Name:
Solaris Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated June 14, 2024
NP 11-202 Final Receipt dated June 14, 2024
Offering Price and Description:
$200,000,000 - Common Shares, Debt Securities, Subscription Receipts, Share Purchase Contracts, Units, Warrants
Filing # 06144349

Issuer Name:
Alpha Cognition Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated June 13, 2024
NP 11-202 Preliminary Receipt dated June 14, 2024
Offering Price and Description:
US$*
Up to * Common Shares
Up to * Pre-Funded Warrants to Purchase * Common Shares
Up to * Warrants to Purchase * Common Shares
Up to * Common Share underlying such Pre-Funded Warrants
Up to * Common Shares underlying such Warrants
Filing # 06145782

Issuer Name:
Capital Power Corporation
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated June 12, 2024
NP 11-202 Final Receipt dated June 13, 2024
Offering Price and Description:
Common Shares, Preference Shares, Subscription Receipts, Debt Securities
Filing # 06145150

Issuer Name:
Franco-Nevada Corporation
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 12, 2024
NP 11-202 Final Receipt dated June 12, 2024
Offering Price and Description:
Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts
US$2,000,000,000
Filing # 06145007

Issuer Name:
National Bank of Canada
Principal Regulator – Quebec
Type and Date:
Preliminary Shelf Prospectus dated June 10, 2024
NP 11-202 Preliminary Receipt dated June 11, 2024
Offering Price and Description:
$12,000,000,000
Medium Term Notes – Debt Securities (Unsubordinated Indebtedness)
Filing # 06144411

Issuer Name:
Agnico Eagle Mines Limited
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 10, 2024
NP 11-202 Final Receipt dated June 11, 2024
Offering Price and Description:
Common Shares, Debt Securities, Subscription Receipts, Warrants
Filing # 06144671

Issuer Name:
Treatment.com AI Inc.
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated June 10, 2024
NP 11-202 Final Receipt dated June 11, 2024
Offering Price and Description:
$10,000,000 - Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Filing # 06085620

Issuer Name:
Canadian Imperial Bank of Commerce
Principal Regulator – Ontario
Type and Date:
Amendment to Final Shelf Prospectus dated May 24, 2024
NP 11-202 Amendment Receipt dated June 11, 2024
Offering Price and Description:
Canadian Depositary Receipts
Filing # 03562020

Issuer Name:
Advantage Energy Ltd.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated June 10, 2024
NP 11-202 Final Receipt dated June 10, 2024
Offering Price and Description:
Common Shares, Preferred Shares, Warrants, Debt Securities, Subscription Receipts, Units
Filing # 06144333

Issuer Name:
First Phosphate Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 6, 2024
NP 11-202 Final Receipt dated June 10, 2024
Offering Price and Description:
$20,000,000 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06130447

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Pangaea Asset Management Inc.	Portfolio Manager and Exempt Market Dealer	June 10, 2024
New Registration	Camber Capital Corp	Portfolio Manager	June 12, 2024
Change in Registration Category	Timbercreek Investment Management Services Inc.	From: Restricted Portfolio Manager and Exempt Market Dealer To: Restricted Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	June 17, 2024
Change in Registration Category	Quintessence Wealth	From: Exempt Market Dealer, Investment Fund Manager, Portfolio Manager To: Exempt Market Dealer, Investment Fund Manager, Portfolio Manager and Commodity Trading Manager	June 17, 2024

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