The Ontario Securities Commission

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

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FOR IMMEDIATE RELEASE
July 3, 2024

MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN,
File No. 2021-32

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

A copy of the Reasons and Decision and Order both dated July 2, 2024 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
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A.2.2 Troy Richard James Hogg et al.

FOR IMMEDIATE RELEASE
July 3, 2024

TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC.,
ARBITRADE EXCHANGE INC.,
ARBITRADE LTD.,
T.J.L. PROPERTY MANAGEMENT INC. AND
GABLES HOLDINGS INC.,
File No. 2022-20

TORONTO – A case management hearing in the above-named matter is scheduled to be heard on July 25, 2024 at 10:00 a.m. by videoconference.

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

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A.2.3 Capital Markets Tribunal Rules of Procedure – Amendments

FOR IMMEDIATE RELEASE
July 5, 2024

CAPITAL MARKETS TRIBUNAL ANNOUNCES AMENDMENTS TO ITS *RULES OF PROCEDURE*

TORONTO – On July 5, 2024, the Capital Markets Tribunal adopted amendments to its *Rules of Procedure* (***Rules***), effective immediately.

Amendments to rules 21 ("Application and motion records"), 29 ("Evidence"), and 31 ("Submissions"), simplify filing requirements for parties involved in Tribunal proceedings.

The *Rules* apply to all Tribunal proceedings, including proceedings commenced prior to the issuance of this Notice.

The amended Rules are available at capitalmarketstribunal.ca/resources.

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A.2.4 Aimia Inc. and Mithaq Capital SPC

FOR IMMEDIATE RELEASE
July 8, 2024

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

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

A copy of the Reasons for Decision dated July 5, 2024 is available at capitalmarketstribunal.ca.

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A.3
Orders

A.3.1 Michael Paul Kraft and Michael Brian Stein – ss. 127(1), 127.1

IN THE MATTER OF
MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN

File No. 2021-32

Adjudicators: Andrea Burke (chair of the panel)
M. Cecilia Williams
Sandra Blake

July 2, 2024

ORDER
(Subsection 127(1) and section 127.1 of the *Securities Act,* RSO 1990, c S.5)

WHEREAS on March 4, 2024, the Capital Markets Tribunal held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the sanctions and costs that the Tribunal should impose on Michael Paul Kraft and Michael Brian Stein as a result of the findings in the Reasons and Decision on the merits issued on October 20, 2023;

ON READING the materials filed by the parties, and on hearing the submissions of the representatives for the Ontario Securities Commission and the representatives for each of Kraft and Stein;

IT IS ORDERED THAT:

1. with respect to Kraft:

   a. pursuant to paragraph 2 of subsection 127(1) of the *Securities Act* (***Act***), trading in any securities or derivatives by Kraft shall cease for a period of three years from the date of this order, except that Kraft shall be permitted to trade:

      i. mutual funds, exchange-traded funds, government bonds, and guaranteed investment certificates (**GICs**);

      ii. securities or derivatives for the account of any registered retirement savings plan (**RRSP**), registered retirement income fund (**RRIF**) and tax-free savings account (**TFSA**), as defined in the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the ***Income Tax Act***), in which Kraft has sole legal and beneficial ownership;

      iii. solely through a registered dealer in Ontario, to whom Kraft must have given a copy of this order; and

      iv. only after the amounts in subparagraphs 1(g) and 1(h) have been paid in full;

   b. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Kraft is prohibited for a period of three years from the date of this order, except that Kraft shall be permitted to acquire:

      i. mutual funds, exchange-traded funds, government bonds, and GICs;

      ii. securities for the account of any RRSP, RRIF, and TFSA, as defined in the *Income Tax Act*, in which Kraft has sole legal and beneficial ownership;

      iii. solely through a registered dealer in Ontario, to whom Kraft must have given a copy of this order; and

      iv. only after the amounts in subparagraphs 1(g) and 1(h) have been paid in full;

   c. pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Kraft for a period of three years from the date of this order;

d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the *Act*, Kraft shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the *Act*, Kraft is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of four years from the date of this order;

f. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Kraft is prohibited from becoming or acting as a registrant or as a promoter for a period of four years from the date of this order;

g. pursuant to paragraph 9 of subsection 127(1) of the *Act*, Kraft shall pay an administrative penalty in the amount of $200,000 to the Commission; and

h. pursuant to section 127.1 of the *Act*, Kraft shall pay to the Commission $150,000, for the costs of the investigation and hearing; and

2. with respect to Stein:

a. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Stein shall cease for a period of four years from the date of this order, except that Stein shall be permitted to trade:

i. mutual funds, exchange-traded funds, government bonds, and GICs;

ii. securities or derivatives for the account of any RRSP, RRIF, and TFSA, as defined in the *Income Tax Act*, in which Stein has sole legal and beneficial ownership;

iii. solely through a registered dealer in Ontario, to whom Stein must have given a copy of this order; and

iv. only after the amounts in subparagraphs 2(g) through 2(i) have been paid in full;

b. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Stein is prohibited for a period of four years from the date of this order, except that Stein shall be permitted to acquire:

i. mutual funds, exchange-traded funds, government bonds, and GICs;

ii. securities for the account of any RRSP, RRIF, and TFSA, as defined in the *Income Tax Act*, in which Stein has sole legal and beneficial ownership;

iii. solely through a registered dealer in Ontario, to whom Stein must have given a copy of this order; and

iv. only after the amounts in subparagraphs 2(g) through 2(i) have been paid in full;

c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Stein for a period of four years from the date of this order;

d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Stein shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Stein is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of three years from the date of this order;

f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Stein is prohibited from becoming or acting as a registrant or as a promoter for a period of three years from the date of this order;

g. pursuant to paragraph 9 of subsection 127(1) of the Act, Stein shall pay an administrative penalty of $150,000 to the Commission;

h. pursuant to paragraph 10 of subsection 127(1) of the Act, Stein shall disgorge to the Commission the amount of $29,345; and

i. pursuant to section 127.1 of the Act, Stein shall pay to the Commission $50,000, for the costs of the investigation and proceeding.

“Andrea Burke”

“M. Cecilia Williams”

“Sandra Blake”

A.4
Reasons and Decisions

A.4.1 Michael Paul Kraft and Michael Brian Stein – ss. 127(1), 127.1

Citation: *Kraft (Re)*, 2024 ONCMT 16
Date: 2024-07-02
File No. 2021-32

IN THE MATTER OF
MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN

REASONS AND DECISION
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Andrea Burke (chair of the panel) M. Cecilia Williams Sandra Blake	
Hearing:	March 4, 2024; final written submissions received March 22, 2024	
Appearances:	Alvin Qian	For the Ontario Securities Commission
	David A. Hausman Jonathan Wansbrough	For Michael Paul Kraft
	Lawrence Ritchie Marleigh Dick	For Michael Brian Stein

REASONS AND DECISION

1. OVERVIEW

[1] In a decision on the merits dated October 20, 2023 (the **Merits Decision**),[1] we found that the respondents breached the *Securities Act*[2] (the ***Act***) – Michael Paul Kraft by engaging in illegal tipping, and Michael Brian Stein by engaging in insider trading.

[2] Kraft, who was the Chairman and director of WeedMD Inc. (**WeedMD**), provided Stein, his long-time friend and business associate, with material non-public information (**MNPI**) in the form of draft documents related to a planned expansion transaction with Perfect Pick Farms Ltd. (**Perfect Pick**), in breach of s. 76(2) of the *Act*. Stein then traded shares of WeedMD while in possession of the MNPI, in breach of s. 76(1) of the *Act*.

[3] The Ontario Securities Commission asks that we impose sanctions against the respondents under s. 127(1) of the *Act*, and that we order them to pay a portion of the Commission's costs of the investigation and this proceeding.

[4] For the reasons set out below, we conclude it is in the public interest to order:

a. with respect to Kraft:

i. director and officer bans for a period of four years;

ii. trading bans for a period of three years (with certain carve-outs);

iii. an administrative penalty of $200,000; and

iv. costs in the amount of $150,000; and

[1] *Kraft (Re)*, 2023 ONCMT 36
[2] RSO 1990, c S.5

b. with respect to Stein:

i. director and officer bans for a period of three years;

ii. trading bans for a period of four years (with certain carve-outs);

iii. an administrative penalty of $150,000;

iv. disgorgement of $29,345; and

v. costs in the amount of $50,000.

2. BACKGROUND

[5] The Commission alleged that Kraft tipped Stein on two occasions – once by providing Stein with draft documents related to the Perfect Pick expansion transaction and again by advising Stein of the date of the announcement of the transaction. We found in the Merits Decision that Kraft did indeed tip Stein by providing him with the draft documents but did not find that Kraft advised Stein of the announcement date.

[6] During the merits hearing, Kraft argued that his selective disclosure of the draft documents to Stein was made in the "necessary course of business" (**NCOB**), an exception to the prohibition against illegal tipping. We found that Kraft could not rely on the NCOB exception.

[7] Kraft also brought a challenge to the constitutionality of the tipping provision (s. 76(2)) of the *Act*. We found that s. 76(2) infringes the s. 2(b) freedom of expression right under the *Canadian Charter of Rights and Freedoms* (***Charter***)[3], but the infringement is justified under s. 1 of the *Charter* and dismissed Kraft's challenge.

[8] We also found that Stein traded shares of WeedMD while in the possession of MNPI resulting in a profit of $29,345.

3. PRELIMINARY ISSUE – CONFIDENTIALITY OF STEIN'S SANCTIONS MATERIALS

[9] When he filed his materials for the sanctions and costs hearing, Stein asked that certain portions of his materials be kept confidential and not made available to the public because they included information about his health and personal circumstances.

[10] The Commission took issue with the breadth of the proposed confidentiality redactions.

[11] We advised the parties that we were prepared to consider Stein's confidentiality request in advance of the hearing. After considering written submissions from Stein and the Commission, we issued an order[4] with reasons to follow. We allowed some, but not all, of the redactions proposed by Stein. These are our reasons for that decision.

[12] Written submissions filed in a proceeding and any document admitted as evidence or relied upon by a panel in making a decision, are adjudicative records. They are available to the public upon request, unless a panel orders otherwise.

[13] Under s. 2(1) of the *Tribunal Adjudicative Records Act, 2019*[5] and rule 22 of the *Capital Markets Tribunal Rules of Procedure and Forms* (the rules that were in place at the time Stein's request was heard and decided), the Tribunal may order that all or part of an adjudicative record be kept confidential and not be disclosed to the public if, among other things, avoiding disclosure of intimate financial or personal matters outweighs adherence to the principle that the record should be available to the public.

[14] Stein submitted that the portions of his materials he asked be kept confidential were limited to highly sensitive information about his health, medical, personal and family circumstances. He submitted that the information was relevant to determining appropriate sanctions and should be considered by the Tribunal.

[15] The Commission did not oppose Stein's request that a doctor's letter contained in Stein's affidavit be treated as confidential because the letter had, in the Commission's view, little bearing on the appropriate sanctions.

[16] The Commission opposed some of the other redactions proposed by Stein because they did not involve particularized details of Stein's personal circumstances and health issues and therefore did not satisfy the requirements set out by the Supreme Court in *Sherman Estate v Donovan,*[6] as adopted in a number of decisions of this Tribunal.[7] *Sherman Estate* requires the person who is seeking a confidentiality order to establish that: court openness poses a serious risk to an

3 *Canadian Charter of Rights and Freedoms* (***Charter***), s.2(b), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11
4 (2024) 47 OSCB 1737
5 SO 2019 c 7, Sched 60
6 2021 SCC 25 (***Sherman Estate***)
7 See, for example, *Odorico (Re)*, 2023 ONCMT 34 and *Go-To Development Holdings Inc (Re)*, 2023 ONCMT 44 (***Go-To Development***)

important public interest; the order sought is necessary to prevent this serious risk; and the benefits of the order outweigh its negative effects.[8] An individual must establish that there is a serious risk that, without such an exceptional order, the affected individual will suffer an affront to their dignity.[9]

[17] We agreed with the Commission that some of Stein's proposed redactions to his materials were not sufficiently particularized to warrant treating them as confidential. We did not agree with the Commission that information should be treated as confidential simply because it is deemed irrelevant to the issues at hand.

[18] Consistent with the approach taken in other Tribunal decisions,[10] we decided to allow confidentiality redactions to Stein's materials in the public record pertaining to specific symptoms, diagnoses and medical treatment. This approach strikes the appropriate balance between preserving Stein's dignity and the public interest in having open hearings. We ordered Stein to file revised versions of his redacted materials consistent with our ruling in advance of the hearing on March 4, 2024.

4. SANCTIONS AND COSTS ANALYSIS

4.1 Introduction

[19] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds it to be in the public interest to do so. The Tribunal's exercise of this jurisdiction must be consistent with the purposes of the *Act*, which include protecting investors from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in the capital markets.[11]

[20] Sanctions are protective and are intended to prevent future harm to investors and to the capital markets.[12]

[21] In this case, the Commission seeks the following sanctions and costs:

a. as against Kraft:

   i. 10-year restrictions from participating in the capital markets (with carve-outs);

   ii. a $200,000 administrative penalty; and

   iii. costs of $150,000; and

b. as against Stein:

   i. 8-year restrictions from participating in the capital markets (with similar carve-outs);

   ii. a $150,000 administrative penalty;

   iii. disgorgement of $29,345; and

   iv. costs of $50,000.

[22] Kraft contests all the sanctions the Commission is requesting. He submits that no market participation bans are warranted, proposes a modest administrative penalty of $25,000 and a significant reduction to the proposed costs order.

[23] Stein consents to the disgorgement and costs orders that the Commission has requested. He submits that the market participation bans and administrative penalty sought by the Commission are excessive and proposes shorter market participation bans (and additional carve-outs), an administrative penalty of $50,000 and a reprimand.

[24] Below we address each of the requested sanctions and costs orders in turn. We begin with a discussion of well-established sanctioning factors[13] that apply to the respondents in this case.

[25] In addition to specific and general deterrence, the primary factors raised by the parties for our consideration are the seriousness of the misconduct, the respondents' experience in the marketplace and the impact of the requested sanctions on the respondents' livelihoods. Additionally, we considered the size of the profit earned from the wrongdoing, whether the violations were isolated or recurrent and the Commission's submission that the misconduct involved a betrayal of

8 *Sherman Estate* at para 38
9 *Sherman Estate* at para 35
10 *Go-To Development* at para 54; *Ali (Re)*, 2023 ONCMT 30 at para 53 and *Odorico (Re)*, 2023 ONCMT 10 at para 43
11 *Act*, s.1.1
12 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43
13 *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 (***Belteco***) at 7746

trust. We also considered potential mitigating factors including whether the respondents accepted responsibility for the misconduct.

4.2 Sanctioning factors

4.2.1 Seriousness of the misconduct

[26] The Tribunal has previously described insider trading as "one of the most serious diseases our capital markets face" and "a cancer that erodes public confidence in the capital markets".[14] Tipping is also generally viewed as "equally reprehensible" as insider trading.[15]

[27] Both tipping and insider trading are recognized as serious threats to the *Act*'s objectives of investor protection and the fostering of fair and efficient capital markets and confidence in them.[16]

[28] Kraft submits that the Commission relies heavily on the seriousness of tipping in general but fails to address the nuances of the single act of selective disclosure in this case. He submits that this case is unlike other tipping cases where respondents' selective disclosure is deliberate, unethical and done for improper personal or professional advantage or to allow friends and family to profit, rather than for a genuine corporate purpose.

[29] In contrast, Kraft submits he was careless on a single occasion. He also submits that he was acting within his authority at WeedMD, there were no prior Tribunal authorities providing guidance on the availability of the NCOB exception, and he had every expectation that Stein would keep the information shared with him confidential.

[30] Stein submits that our finding that he engaged in a single breach of s.76(1) of the *Act* was an isolated set of circumstances for him and we should recognize that the Commission's more serious allegation (namely, that Kraft tipped Stein as to the date and content of the announcement) was dismissed. Stein submits that he did not act maliciously, dishonestly or with any corrupt intention, nor was there any finding that he "deliberately" made use of the MNPI. Further, Kraft did not ask Stein to keep the information confidential and did not give Stein any specific direction about what use he could make of the information. Stein submits his trading while in possession of MNPI was, at worst, ill-advised.

[31] The Commission submits that the respondents have not acknowledged the seriousness of their misconduct and have made several attempts in their submissions to minimize the nature of their misconduct.

[32] The Commission also submits that Kraft's misconduct is not unique or qualitatively different than many other instances of tipping that the Tribunal has addressed in the past. The Merits Decision found that Kraft's disclosure of MNPI was for personal reasons, rather than a genuine corporate purpose. The Commission further submits that intent or deliberate use of MNPI is not a relevant consideration under s. 76(1) of the *Act.*

[33] In line with Tribunal decisions involving tipping and insider trading, we find that the misconduct of both respondents was serious, although we have considered that their violations were isolated acts and the profit Stein earned from his trading was not significant.

[34] We agree that Kraft's misconduct was a single act of tipping and was not motivated by personal or professional advantage or a desire to permit Stein to profit through insider trading.[17] As such, his misconduct was qualitatively different than the misconduct in some other cases involving tipping where the respondents are motivated by personal or professional or other advantage.

[35] We find that Kraft's misconduct was nevertheless serious. Kraft's tip to Stein was deliberate, and not done in error. Kraft did not turn his mind to whether the disclosure was in the necessary course of business. Kraft's misconduct would have been less egregious had he considered whether sharing the information with Stein was in the necessary course of business and made an error rather than the circumstances before us.

[36] That there were no prior Tribunal decisions providing guidance on the NCOB exception is irrelevant, especially given our finding in the Merits Decision that Kraft did not turn his mind to the NCOB exception. Kraft's expectation that Stein would keep the information confidential is also irrelevant.

[37] That Kraft did not ask Stein to keep the tipped information confidential does not diminish the seriousness of Stein's misconduct. Given our finding in the Merits Decision that Stein was likely aware the information about the Perfect Pick expansion was MNPI, we do not accept his submission that he did not "deliberately" use the MNPI. He did trade while in possession of MNPI.

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14 *Suman (Re)*, 2012 ONSEC 29 (***Suman***) at para 33
15 *Suman* at para 32
16 2023 ONCMT 4 (***Kitmitto***) at para 14
17 Merits Decision at paras 280, 299-300, 305-308 and 312

4.2.2 Respondents' experience in the capital markets

[38] The respondents have significant experience in the capital markets.

[39] In addition to his role with WeedMD, Kraft has been a director of several other public issuers. Stein has actively traded stock of public companies for over 30 years and has advised both private and public companies on matters related to acquisitions, divestitures, financings and reorganizations for over 35 years. Stein has been an officer and director of public and private companies.

[40] The Commission submits that given the respondents' significant experience in the capital markets, the respondents knew or ought to have known the wrongful nature of insider tipping and trading.

[41] Kraft submits that his extensive experience in the capital markets should have no bearing on his sanctions because the NCOB exception has never previously been considered by the Tribunal. Had he had the benefit of such guidance, he very likely may have conducted himself differently. We do not find this argument persuasive because, as we note above, we found in the Merits Decision that Kraft never turned his mind to whether the NCOB exception applied to his selective disclosure.

[42] Stein submits that while he is a sophisticated trader of public securities and has served as a corporate director of companies throughout his career, he has never been a registrant and it is registrants who have been held to a higher standard by the Tribunal.

[43] Neither of the respondents is a registrant. But it is not only registrants who are held to a higher standard. More generally, the Tribunal has found that "more is expected of directors and officers who have superior qualifications, such as experienced businesspeople, and more is expected of inside directors, who have much greater involvement in corporate decision making and much greater access to corporate information".[18]

[44] Both Kraft and Stein stressed their significant experience in the capital markets. Yet, each asks us not to give much weight to that experience when considering their sanctions. We reject that approach. While neither was a registrant, both have significant experience in the capital markets and as such more is expected of them.

[45] Both respondents also emphasize that they have not been found to have contravened securities legislation during their lengthy careers in the capital markets. We do not find this fact to be a mitigating or significant factor. Compliance with the law is expected, particularly from those who are experienced.

4.2.3 Betrayal of trust

[46] Although evidence of a betrayal of trust underlying the misconduct is not one of the enumerated sanctions factors in *Belteco*[19], that list is non-exhaustive. The Commission asks us to consider this as an aggravating factor.

[47] The Commission submits that Kraft held an elevated position of trust when he obtained MNPI in his capacity as Chairman and director of WeedMD and that he betrayed that position of trust by disclosing the MNPI to Stein. Likewise, the Commission submits that by trading in shares of WeedMD while in possession of MNPI, Stein betrayed Kraft's trust in him.

[48] The respondents submit that betrayal of trust was not a finding made in the Merits Decision. Moreover, Kraft submits that the allegation that he breached his loyalty to WeedMD is without merit as he had every expectation that Stein would keep the information disclosed in confidence.

[49] Stein submits that his position is not analogous to a registrant or a director and officer. He was acting as a friend and business colleague, was not asked to keep the information confidential, and had no relationship with WeedMD.

[50] We did not find a betrayal of trust by Kraft or Stein in the Merits Decision. We are not persuaded that we should do so now.

4.2.4 Effect of sanctions on livelihood of the respondents

[51] Kraft and Stein both submit that the sanctions requested by the Commission, particularly the proposed trading and director and officer bans, would significantly and disproportionately impact them.

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18 *Coventree Inc (Re)*, 2011 ONSEC 38 (***Coventree***) at para 769

19 *Belteco* at 7746

[52] Kraft is 60 years old. He has been making a living as a director and officer and consultant to small cap companies. Remuneration for such roles is often in the form of shares in those companies. Kraft submits that the sanctions the Commission seeks would destroy his career.

[53] Stein is 64 years old and is experiencing significant personal, health and family issues, which are limiting his ability to earn a living. In addition to being a consultant, an active trader of public securities and a director of public and private companies for much of his life, he is also a director of his and his children's consulting companies and the director of a company that holds real estate investments and trading accounts for a family trust. He has sole trading authority for that company. Stein submits that the sanctions the Commission seeks would essentially strip him of his ability to earn a livelihood, likely for the remainder of his life.

[54] The Commission submits that neither respondent provided evidence to demonstrate that the Commission's requested sanctions will have a significant impact on their livelihoods. Neither respondent provided evidence about what they are earning from director and officer positions or about other income sources. Therefore, the Commission submits the evidentiary record is insufficient to support conclusions about the impact of the requested sanctions on their livelihoods.

[55] The Commission further submits that it would send the wrong message to impose more lenient sanctions to those occupying privileged positions as directors and officers. Since the misconduct occurred while Kraft was acting in a director and officer role at WeedMD, the sanctions should be greater, rather than lesser.

[56] Neither respondent submits that he is financially unable to pay the sanctions sought by the Commission and therefore ability to pay does not factor into our decision. Rather, their submissions focus on their continued ability to work in the capital markets in a meaningful capacity, as they have done for most of their professional careers. We do recognize that the market participation bans the Commission is seeking will have a significant impact on the respondents who have focused their careers in the capital markets.

4.2.5 Mitigating factors

[57] We have already addressed the respondents' lack of any prior disciplinary history.

[58] As further mitigating factors, both the respondents submit that:

a. they cooperated fully in the Commission's investigation and acted responsibly in the conduct of their defences in this proceeding;

b. they have both acknowledged their misconduct. We took this submission to mean that they have taken responsibility for their misconduct; and

c. they acted responsibly by resigning from positions held as officers and directors and have not taken on any new positions (with one exception for Kraft who has a volunteer director position on a charitable board after making full prior disclosure of this proceeding).

[59] Kraft also submits that the fact that his misconduct was not unethical and did not involve moral turpitude (a grave violation of a community standard) is another mitigating factor.

[60] Stein submits that his significant personal, health and family circumstances have impacted his daily life and are another mitigating factor to consider. They have led to his career taking a back seat and to a significant reduction in his personal trading. His activity in the capital markets is greatly reduced due to these circumstances.

[61] The Commission submits that we should not attach much, if any, weight to these factors.

[62] Regarding cooperation, the Commission submits that both respondents vigorously defended the allegations made against them. Kraft also added to the complexity of the proceeding by seeking to adduce expert evidence and by bringing a *Charter* challenge that was dismissed. The respondents are entitled to make full answer and defence, but they are not entitled to receive credit for cooperation.

[63] We accept the respondents' submissions that there was regular and constructive communication between them and the Commission throughout the proceeding. However, that is as should be expected. We are not aware of anything out of the ordinary that contributed significantly to the efficiency of the proceeding or that entails behaviour that warrants credit for cooperation. We give this factor little weight in determining sanctions.

[64] Likewise, we give little weight to the fact that both Kraft and Stein have resigned from public director and officer positions. Even if these resignations were voluntary, we find that given the required public disclosure, there is pressure to resign from such positions when faced with allegations of breaches of the *Act.* As a practical matter, allegations of the sort

raised in this proceeding against the respondents do most often result in resignations. We do not find the resignations, despite their characterization as voluntary, to be a mitigating factor.

[65] The Commission submits that Kraft's statement in a letter to the Tribunal that "he could have been more careful and put more structure around [the] disclosure" he made to Stein falls short of an acknowledgement of misconduct.

[66] Kraft submits that there is little for him to be contrite about. We find that Kraft's statement in his letter to the Tribunal is not a true acceptance of responsibility or expression of regret for his misconduct, and therefore not a mitigating factor.

[67] Regarding Stein, the Commission submits that his statement recognizing that his decision to trade WeedMD shares was "ill-advised and an error in judgment" rings hollow when considered with the Merits Decision findings.

[68] We are not satisfied that Stein has fully accepted responsibility for his misconduct. His acknowledgment of wrongdoing downplays his serious misconduct to an "error in judgment". It was more than that. We do not find this to be a mitigating factor.

[69] We conclude above that Kraft's misconduct was not motivated by personal or professional advantage or a desire to permit Stein to profit through insider trading. As such, we agree with Kraft's submission that his misconduct was not inherently unethical or based on moral turpitude. While this does not diminish the seriousness of his misconduct, we consider it to be a mitigating factor that we have considered in determining the length of market participation bans.

[70] While we are sympathetic to Stein's difficult personal circumstances, we have not given them any weight as a mitigating factor in sanctions. His personal circumstances arose after the misconduct in question, and it is not suggested that they explain, account for or excuse his misconduct in any way. He also does not submit that his personal circumstances translate into an inability to comply with any sanctions (for example, a financial inability to pay any administrative penalty or cost award).

4.2.6 Specific and general deterrence

4.2.6.a Kraft

[71] Kraft devoted much of his sanctions submissions to what impact, if any, specific and general deterrence should have on sanctions in this case. Kraft submits that the Commission is focused on the violation. It is looking at insider tipping and trading and then a "menu" of sanctions taken from prior cases. In contrast, Kraft submits that in the cases cited by the Commission the conduct differs significantly from the circumstances of this case. Kraft urges the Tribunal to be agnostic as to the nature of the violation, and base sanctions on the conduct. Kraft submits that, as stated in *Azeff*, it is not appropriate to slavishly follow prior cases and adjust sanctions.[20]

[72] Kraft submits that in this case there is one act of carelessness and no recidivism. There is no indication that he will act this way again. Indeed, he has stated that he will use greater care in the future. Consequently, specific deterrence is not an important factor.

[73] The Commission submits that specific deterrence is an important factor. The Commission submits that it provided Kraft with an opportunity to admit that he was careless during the merits hearing and he would not do so. In fact, at the merits hearing, Kraft's testimony made it clear that he considers himself to be an experienced director and officer in the capital markets and "no one tells [him] what is necessary, [he] make[s] [his] own decisions and [he] make[s] [his] own judgments".

[74] While Kraft has stated that he will use more care when considering selective disclosure in the future, he also stated that there is little here for him to be contrite about. We conclude that specific deterrence is a relevant factor for Kraft as a result.

[75] As for general deterrence, the Commission submits that the Tribunal should take this opportunity to send the general message that directors and officers like Kraft must treat MNPI with the utmost care and only selectively disclose MNPI when necessary. The Commission submits that to send that message the sanctions in this hearing cannot be seen as merely a "cost of doing business".

[76] Kraft submits that given the extensive public attention to the Merits Decision in this matter, and particularly the public interest in its consideration of the NCOB exception, there is no need to send a message to "the street" through sanctions. However, Kraft also submits that conveying MNPI without the required degree of care probably happens more often than we know. Indeed, this case only came to the Tribunal because there was illegal insider trading based on the tip.

[77] We are not persuaded that the public interest in the guidance provided in the Merits Decision about the NCOB exemption negates the need for sanctioning here to achieve general deterrence. As we have noted, Kraft did not turn his mind to whether the exemption was available. The fact that the Tribunal will not tolerate directors' and officers' careless

[20] *Azeff* at para 10

mishandling of MNPI and the fact that such misconduct is serious, is an important message for the street. If Kraft's submission that the careless sharing of MNPI happens every single day is accurate, the need for general deterrence is heightened.

4.2.6.b Stein

[78] Stein submits that because his trading has decreased significantly and he is less focussed on his career, the risk to the capital markets is greatly reduced.

[79] The Commission submits that despite Stein's health challenges and personal circumstances, it is clear he intends to continue trading in securities and act in roles that would continue to give him access to MNPI. Stein requests significant carve-outs to trading and acquisition bans (discussed in more detail below) and he is still engaged in his consulting business to public and private companies. Both activities would pose significant risks of future harm and warrant significant sanctions.

[80] We are satisfied that specific deterrence has an important role in Stein's sanctions. The Tribunal found that Stein likely knew that he possessed MNPI about the Perfect Pick transaction. This raises concerns about his future behaviour.

[81] Regarding general deterrence, Stein submits that our decision can make it clear to the market that limited sanctions are being ordered against Stein because of his unique circumstances and other mitigating circumstances. In other words, that general deterrence should not be a particular focus, because Stein's circumstances are unique. Because he was not found to have acted on a tip on the announcement of the Perfect Pick transaction, he poses less of a risk than someone who deliberately used MNPI for their own benefit.

[82] We do not agree, and we believe that sanctions that will generally deter behaviour such as his are important.

4.3 Market participation bans

4.3.1 Introduction

[83] The Commission asks that we impose orders restricting the respondents' participation in the capital markets to protect investors and the capital markets generally. Specifically, the Commission asks for an order that:

a. trading in any securities or derivatives by Kraft cease for a period of 10-years, and by Stein for a period of 8-years;

b. the acquisition of any securities by Kraft cease for a period of 10-years, and by Stein for a period of 8-years;

c. any exemptions contained in Ontario securities law do not apply to Kraft for 10-years, and to Stein for 8-years;

d. Kraft and Stein resign from any positions they hold as directors or officers of an issuer or registrant;

e. Kraft cease becoming or acting as a director or officer of any issuer or registrant for 10-years, and Stein for a period of 8-years; and

f. Kraft cease becoming or acting as a registrant or as a promoter for a period of 10-years; and Stein for a period of 8-years.

[84] The Commission proposes identical trading ban carve-outs for Kraft and Stein. Both respondents object to the proposed trading and market participation bans – Kraft submitting that no bans are needed, and Stein submitting that a shorter trading ban more limited in scope, with no director and officer bans, is appropriate. Should market participation bans be imposed, both respondents propose various additional carve-outs.

[85] We find that trading bans, director and officer bans, registrant and promoter bans are warranted against the respondents, but for shorter time periods than those proposed by the Commission. We also find that the exemptions under Ontario securities laws should not apply to the respondents. In so finding, we have considered the serious nature of the misconduct. We have also considered the limited market impact of the breach, the circumstances of the respondents, including their ages, the significant effect such bans would have on Kraft's and Stein's livelihoods, and the fact that Kraft's misconduct was not inherently unethical or based on moral turpitude.

[86] We acknowledge the public interest in tying sanctions closely to the breach and have reflected this principle in determining appropriate market participation bans. We balanced this interest against the fact that participating in the capital markets is a privilege, not a right.[21]

[21] *Glen & Christine Erikson v OSC*, 2003 CanLII 2451 (Div Ct) at para 55

4.3.2 Kraft

[87] The Commission submits that the 10-year market participation bans requested against Kraft are consistent with precedent tipping cases before the Tribunal, including, 10-year bans ordered against Madj Kitmitto in *Kitmitto*[22] and Mitchell Finkelstein in *Azeff*,[23] and permanent bans against Eda Marie Agueci in *Agueci*[24] and Shane Suman in *Suman*.[25]

[88] Kraft submits that no bans are needed in this case to achieve the Tribunal's goals of general and specific deterrence. Kraft takes issue with the specific terms requested by the Commission in its draft order and argues that it only serves to punish him. Alternatively, Kraft submits that if bans were to be imposed, they should be subject to various carve-outs. We address carve-outs separately below.

[89] Kraft further submits that a trading ban is inappropriate because Kraft's misconduct here did not involve any trading and that not imposing a trading ban would be consistent with the approach taken with respondents Cornish and Tai in *Coventree*.

[90] The Tribunal in *Coventree* does not explain why trading bans were not imposed on Cornish and Tai. The reasons merely state that it was not "necessary in the circumstances…in order to protect investors or our capital markets from their future conduct."[26] We distinguish *Coventree*. The substance of the breaches of the *Act* in that case was the failure to make timely public disclosure of two material changes, and the consequent failure to file the required reports regarding those changes. Cornish and Tai were found to play a significant role in those breaches by authorizing, permitted or acquiescing in Coventree's failures to disclose.

[91] While timely and accurate disclosure is a cornerstone of the regulatory framework, insider tipping is considered one of the most serious breaches of the *Act*. Kraft intentionally tipped Stein about the MNPI. We conclude, having regard to the fact that participation in the capital markets is a privilege and not a right, that notwithstanding that Kraft's breach did not involve any trading, trading bans are necessary to protect the capital markets.

[92] We do not propose further carve-outs from those already proposed by the Commission as set out in our reasons below. Considering Kraft's role in the capital markets and his specific circumstances, we find that a 4-year director and officer ban and a 3-year trading ban are appropriate. We differentiate the length of the director and officer ban from the trading ban to reflect that Kraft's misconduct directly engaged his role as an officer and director. The 4- and 3-year bans appropriately balance the seriousness of Kraft's breach with the mitigating fact that it was one tip that did not involve moral turpitude and the potentially disproportionate impact that lengthier market conduct bans will have on Kraft. The circumstances do not warrant the impact that the Commission's proposed 10-year bans would likely have had.

4.3.3 Stein

[93] The Commission submits that the 8-year market participation bans requested against Stein are consistent with applicable precedents, including, 8-year bans ordered against Trevor Rosborough in *Rosborough (Re),*[27] 10-year bans ordered against Paul Azeff and Korin Bobrow in *Azeff*,[28] 15-year bans ordered against Kimberley Stephany in *Agueci*[29] and permanent bans ordered against Constance Anderson in *Anderson (Re).*[30]

[94] Stein submits that a limited trading and acquisition ban (of no more than two years), subject to certain additional carve-outs is an appropriate, fair and proportionate sanction.

[95] Stein also submits that a director and officer and registrant ban is unwarranted because the misconduct was not carried out in his capacity as an officer or director, and he is not a registrant. In other words, Stein submits that there is an insufficient nexus between these proposed bans and his misconduct. Stein cited a decision of this Tribunal approving the settlement of an insider trading case where no director and officer bans were ordered.[31]

[96] Alternatively, Stein submits that if we are inclined to impose a director and officer ban, it should be subject to further carve-outs and apply for no more than two years. In addition, Stein proposes a "time served" approach to any director and officer bans, *i.e.*, any ban should be deemed to have been effective as of October 2021 when Stein resigned from the directorships of public companies and the date that he was advised that he would require written approval from the TSX if he proposed to have further involvement with exchange-listed issuers.

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22 *Kitmitto* at para 39
23 *Azeff* at para 29
24 *Agueci (Re)*, 2015 ONSEC 19 (***Agueci***) at para 25
25 *Suman (Re)*, 2012 ONSEC 29 at para 53(a)
26 *Coventree* at para 76
27 2021 ONSEC 20 at paras 6(a) and 20
28 *Azeff* at para 29
29 *Agueci* at para 70
30 (2015) 38 OSCB 4510
31 *Schloen (Re)*, (2014) 37 OSCB 4157

[97] The Commission submits that the sanctions proposed by Stein are not sufficient and contain broad carve-outs to the trading and acquisition prohibitions that render the prohibitions meaningless. The Commission also submits that Stein's "time served" approach to the director and officer bans should be rejected given the lack of precedent in support and the fact that in practice, it means the ban will have lapsed by the time our sanctions order is even imposed.

[98] As set out in our reasons below, we are not persuaded that further carve-outs for trading are warranted. We also do not accept Stein's submission that a director and officer ban is not warranted. While Stein's misconduct did not directly engage him in his capacity as a director and officer, participation in the capital markets is a privilege and not a right. Further, we recognize that any continued role as a director and officer may expose him to MNPI.

[99] We also do not accept Stein's "time served" submission, which would effectively mean that our sanction will have lapsed prior to the sanction being imposed, rendering it meaningless. We find that a 3-year director and officer ban and a 4-year trading ban are appropriate. We differentiate the length of the director and officer ban from the trading ban to reflect that Stein's misconduct directly relates to trading. We conclude that the 3- and 4-year bans are an appropriate balance of the seriousness of Stein's breach and the potentially disproportionate impact that a lengthier ban would have had on his livelihood. The circumstances do not warrant the impact that the Commission's proposed 8-year bans would likely have had.

4.3.4 Further market participation ban carve-outs are not appropriate

[100] The carve-outs proposed by the Commission would allow Kraft and Stein to trade and acquire mutual funds, exchange-traded funds, government bonds and guaranteed investment certificates (**GICs**) in any type of account, and both securities and derivatives in certain registered accounts (*i.e.* RRSP, RRIF and TFSA accounts) in which they are the sole legal and beneficial owners. The proposed carve-outs would not take effect until all monetary sanctions and costs are paid and all the proposed carve-outs are subject to the trades and acquisitions occurring through a registered dealer in Ontario to whom Kraft and Stein must have given a copy of our order.

[101] Kraft submits that the Commission's requested trading bans are overly broad or harsh because they capture securities of private companies including personal holding companies, securities of reporting issuers of which Kraft is not an insider, securities acquired by Kraft as part of an employee stock option plan, and all exemptions under Ontario securities law without a basis for the wide scope. He submits that the other proposed bans are overbroad because they extend to all issuers, rather than reporting issuers, which he submits is inconsistent with precedent orders and activities as a promoter, because that can capture a broad scope of activities in relation to any company.

[102] The additional carve-outs proposed by Kraft are:

a. that trading and acquisition restrictions be limited to securities of reporting issuers of which he is not an insider,

b. that he should also be permitted to trade (in accordance with an automatic securities disposition plan) and acquire securities from employee stock option and other similar plans awarded as compensation to him for consulting and other services,

c. that he should be permitted to avail himself of any exemptions contained in Ontario securities laws,

d. that any director and officer ban should only apply to reporting issuers and also should exclude a single reporting issuer that he previously founded, and

e. there should not be a promoter ban.

[103] Stein submits that he should be permitted to continue to direct trading for a private company that is owned by a family trust of which he is one of the trustees and beneficiaries. More specifically, Stein wants to be permitted without restriction to direct the acquisition and sale by the company of investments that are not shares of reporting issuers, and he wants to be able to direct the company's sale of shares of reporting issuers with the Commission's prior consent. He submits that there is no danger of such activity involving MNPI. He also wants no restriction on his ability to sell shares held in any account for a period of 30 days after our sanctions decision is issued. Stein also submits that GICs are not securities and further seeks an additional carve-out for trading and acquiring GICs, such that this would not have to be done through a registered dealer.

[104] The Commission submits that the carve-outs it has proposed are generous. The Commission submits that Kraft's proposed additional carve-outs all amount to attempts to continue the privilege of participating in the capital markets and that, as is evident from past cases, the Tribunal frequently takes away such privilege in cases of insider trading and tipping. The Commission also submits that the breadth of Stein's requested carve-outs are unprecedented and would make any trading and acquisition ban effectively meaningless. The Commission also objects to Stein's proposal that the Commission could pre-screen trades in shares of reporting issuers.

[105] We are not persuaded that further carve-outs for trading are warranted for either Kraft or Stein. Nor are we persuaded that Kraft's additional proposed carve-outs around exemptions under Ontario securities laws, and director and officer and promoter bans are appropriate. We received no submissions about the practical outcome of the various additional proposed carve-outs which go beyond precedent orders in other insider tipping and trading cases. It is not possible for us to foresee all the unintended consequences of the respondents' additional proposed carve-outs. For example, a private issuer may enter into a merger and acquisition agreement with a public company, resulting in exposure to MNPI. Many of Kraft's submissions raised issues about the nature and scope of carve-outs. Without more robust submissions and evidence about the practical impact of the proposals we are not persuaded they are appropriate.

[106] We find that the scope of both respondents' requested carve-outs would render the trading ban meaningless. We are also not prepared to make an order, over the Commission's objection, requiring it to review and pre-screen trades as Stein proposes. Significant time has passed to allow Stein to make alternative arrangements for trading in the accounts of the private company that is owned by his family trust. We are also not inclined to grant Stein's request for an additional 30 days from the date of our order before the trading ban becomes operative. Stein has had sufficient time to put his affairs in order. Stein provided no authority for his submission that GICs are not securities and we are not prepared to exclude GICs from the order.

4.4 Administrative penalties

4.4.1 Introduction

[107] The Commission seeks administrative penalties of $200,000 against Kraft and $150,000 against Stein.

[108] Paragraph 9 of s. 127(1) of the *Act* provides that if a person or company has not complied with Ontario securities law, the Tribunal may require the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

[109] There is no formula for determining the quantum of an administrative penalty. Factors to consider in determining an appropriate administrative penalty include: the seriousness of the misconduct; whether there were multiple or repeated breaches of the *Act*; whether the respondent realized any profit because of their misconduct; the level of administrative penalties imposed in other cases; and the past and present circumstances of the respondent.[32]

[110] When ordering administrative penalties, the Tribunal must take care to avoid amounts that are so low that they may be viewed as a cost of doing business or a licence fee for unscrupulous market participants.[33]

[111] The Commission submits we should follow the approach taken by the Tribunal in *Kitmitto* where there was a presumption of a $200,000 administrative penalty per breach with adjustments made to reflect the seriousness of the conduct, the conduct of one respondent relative to other respondents, and any aggravating or mitigating factors.[34]

[112] The Commission submits that a presumption of $200,000 per breach reflects the seriousness of insider trading and tipping and the harm that they cause to investors and the capital markets and sends a clear message that such conduct will not be tolerated in Ontario.

[113] Both Kraft and Stein submit that the Commission's requested administrative penalties are excessive and not in the public interest.

4.4.2 Kraft

[114] In addition to being consistent with the standard set in *Kitmitto*, the Commission submits that $200,000 is an appropriate administrative penalty for Kraft, who engaged in one instance of tipping, on account of his significant experience in the capital markets, and the fact that he abused his position of trust as the Chairman and a director of WeedMD in tipping Stein.

[115] Kraft submits that, if found necessary to achieve general deterrence, a modest administrative penalty of $25,000 is more appropriate than the $200,000 penalty proposed by the Commission. Kraft characterizes his misconduct as unique or that it was qualitatively different from other tipping cases because he did not act in bad faith or with ill-intent. He seeks to rely on *Air Canada (Re),*[35] a settlement before the Tribunal, and a British Columbia Securities Commission (**BCSC**) case, *Stock Social Inc.*[36] in support of his position. While Kraft's submissions regarding these decisions extended more

[32] *Azeff* at para 33
[33] *Azeff* at para 20
[34] *Kitmitto* at paras 28-30
[35] (2001) 24 OSCB 4697
[36] *Stock Social Inc. (Re)*, 2023 BCSECCOM 372

generally to the appropriate approach to both market participation bans and administrative penalties, we address these submissions here.

[116] Kraft submits that *Air Canada* is important and unique because it is the only tipping case decided in Ontario in the past twenty years that did not involve the disclosure of MNPI for improper personal or professional gain or advantage or to allow friends and relatives to profit. Kraft submits that it is therefore the only relevant authority in the tipping context for appropriate sanctions here where there was no improper motive for the tipping. Kraft submits that because Air Canada is a large reporting issuer and the case resulted in a settlement it is difficult to scale the sanctions that were ordered in *Air Canada* to Kraft's circumstances, but that the take-away should be that the sanctions ordered in *Air Canada* were not especially onerous.

[117] Kraft submits that *Stock Social Inc.* should also inform sanctions here. It is a case where the BCSC determined that only a modest monetary penalty of $25,000 was appropriate to achieve general deterrence, because the conduct in that case (namely, conduct that engaged conflict of interest disclosure issues) did not involve any deliberate flouting of securities law and did not engage a need for specific deterrence.

[118] We distinguish both above cases. *Air Canada* is a settlement involving a corporate respondent, not an individual. The decision did not find a breach of Ontario securities law, but instead involved admissions of conduct contrary to the public interest. Notably, while Air Canada's submissions included reference to the fact that the activity did not occur for personal gain, it is not evident from the Tribunal's reasons for approving the settlement that the lack of improper motive played the significant role in that decision that Kraft says it did. *Stock Social* is not an insider trading or tipping case, and, in any event, we have already found that specific deterrence is an important consideration here.

[119] We find that an administrative penalty of $200,000 is appropriate. Although we have not found that he betrayed his position of trust, because Kraft was the recipient of inside information through his position as Chairman of WeedMD, a higher administrative penalty than for Stein is warranted. While there is no formula for determining an administrative penalty, we find that consistency with the approach in *Kitmitto*, having regard to contextual factors, ensures fairness and reinforces the seriousness of insider trading and tipping. Furthermore, we have already taken into account Kraft's motives in setting the length of the market participation bans.

4.4.3 Stein

[120] The Commission submits that $150,000 is an appropriate administrative penalty for Stein, who engaged in one instance of insider trading, on account of his significant experience in the capital markets, the fact that he betrayed Kraft's trust, and that his conduct falls below what one would reasonably expect of someone who has been consulting and advising issuers for decades.

[121] The Commission proposes $150,000 rather than $200,000 to reflect a downward adjustment on account of the smaller market impact arising from Stein's misconduct relative to that of the respondents in *Kitmitto*. The Commission submits it is also consistent with the $150,000 per breach approach taken in *Azeff*[37] and the sanctions ordered against the respondent Christopher Candusso in *Kitmitto*.[38]

[121] Stein submits that an administrative penalty of $50,000 is appropriate and considers Stein's age and ability to earn a livelihood, personal challenges, the Tribunal's findings, and takes into account comparable precedents, particularly the administrative penalties imposed by the Tribunal against Stephany in *Agueci (Re)*[39] and Taylor Carr in *Rosborough (Re).*[40]

[123] We find that an administrative penalty of $150,000 is appropriate. *Kitmitto* stands for the proposition that insider tipping and trading is a serious breach and that there is sufficient leeway to consider contextual factors while ensuring consistency and fairness in deciding appropriate sanctions.

[124] We differentiate *Rosborough* as Carr had no experience in the capital markets and unlike Stein, there was no evidence that Carr was an active trader who would be inclined to engage in further trading. Regarding *Agueci*, we note that the decision is approximately 10 years old and administrative penalties have trended upwards through the passage of time. Additionally, in *Agueci,* the respondent Stephany was found to have a limited ability to pay. Stein did not raise impecuniosity as a factor in determining sanctions.

37 *Azeff* at paras 21 and 41
38 *Kitmitto* at para 58
39 2015 ONSEC 19 at para 73
40 2023 ONCMT 2 at para 45

4.5 Disgorgement

[125] The Commission requests a disgorgement order against Stein in the amount of $29,345, being the profit that Stein earned from insider trading. Such an order is authorized by paragraph 10 of s. 127(1) of the *Act*.

[126] Stein does not oppose the Commission's request and submits that the sanction is appropriate. It is in the public interest to make this disgorgement order against Stein.

4.6 Reprimand

[127] Stein submits that a reprimand would be an appropriate sanction in this case, despite the Commission not requesting such a sanction.

[128] The Commission advised us that it does not oppose the imposition of a reprimand against Stein, however, it submits that a reprimand on its own is not sufficient and does not warrant a reduction of any of the other sanctions requested.

[129] We are not persuaded that a reprimand is necessary in these circumstances. We conclude that the sanctions we are ordering against Stein are sufficient for specific and general deterrence, reflect the seriousness of his offence, take into consideration his personal circumstances to an appropriate extent and are proportionate in the circumstances.

4.7 Costs

[130] Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation and of the proceeding that follows if the respondent has been found to have contravened Ontario securities law. A costs order is designed to reduce the burden on market participants to pay for investigations and enforcement proceedings and is not punitive.[41]

[131] The Commission seeks costs of $150,000 against Kraft, and $50,000 against Stein. The merits hearing occurred over 10 days. The total costs incurred were apportioned among the respondents to reflect their contribution to the complexity and length of the investigation and hearing (60% to Kraft and 40% to Stein).

[132] The costs sought represent a discount from the total costs incurred of approximately 43% for Kraft, and 55% for Stein. The discounts were applied to account for the allegations that were not proved at the merits hearing.

[133] Kraft takes issue with the amount claimed by way of disbursement to a lawyer from the firm Heinen Hutchison Robitaille LLP, who was retained by the Commission during the merits hearing to respond to Kraft's *Charter* challenge and who attended the merits hearing in its entirety. Kraft does not dispute the number of hours the lawyer devoted to the hearing but submits that the rate of $725 per hour is unreasonable.

[134] Kraft submits that it is within the reasonable expectations of respondents that enforcement counsel would be able to address all relevant legal issues and when it is necessary to retain outside counsel, that the rate applied to that counsel match the rate applied to internal counsel ($205 an hour). Kraft therefore submits that the disbursement for external counsel fees should be reduced from $91,739.00 to $30,902.11 and then the 43% reduction should be applied, resulting in a maximum cost award of $115,594.96.

[135] Kraft submits that in *Paramount (Re)*[42] and *Solar Income Fund Inc (Re)*[43] the Commission reduced external counsel fees to match the hourly rate attributed to internal counsel of the Commission. Kraft submits that the Tribunal should exercise its discretion to similarly reduce the hourly rate of external counsel in this case.

[136] The Commission submits that it was reasonable to retain external counsel with expertise in constitutional law to respond to Kraft's *Charter* challenge, which raised novel issues argued for the first time in Canada and was ultimately unsuccessful. The Commission further submits that an hourly rate limit on external counsel retainers of $205 would discourage the Commission from seeking its counsel of choice in pursuit of its public interest mandate.

[137] The Commission notes the 43% discount already applied to the costs sought against Kraft to support the reasonableness of its request as a whole.

[138] We find that there is nothing precluding the Commission from retaining its choice of external counsel to assist with proceedings, especially where that counsel has specific necessary expertise, and that there is nothing express in the *Act* or otherwise that imposes a cap on external counsel fees that can be claimed. Costs awards are within the Tribunal's discretion and the overall reasonableness of fees and disbursements, having regard to the complexity of the matter, length of proceedings and other relevant factors is what matters. We are reluctant to impose any arbitrary or fixed cap

41 *Solar Income Fund* at para 166
42 2023 ONCMT 20 at para 128
43 2023 ONCMT 3 at para 165(a)

on fees or disbursements that can be claimed by the Commission through our decision-making. In this case, we find that the 43% reduction to costs already applied by the Commission is reasonable in the circumstances. We also find the costs incurred and claimed as against Kraft, given the length and complexity of the matter are not unreasonable. We therefore do not order a reduction in the amount of costs attributed to Kraft and we find it to be in the public interest to order Kraft to pay costs in the amount sought by the Commission.

[139] Stein does not take issue with the amount of costs sought against him and submits it is not unreasonable in the circumstances. We agree and find it is in the public interest to make the order.

5. CONCLUSION

[140] The sanctions we have set out above are proportionate to the misconduct in this case and appropriate when considered together in the context of each respondent. They ensure that Stein does not profit from his misconduct and are tailored to the respondents to effect both general and specific deterrence.

[141] For the reasons set out above, we shall issue an order that provides:

a. with respect to Kraft:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Kraft shall cease for a period of three years from the date of the order, except that Kraft shall be permitted to trade:

(i) mutual funds, exchange-traded funds, government bonds, and GICs;

(ii) securities or derivatives for the account of any registered retirement savings plan (**RRSP**), registered retirement income fund (**RRIF**) and tax-free savings account (**TFSA**), as defined in the *Income Tax Act*, RSC 1985, c 1 (5th Supp), (the ***Income Tax Act***), in which Kraft has sole legal and beneficial ownership;

(iii) solely through a registered dealer in Ontario, to whom Kraft must have given a copy of the order; and

(iv) only after the amounts in subparagraphs vii and viii have been paid in full;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Kraft is prohibited for a period of three years from the date of this order, except that Kraft shall be permitted to acquire:

(i) mutual funds, exchange-traded funds, government bonds, and GICs;

(ii) securities for the account of any RRSP, RRIF, and TFSA, as defined in the *Income Tax Act*, in which Kraft has sole legal and beneficial ownership;

(iii) solely through a registered dealer in Ontario, to whom Kraft must have given a copy of the order; and

(iv) only after the amounts in subparagraphs vii and viii have been paid in full;

iii. pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Kraft for a period of three years from the date of the order;

iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the *Act*, Kraft shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the *Act*, Kraft is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of four years from the date of the order;

vi. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Kraft is prohibited from becoming or acting as a registrant or as a promoter for a period of four years from the date of the order;

vii. pursuant to paragraph 9 of subsection 127(1) of the *Act*, Kraft shall pay an administrative penalty in the amount of $200,000 to the Commission; and

viii. pursuant to section 127.1 of the *Act*, Kraft shall pay to the Commission $150,000, for the costs of the investigation and hearing; and

b. with respect to Stein:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Stein shall cease for a period of four years, except that Stein shall be permitted to trade:

(i) mutual funds, exchange-traded funds, government bonds, and GICs;

(ii) securities or derivatives for the account of any RRSP, RRIF, and TFSA, as defined in the *Income Tax Act*, in which Stein has sole legal and beneficial ownership;

(iii) solely through a registered dealer in Ontario, to whom Stein must have given a copy of the order; and

(iv) only after the amounts in subparagraphs vii through ix have been paid in full;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Stein is prohibited for a period of four years, except that Stein shall be permitted to acquire:

(i) mutual funds, exchange-traded funds, government bonds, and GICs;

(ii) securities for the account of any RRSP, RRIF, and TFSA, as defined in the *Income Tax Act*, in which Stein has sole legal and beneficial ownership;

(iii) solely through a registered dealer in Ontario, to whom Stein must have given a copy of this order; and

(iv) only after the amounts in subparagraphs vii through ix have been paid in full;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Stein for a period of four years from the date of the order;

iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Stein shall immediately resign any positions that he holds as a director or officer of an issuer or registrant;

v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Stein is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of three years from the date of the order;

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Stein is prohibited from becoming or acting as a registrant or as a promoter for a period of three years from the date of the order;

vii. pursuant to paragraph 9 of subsection 127(1) of the Act, Stein shall pay an administrative penalty of $150,000 to the Commission;

viii. pursuant to paragraph 10 of subsection 127(1) of the Act, Stein shall disgorge to the Commission the amount of $29,345; and

ix. pursuant to section 127.1 of the Act, Stein shall pay to the Commission $50,000, for the costs of the investigation and proceeding.

Dated at Toronto this 2nd day of July, 2024

“Andrea Burke”

“M. Cecilia Williams”

“Sandra Blake”

A.4.2 Aimia Inc. and Mithaq Capital SPC – s. 104

Citation: *Aimia Inc (Re)*, 2024 ONCMT 17
Date: 2024-07-05
File No. 2024-2

IN THE MATTER OF
AIMIA INC.

AND

IN THE MATTER OF
MITHAQ CAPITAL SPC

REASONS FOR DECISION
(Section 104 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Timothy Moseley (chair of the panel) Andrea Burke Dale R. Ponder	
Hearing:	By videoconference, April 10, 2024	
Appearances:	Andrew Gray Sarah Whitmore Hanna Singer	For Mithaq Capital SPC
	Orestes Pasparakis James Renihan Mark Laschuk	For Aimia Inc.
	Kirsten Thoreson Jason Koskela David Mendicino Jordan Lavi Gbemi Adekola Maryam Shahid	For Ontario Securities Commission

REASONS FOR DECISION

1. OVERVIEW

[1] Mithaq Capital SPC is the largest common shareholder of Aimia Inc., a publicly traded company. Mithaq and Aimia have been engaged in extensive litigation in court and before this Tribunal about Aimia's governance and strategy.

[2] On eleven different days in February 2023, Mithaq added to its shareholdings of Aimia. At that time, Mithaq's own shareholdings of Aimia were below but approaching the 20% level that would trigger certain provisions of Ontario securities law relating to take-over bids.

[3] Eventually, in October 2023, a wholly-owned subsidiary of Mithaq made a formal, unsolicited take-over bid for Aimia. That bid expired in February 2024 and was unsuccessful.

[4] Two days before that formal bid expired, Aimia brought this application under s. 104 of the *Securities Act* (the ***Act***).[1] Aimia asked us to find that Mithaq's share acquisitions a year earlier, in February 2023, violated Ontario securities law. Aimia said that Mithaq had, at the time, been acting jointly with others, and that the joint actors' combined shareholdings of Aimia exceeded 20%. As a result, said Aimia, those February 2023 acquisitions are deemed to have been take-over bids, and Mithaq was required to make an offer to all shareholders to acquire their shares. Mithaq did not do that. In this application, Aimia asked us to order Mithaq to do now what Aimia says Mithaq should have done then.

[5] Mithaq responded to Aimia's application by moving to dismiss it on a preliminary basis, without a merits hearing. Mithaq submitted that Aimia did not have standing to bring this application, and that the application was an abuse of process.

[1] RSO 1990, c S.5 (***Act***)

[6] We heard Mithaq's motion. Shortly afterward, we issued an order granting the motion and dismissing this application, for reasons to follow.[2] These are our reasons for that decision. We concluded that while Aimia did have standing to bring this application, Aimia's long delay in seeking the specific relief it asks us to grant should disentitle Aimia from obtaining that relief, and should therefore preclude Aimia from proceeding with the application.

2. ANALYSIS

2.1 Introduction

[7] A threshold issue was whether it was proper for us even to consider Mithaq's motion to dismiss the application preliminarily, without a full record or a merits hearing. As we explain below, we concluded that it was proper for us to consider Mithaq's request at this early stage. Having decided that, we then had to address two issues:

a. Does Aimia have standing as an offeree issuer to bring its application?

b. Even if Aimia has standing, should we dismiss the application because it is a misuse of s. 104 of the *Act*?

[8] We address each of these issues in turn.

2.2 Is it appropriate to consider Mithaq's motion on a preliminary basis?

[9] We begin our analysis by explaining why it was proper for us, over Aimia's objection, to consider Mithaq's motion on a preliminary basis.

[10] Section 104 of the *Act* authorizes the Tribunal to make various orders if it finds that a person or company has not complied with a provision of Ontario securities law that relates to take-over bids. The section allows "an interested person" to apply for such an order.

[11] However, even when an interested person applies under s. 104, it does not necessarily follow that we must allow that application to proceed to a full merits hearing.[3] In its motion, Mithaq said that we should dismiss Aimia's application preliminarily because Aimia lacked standing and its application was an abuse of process.

[12] Those two issues were worth addressing at a preliminary stage, before the parties had to assemble materials and prepare for a full merits hearing. We decided that hearing Mithaq's motion would align with the Tribunal's goal, set out in the *Rules of Procedure*, to conduct proceedings expeditiously and cost-effectively.[4]

2.3 Did Aimia have standing to bring this application?

[13] Mithaq's first objection was that Aimia had no standing to bring the application. We disagree. We concluded that Aimia did have standing, because Aimia was "an interested person", and therefore entitled to apply under s. 104 of the *Act*.

[14] An "interested person" is defined under s. 89(a) of the *Act* to include an "offeree issuer." In turn, an "offeree issuer" is defined to include an issuer whose securities are the subject of a take-over bid.

[15] Were Aimia's securities the subject of a take-over bid when Aimia brought the application? The answer to that question might conceivably have been "yes" as a result of one or both of:

a. Mithaq's subsidiary's October 2023 formal bid; or

b. Mithaq's February 2023 acquisitions, which Aimia said were take-over bids, as defined in National Instrument 62-104 *Take-over Bids and Issuer Bids*, because Mithaq and its alleged joint actors collectively owned 20% or more of Aimia at the time (in these reasons, we refer to the February acquisitions as **deemed bids**).

[16] We did not accept Aimia's submission that the October formal bid could give Aimia standing under s. 104 to bring the application framed in the way that it was. We reached that conclusion not because the October bid had expired before we heard Mithaq's motion, but because Aimia's application does not depend on the making of that bid. Aimia's complaint is, instead, about the acquisitions that happened in February. In addition, the relief that Aimia seeks (*i.e.*, an order requiring Mithaq to make an offer to shareholders at the highest acquisition price) is inextricably tied to the February acquisitions, and to those acquisitions alone. The relief sought neither relates to, nor depends in any way on, the October bid.

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2 (2024) 47 OSCB 3389

3 *AbitibiBowater Inc (Resolute Forest Products) (Re)*, 2012 ONSEC 12 (***AbitibiBowater***) at para 49; *Western Wind Energy Corp (Re)*, 2013 ONSEC 25 at para 47

4 *Rules of Procedure*, r 1

[17] We turn then to explain why Mithaq's February acquisitions give Aimia standing to bring its application.

[18] Under the take-over bid framework in Ontario securities law, any acquisition of a class of voting or equity securities of an issuer, once the acquiror already holds 20% or more of that class, constitutes a take-over bid (unless an exemption is available). If an acquisition does constitute a take-over bid, then an offer at the same price must be made to all holders of that class of securities. This is what Aimia said should have happened.

[19] In making that submission, Aimia relied on the fact that in calculating whether the 20% threshold has been met, one considers not only the acquiror's own shareholdings, but also those of any person or company who acted jointly or in concert with the acquiror in making the acquisitions. Aimia contended that at the time of the February acquisitions, the shares held by Mithaq and by others acting jointly with Mithaq totaled more than 20% of Aimia's shares.

[20] Mithaq has consistently denied the allegations of joint actorship. Whether those allegations are true was not before us at this stage of the proceeding, and we make no finding about that issue. However, for the sole purpose of deciding the question of standing, we assumed the allegations to be true.

[21] With that assumption made, could Mithaq's February acquisitions give Aimia standing to bring this application? To use the words in the definition of "offeree issuer" in s. 89 of the *Act*, would it have been correct to say that Aimia's "securities are [emphasis added] the subject of" the alleged deemed bids at the time that Aimia brought this application, about a year after the acquisitions?

[22] Answering that question is more difficult for deemed bids than it is for conventional, formal bids. Unlike a deemed bid, a formal bid has an expiry date. One can easily know whether a formal bid is still live, and therefore whether the offeree issuer's shares are, at any given time, still the subject of the formal bid. The same cannot be said about a deemed bid. If an acquisition by Mithaq of shares of Aimia is deemed to have been a bid, how long does Aimia have to apply for related relief under s. 104 of the *Act*? Apart from the general six-year limitation period for all proceedings under the *Act*,[5] we are not aware of any provision of Ontario securities law, or any prior Tribunal decision, that answers that question.

[23] We answer the question by first looking to the purpose of s. 104. Its purpose is not to provide a basis for an enforcement proceeding in respect of a bid that is no longer live, and especially not an enforcement proceeding brought by a party other than the Commission. Rather, the provision enables an offeree issuer (among others) to apply for relief in connection with a live bid.[6] How long is a deemed bid "live"?

[24] Where an issuer asserts that an acquiror made a deemed bid but failed to follow up with an offer to all shareholders as required, that alleged deficiency persists until cured. We therefore had to decide whether an issuer would continue to have standing under s. 104 until the deficiency is cured, or only until some earlier time. The issuer must logically have standing the day after the impugned acquisition, but what about one month, or one year, later?

[25] We concluded that there is no principled basis for imposing a specific time limit. In particular, we rejected Mithaq's submission that we should import the default minimum deposit period of 105 days that applies to formal bids. Both the context and the purpose are different between the formal bid deposit period and the deadline, if any, for the use of s. 104 for a deemed bid.

[26] Where, as here, a long time has elapsed between the deemed bid and the s. 104 application, that delay would be relevant to whether the application can proceed to a merits hearing or ultimately succeeds. However, the delay does not preclude the issuer having standing to bring the application. We therefore concluded that Aimia had standing in respect of the February acquisitions.

2.4 Even though Aimia had standing, should we dismiss the application because it is a misuse of s. 104 of the *Act*?

[27] The fact that Aimia has standing to bring the application does not mean that we must proceed to hear the merits of the application.[7] We therefore turn to our reasoning for our conclusion that we should dismiss the proceeding because it is a misuse of s. 104 of the *Act*.

[28] Mithaq characterized Aimia's application as an "abuse of process". As the Supreme Court of Canada has held, that doctrine embodies a court's inherent power "to prevent the misuse of its procedure".[8] There is therefore no conceptual difference between "abuse of process" and "misuse of procedure".

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5 *Act*, s 129.1
6 *AbitibiBowater* at para 43
7 *AbitibiBowater* at para 49
8 *Toronto (City) v CUPE Local 79*, 2003 SCC 63 at para 37, citing *Canam Enterprises Inc v Coles*, 2000 CanLII 8514 (ON CA) at para 55 (*per* Goudge JA, dissenting)

[29] This Tribunal has a similar statutory power, to "prevent abuse of its processes".[9] We reject Aimia's argument that by implementing Rule 36 of its *Rules of Procedure*, the Tribunal has imposed a constraint on that statutory power. Rule 36 permits summary dismissal, without a hearing, of applications or motions on certain specified grounds. The rule expands rather than limits the Tribunal's authority and is irrelevant here.

[30] In submitting that the application is an abuse of process, Mithaq alleged that Aimia had intentionally moved slowly, expensively and disruptively, and that Aimia brought the application as a deliberate tactic to frustrate shareholder activism, after having deliberately chosen not to pursue the relief earlier in other court and Tribunal proceedings. In reaching our decision, however, we did not need to draw inferences about Aimia's motives. Viewing the application objectively, in the context of all the relevant circumstances, led us to conclude that the application is a misuse of our procedure.

[31] Section 104 of the *Act* empowers the Tribunal to fix a wrong that is occurring, or has occurred, in the context of a live take-over bid. Each of the possible orders set out in s. 104 is targeted to that objective. None of them is in the nature of a sanction that would be imposed after the fact.

[32] Therefore, if Aimia wanted to fix the situation arising from the impugned acquisitions, *i.e.*, by forcing Mithaq to comply with its alleged obligation to extend an offer to all shareholders, then it was incumbent upon Aimia to move expeditiously for an order to that effect. From the time an impugned acquisition is completed, each passing day could introduce new circumstances that would diminish the suitability and effectiveness of the requested order as a way to fix what Aimia says needed to be fixed.

[33] We have found for the purposes of determining standing that there is no specific time limit to the availability of s. 104 that would apply in all cases (other than the six-year limitation period under the *Act*). However, in any given case, there must be a time limit, given the nature of the relief available in s. 104. The limit will vary from case to case and will depend on the facts of each case.

[34] In this case, more than a year passed between the time of the impugned share acquisitions and the hearing before us. This lengthy period was central to our conclusion that allowing Aimia to proceed with its application would be a misuse of s. 104. We did not conclude that mere delay, by itself, was fatal to the application. Rather, we were influenced by the significant changes that occurred in the year that elapsed:

a. Mithaq's shareholding of Aimia rose from almost 20% to almost 31% before dropping to about 28%;

b. Aimia completed a significant private placement of shares and warrants to what Aimia described as "blue-chip investors";

c. there were significant changes to Aimia's board and senior management;

d. Mithaq's subsidiary had commenced an unsolicited formal take-over bid for Aimia that did not succeed and that expired in February 2024;

e. Aimia reached settlements with the alleged joint actors (other than Mithaq), thereby preventing Aimia from including them as respondents to this application, even though findings on the merits of this application might well have significant implications for them;

f. Aimia's share price dropped from above $4.00 in February 2023 to a closing price of $2.52 on the date of the hearing before us;

g. an unknown number of investors bought or sold shares of Aimia; and

h. Mithaq and Aimia commenced, and took steps in, various court and Tribunal proceedings against each other.

[35] The court proceedings include an action in which, in mid-May 2023, Aimia added Mithaq as a defendant. In doing so, Aimia renewed an allegation that it had previously communicated to Commission staff on March 23, 2023. Specifically, Aimia alleged that Mithaq had engaged in undisclosed joint actor conduct, including by surreptitiously coordinating the acquisition of Aimia shares, in breach of the *Act*. Aimia expressly pleaded that because of these acquisitions, Ontario securities law required Mithaq to make an offer to acquire all of Aimia's shares. However, despite making those allegations, Aimia did not seek an order from the court requiring Mithaq to comply.

[36] It is therefore clear that by no later than March 23, 2023, Aimia believed that Mithaq had an obligation to offer to buy all the shares of Aimia. Despite this, it was not until Aimia brought this application in February 2024 that it asked anyone for an order requiring Mithaq to comply.

[9] *Statutory Powers Procedure Act*, RSO 1990 c S.22, s 23(1)

[37] We heard no persuasive reason from Aimia why it could not have sought this relief sooner. Aimia's submission that it should not have done so because it had made the joint actor allegations in the court litigation, and it would therefore be improper to make the same allegations before this Tribunal, is not a satisfactory answer. Aimia cannot have it both ways. It chose to make the joint actor allegations in court but to seek different relief from the Court in connection with those allegations. It cannot then use those allegations as an excuse for not seeking the relief it is now seeking sooner. Either the Court could or could not grant this type of relief. If the Court could grant the relief, likely under s. 105 of the *Act*, then Aimia could have sought the relief from the Court long before it sought it from this Tribunal. If the Court could not grant the relief, then the presence of the joint actor allegations in the court litigation would not have been a bar to seeking that relief, much earlier, from this Tribunal.

[38] We were equally unpersuaded by Aimia's submission that we should be influenced by the Tribunal's decision in *Central Goldtrust (Re)*,[10] in which the Tribunal decided to hear a bid-related application even after a court proceeding had addressed similar issues arising from the same facts. There are many relevant differences, but the important distinction here is that Aimia sought the requested relief in neither forum – neither the Court nor this Tribunal – until almost a year after the acts complained of. Nothing in *Central Goldtrust* helps Aimia with that problem.

[39] We therefore concluded that even assuming Aimia would succeed in proving its joint actor allegations at a merits hearing, this application was a misuse of s. 104. The application cannot achieve s. 104's purpose of fair treatment of shareholders. Rectification of the allegedly non-compliant situation simply did not make any sense at this stage, given the passage of time and the intervening events.

2.5 Other grounds raised by Mithaq

[40] In addition to Mithaq's objections about abuse of process, Mithaq submitted that we should dismiss Aimia's application preliminarily because:

a. cause of action estoppel should prevent Aimia from raising the allegations of joint actorship; and

b. Aimia's application was a collateral attack on an earlier decision of the Tribunal.

[41] Because we concluded that the application was a misuse of s. 104, we need not analyze these additional grounds, neither of which we found persuasive.

3. CONCLUSION

[42] We concluded that Aimia had standing to bring this application under s. 104 of the *Act* because of its allegations that Mithaq did not comply with obligations arising from the share acquisitions made in February 2023.

[43] However, we concluded that the specific kind of relief Aimia was seeking in this application must be sought expeditiously. Because of Aimia's long delay in seeking this relief, and the intervening events, Aimia's application was a misuse of s. 104. We therefore granted Mithaq's motion and dismissed Aimia's application.

Dated at Toronto this 5th day of July, 2024

"Timothy Moseley"

Andrea Burke"

"Dale R. Ponder"

[10] 2015 ONSEC 44

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 31-365 OBSI Joint Regulators Committee Annual Report for 2023

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA STAFF NOTICE 31-365
OBSI JOINT REGULATORS COMMITTEE ANNUAL REPORT FOR 2023

July 11, 2024

Introduction

This notice is being published jointly by the Canadian Securities Administrators (**CSA**) and the Canadian Investment Regulatory Organization (**CIRO**) to serve as the Annual Report of the Joint Regulators Committee (**JRC**) of the Ombudsman for Banking Services and Investments (**OBSI**).

Members of the JRC are representatives from the CSA and CIRO. In 2023, CSA designated representatives were from British Columbia, Alberta, Ontario and Québec.

The JRC believes that a fair and effective independent dispute resolution service is important for investor protection in Canada and is vital to the integrity and confidence of the capital markets. The JRC supports a fair, accessible and effective OBSI dispute resolution process. The JRC meets regularly with OBSI to discuss governance and operational matters and other significant issues that could influence the effectiveness of the dispute resolution system.

The purpose of this notice is to provide an overview of the JRC and to highlight the major activities conducted by the JRC in 2023.

Background to Establishment of the JRC

In May 2014, amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Amendments**) came into force requiring all registered dealers and advisers to make OBSI available to their clients as their dispute resolution service, except in Québec where the dispute resolution services administered by the Autorité des marchés financiers (**AMF**) would continue to apply. In Québec, the AMF provides dispute resolution services to those clients of all registered dealers and advisers who reside in Québec. The Québec regime remains unchanged, and firms registered in Québec have to inform clients residing in Québec of the availability of the AMF's dispute resolution services. Investors in Québec are nevertheless entitled to use the services of OBSI for disputes that fall within OBSI's mandate, in lieu of the dispute resolution services provided by the AMF.

Memorandum of Understanding / Amendments: In conjunction with the passing of the Amendments, the CSA and OBSI signed a Memorandum of Understanding (**MOU**) which provides an oversight framework intended to ensure that OBSI continues to meet the standards set by the CSA.[1] The MOU also provides a framework for the CSA members and OBSI to cooperate and communicate constructively.

In 2015, the MOU was amended to include the AMF as a signatory, with it joining all other CSA members.[2] The amended MOU also clarifies certain provisions, including those relating to information sharing and the requirement for an independent evaluation of OBSI.[3]

1 The MOU sets out the standards that OBSI is expected to meet on: governance, independence and standard of fairness, processes to perform functions on a timely and fair basis, fees and costs, resources, accessibility, systems and controls, core methodologies, information sharing, and transparency.
2 The AMF became a party to the MOU effective as of December 1, 2015.
3 For a copy of the MOU, please see the Amended and Restated Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments among the Canadian Securities Administrators and OBSI.

JRC Mandate: The CSA jurisdictions and OBSI agreed with predecessor organizations to CIRO to form the JRC with a mandate to:

- facilitate a holistic approach to information sharing and monitor the dispute resolution process with an overall view to promoting investor protection and confidence in the external dispute resolution system;
- support fairness, accessibility and effectiveness of the dispute resolution process; and
- facilitate regular communication and consultation among JRC members and OBSI.

Overview of JRC Activities in 2023

In 2023, four regularly scheduled meetings were held in March, June, September and December. The JRC also held an *ad hoc* meeting in May, met with OBSI's Board of Directors (the **OBSI Board**) in December and engaged with OBSI throughout the year. These meetings provided OBSI and JRC with an opportunity to discuss specific matters as contemplated by the MOU.

The following matters were considered and advanced by the JRC, and include matters on which OBSI provided updates to the JRC throughout 2023:

1. **OBSI's 2021 independent evaluation:** The MOU requires that an independent evaluation of OBSI's operations and practices on the investment side of its mandate commence every five years. The 2021 *Independent Evaluation of the Ombudsman for Banking Services and Investments (OBSI) Investments Mandate* (**Investments Report**) found that overall, OBSI met and exceeded its obligations under the MOU. In addition to these findings, the Investments Report includes 22 recommendations for improvements regarding governance, strategy, operations, additional value and awareness, and includes the recommendation that OBSI be empowered to make awards that are binding.

   In 2023, the JRC continued to receive written and verbal reporting from OBSI staff regarding OBSI's response to the Investments Report, and continues to review and support progress of related action plans.

   The JRC met with OBSI following the conclusion of a public consultation regarding OBSI's governance structure prompted by recommendations made in the Investments Report. OBSI discussed the responses received from stakeholders, shared plans to implement changes to its organizational governance, and engaged in constructive dialogue with the JRC regarding those plans. At a subsequent meeting of the OBSI Board, OBSI implemented changes including the introduction of a revised skills matrix for board members, an increase in the number of consumer interest directors from one to three, and removed requirements for industry directors to be nominated by industry associations.

   The JRC and OBSI also discussed the definition of 'systemic issues' and the application of the OBSI Systemic Issues Protocol with the CSA. In addition to potential systemic issue reports, JRC and OBSI also had robust discussions pertaining to detailed aggregate data shared by OBSI on a quarterly basis, addressing products, issues and outcomes, as well as emerging trends and potential areas of future risk. For example, as discussed further in item 5, OBSI brought the activities of certain claims management companies to the JRC's attention, resulting in the publication of an Investor Alert.

2. **CSA's project to strengthen OBSI:** In 2023, the JRC continued to receive quarterly progress updates about the CSA's continued policy work to strengthen OBSI as an independent dispute resolution service. In November 2023, the CSA published for consultation a proposed framework for an independent dispute resolution service whose decisions would be binding.[4] Under the proposed framework, it is anticipated that OBSI would be the designated or recognized independent dispute resolution service for the investment industry, and would be subject to coordinated oversight by CSA jurisdictions. This coordinated oversight is expected to reflect certain existing oversight regimes such as those in place for self-regulatory organizations (**SROs**), clearing agencies and exchanges.

3. **Continuous monitoring of OBSI quarterly reports, compensation refusals and settling for lower amounts than recommended by OBSI:** The JRC continued to monitor data on investment-related complaints, including compensation refusals and settlements below OBSI's recommendations, through the review of OBSI's quarterly reporting. The JRC believes this data can sometimes provide risk-based indications of potential problems with a firm's complaint handling practices or raise questions about whether a firm is participating in OBSI's services in good faith or consistently with the applicable standard of care.

   There were no compensation refusals in 2023.

   Overall, since OBSI's 2018 fiscal year, clients received approximately $1.6 million less than what OBSI recommended. Low settlements continue to be an area of concern for the JRC. For OBSI's fiscal years 2018 to 2023 out of 1013 cases that ended with monetary compensation, 44 cases (approximately 4%) involving 25 firms settled below OBSI

[4] Canadian securities regulators propose binding regime for investment-related disputes, November 30, 2023.

recommendations. In the same five-year period, 11 of the 25 firms settled below OBSI's recommended amount more than once. Subsequent to follow-up efforts by CSA jurisdictions and SROs regarding low settlement cases, 2 of these firms made additional payments on 3 cases in 2021 to align compensation amounts with OBSI recommendations.

About 57% of all low settlement cases involved recommendations over $50,000. On average, low settlement cases settled for about 60% of OBSI's recommended amount of compensation. In terms of the dollar amount, where OBSI made a recommendation for compensation of $50,000 or less, the complainant received an average of $8,745 less than what OBSI recommended. Where OBSI made a recommendation for compensation above $50,000, the complainant received an average of $58,216 less than what OBSI recommended.

The JRC recognizes the impact on complainants when firms refuse to compensate clients consistent with OBSI's recommendations or settle for lower amounts than recommended by OBSI. As OBSI's recommendations are not binding on a firm, complainants may feel compelled to accept a lower settlement offer or risk receiving nothing. While commencing a civil proceeding to seek full compensation is another option for the complainant, such proceedings can be time-consuming, expensive, and stressful. This dynamic may dissuade some complainants from using OBSI's non-binding process.

Low settlements and settlement refusals may erode retail client confidence in the fairness and effectiveness of OBSI's dispute resolution services, the CSA's approach to independent dispute resolution generally, and may contribute to reluctance to engage with firms or to invest in financial markets using the services of firms if there is no assurance of an effective dispute resolution service.

The JRC continues to monitor low settlements and supports the ongoing work of the CSA to provide OBSI with the authority to make binding awards.

4. **Systemic issues:** Under the MOU, the Chair of the OBSI Board is to inform the CSA Designates of any issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients of one or more firms (referred to as **Systemic Issues**). In 2015, the JRC finalized with OBSI a protocol to define potential Systemic Issues and to set out a regulatory approach to address these issues when reported by OBSI under the MOU. Information sharing about individual complaints relating to Systemic Issues allows for evaluation of whether a systemic issue exists and assessment of its impact on the applicable registrant, the registrant category and/or investors. Please see OBSI and JRC Protocol for Handling Systemic Issues for further information.

In 2023, one new potential Systemic Issue was reported to the JRC by OBSI. OBSI identified the potential systemic under-representation of risk in some mutual fund risk ratings in recent years. OBSI reported having observed many funds reducing risk ratings on the basis of the ten-year standard deviation and relatively few increasing or maintaining them by using upward discretion.

Further to OBSI's reporting, a CSA jurisdiction undertook a review of mutual fund risk ratings and found that mutual fund risk ratings have not been systemically under-representing risk in recent years.

OBSI also reported seeing an increasing number of exempt market issuers using standard deviation as the sole approach in risk rating their exempt market funds. However, the CSA jurisdiction noted that the CSA risk classification methodology was not developed with exempt products in mind and exempt market issuers are not required to use the CSA methodology. For exempt market products that use leverage or have access to asset classes that are not permitted under the regulatory framework in place for publicly offered mutual funds, the distribution of returns might involve more tail events[5] and it would not be appropriate to use the CSA methodology to provide risk ratings.

The CSA jurisdiction has shared the findings from the review with CSA counterparts and has also met with OBSI staff. The CSA jurisdiction continues to discuss next steps and share regular updates with the JRC.

The JRC also continued to receive updates on two previously reported Systemic Issues:

- A portfolio manager was the subject of multiple complaints alleging understating and misrepresenting the risk of a fund and disregarding documented investor risk tolerance in multiple cases. The issue was referred to the relevant CSA jurisdiction which, as a result of the jurisdiction's ongoing review, applied conditions of registration to the portfolio manager in 2022. In 2023, the CSA jurisdiction advised that the firm resolved the compliance issues and no longer had any terms and conditions on its registration.

- An order execution-only dealer received two complaints regarding a system issue impacting Canadian investors purchasing certain U.S. derivatives. The dealer resolved the issue shortly after discovering it. The matter was referred to the SRO, which determined that the issue was limited to the two

[5] Tail events refer to the occurrence of extreme events that deviate significantly from the expected outcomes in financial markets.

complainants. The dealer has a business conduct compliance examination scheduled and CIRO will keep the JRC apprised of relevant findings.

5. **Emerging and ongoing complaint trends:** The JRC worked with OBSI to identify and monitor emerging and ongoing trends in complaint volumes, as well as the nature of complaints received. On a quarterly basis, OBSI provided the JRC with detailed aggregate data relating to products, issues and outcomes, as well as anonymized case outcomes and summaries to assist with the identification of these trends.

   In 2023, OBSI experienced a significant increase in overall complaint volumes, driven largely by complaints from banking consumers. The JRC received regular updates from OBSI on steps taken to respond to record-setting case levels, including its significant recruitment efforts. While OBSI reported that these trends resulted in delays in assigning cases to investigators, OBSI continued to complete investigations in a timely manner. OBSI advised JRC that they have implemented various initiatives and expected to see improvements in the case assignment and resume meeting all timeliness benchmarks for investment cases in early 2024.

   Investment complaints also increased, with a 43% increase in opened complaints and a 32% increase in complaints closed in 2023. OBSI reported that these increases were primarily attributable to trends reported in 2022, including a rise in complaints relating to market conditions and products that experienced losses due to the changing interest rate environment, as well as a continued increase in cases relating to crypto asset fraud. These trends moderated in the last two quarters of 2023.

   While OBSI observed a decrease in crypto asset related complaints in the latter half of 2023, OBSI continued to observe that despite warnings and fraud reduction steps taken by firms, instances of crypto asset fraud continue to be common. Throughout the year, CSA jurisdictions, CIRO and OBSI have each released publications advising investors of the risk of fraudulent activity involving crypto assets. The JRC continues to monitor this trend and act on opportunities for risk reduction, including with OBSI, internally within their jurisdictions and with CSA counterparts.

   The JRC also heard from OBSI regarding an increase in complaints received from claims management companies. These companies may engage in activities such as advising, investigating, and managing complaints on behalf of investors for a fee that is either charged upfront or taken as a percentage of any money that may be recovered through the claim or complaint process. JRC referred the matter to an appropriate CSA jurisdiction, which coordinated with other CSA jurisdictions, CIRO and OBSI to publish a joint Investor Alert[6] in March 2024.

6. **Review and consideration of stakeholder feedback:** The JRC receives stakeholder feedback predominantly through its dedicated inbox (ContactJRC-CMOR@acvm-csa.ca). The JRC regularly discusses the feedback, considers opportunities to enhance the effectiveness of its oversight in accordance with its mandate, and implements changes where appropriate. Where feedback falls outside of the JRC's mandate and areas of oversight, it is referred to OBSI, the relevant CSA project or committee, or the relevant jurisdiction or to CIRO for consideration.

7. **Consultations regarding SRO proposals:** The JRC received updates from CIRO regarding a consultation pertaining to a review of the IIROC Arbitration Program. CIRO shared recommendations from an external working group and sought comments on the program and its role in the current dispute resolution framework, its coexistence with other dispute resolution options available to investors, and in particular, the dispute resolution services provided by OBSI. CIRO also updated the JRC regarding a proposal to distribute funds collected through its disciplinary proceedings to harmed investors, and advised that an internal working group is reviewing comments received and conducting additional research. The JRC continues to receive updates on the status of both projects.

8. **OBSI designated as the sole banking complaints ombudsman by the federal government:** On October 17, 2023, OBSI was designated as the single external complaints body (**ECB**) for the banking industry. Following a transition period, OBSI will assume its responsibilities as Canada's single ECB on November 1, 2024. During this transition period, the JRC will continue to work with OBSI to monitor and respond to challenges such as increases in overall case volumes, significant anticipated organizational growth and any other potential impacts on OBSI's operations that may affect OBSI's performance under its investments mandate.

JRC Meeting with OBSI's Board of Directors

As set out by the MOU, an annual meeting of the JRC with the OBSI Board was held on December 13, 2023. In addition to broader discussions on operating and governance issues and the effectiveness of OBSI's processes, discussion focused on the CSA's proposed regulatory framework for securing redress for investors, actions taken and underway in response to the recommendations made in the Investments Report, and the implications of OBSI's designation as the single ECB for the banking industry.

[6] Investor Alert: Investors are not required to use claims management companies to communicate with the CSA, CIRO or OBSI, March 19, 2024.

OBSI Annual Report

For additional information on OBSI, readers may wish to review OBSI's Annual Report for its fiscal year ending October 31, 2023.

Comments

We appreciate the feedback received on previous annual reports from various stakeholders and welcome comments on this annual report and any matter relating to the JRC's oversight of OBSI. Please send your comments to ContactJRC-CMOR@acvm-csa.ca.

Questions

Please refer your questions regarding this CSA Staff Notice to any of the following CSA staff:

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Acting VP, Investor Office
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B.2
Orders

B.2.1 Advantagewon Oil Corp.

Headnote

Section 144 of the Securities Act (Ontario) – Application for a partial revocation of a failure-to-file cease trade order – Issuer cease traded due to failure to file audited annual financial statements and management's discussion and analysis – Issuer applied for a variation of the cease trade order to permit the Issuer to complete a private placement to accredited investors and family, friends and business associates – Issuer will use proceeds to bring itself into compliance with its continuous disclosure obligations – Partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

IN THE MATTER OF
ADVANTAGEWON OIL CORP.

PARTIAL REVOCATION ORDER

UNDER THE SECURITIES LEGISLATION OF ONTARIO
(the Legislation)

Background

1. Advantagewon Oil Corp. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission, its principal regulator (the **Principal Regulator**) on May 5, 2023.

2. The Issuer has applied to the Principal Regulator for a partial revocation order of the FFCTO (the **Order**).

Interpretation

Terms defined in National Instrument 14-101 Definitions or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**NP 11-207**) have the same meaning if used in this Order, unless otherwise defined.

Representations

3. This decision is based on the following facts represented by the Issuer:

   (a) The Issuer was incorporated as **"Advantagewon Oil Corp."** under the *Business Corporations Act* (Ontario) on July 10, 2013.

   (b) The Issuer's registered office is located at 47 Colborne St., Suite 307, Toronto, Ontario, M5E 1P8.

   (c) The Issuer is a reporting issuer under the securities legislation of the provinces of British Columbia, Ontario and Alberta. The Issuer is not a reporting issuer in any other jurisdictions in Canada.

   (d) The Issuer's authorized share capital consists of an unlimited number of common shares (the **Common Shares**). The Issuer currently has 50,744,453 Common Shares issued and outstanding. Other than the issued and outstanding Common Shares, the Issuer has no securities outstanding.

   (e) The Issuer's securities are not listed on any stock exchange or quotation system. The Issuer was previously listed on the Canadian Securities Exchange (**CSE**), under the trading symbol **"AOC"**. On May 8, 2023, trading in the securities of the Issuer was halted. The Issuer was subsequently delisted from the CSE.

   (f) The FFCTO was issued as a result of the Issuer's failure to file the following continuous disclosure materials as required by Ontario securities law:

a. audited financial statements for the year ended December 31, 2022;

b. management's discussion and analysis (**MD&A**) relating to the audited annual financial statements for the year ended December 31, 2022; and

c. the certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**).

(Collectively, the **Required Annual Filings**).

(g) The Required Annual Filings were not filed as a result of financial difficulties.

(h) Subsequent to the failure to file the Required Annual Filings, the Issuer also failed to file the following required filings:

a. annual audited financial statements for the year ended December 31, 2023;

b. interim unaudited financial statements for the interim periods ended March 31, 2022 through to March 31, 2023;

c. MD&A relating to the financial statements referred to in subparagraphs a. and b. above;

d. certificates required to be filed in respect of the financial statements referred to in subparagraphs a. and b. above under NI 52-109;

e. disclosure required by Form 51-102F6V *Statement of Executive Compensation - Venture Issuers* for the year ended December 31, 2023;

f. disclosure required by Form 52-110F2 *Disclosure by Venture Issuers*, for the year ended December 31, 2023; and

g. disclosure required by Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)*, for the year ended December 31, 2023.

(Together with the Required Annual Filings, the **Required Filings**).

(i) The Issuer has failed to pay certain fees to the Principal Regulator including, but not limited to, those in connection with the Required Filings (the **Outstanding Fees**).

(j) The Issuer is seeking a partial revocation of the FFCTO to be able to complete a private placement of up to $60,000 by way of secured promissory notes (each a **Secured Promissory Note**) in the provinces of British Columbia, Ontario and other provinces (the **Offering**), with each Secured Promissory Note to be issued in the principal amount of C$1,000, bearing interest at an annual rate of 2% payable in arrears in equal installments semi-annually, and maturing on the date that is 24 months from the date of the issuance (**Maturity Date**).

(k) The Issuer intends to complete the Offering to enable the Issuer to raise sufficient funds to bring its continuous disclosure record up to date by filing the Required Filings, pay the Outstanding Fees, apply to the Principal Regulator for a full revocation of the FFCTO within a reasonable time following completion of the Offering, and provide working capital.

(l) The Offering will be conducted on a prospectus exempt basis with subscribers in Ontario who satisfy the requirements of sections 2.3 (*Accredited Investor*) and 2.5 (*Family, Friends, and Business Associates*) of National Instrument 45-106 *Prospectus Exemptions*.

(m) The Issuer is not currently 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.

(n) Other than the failure to file the Required Filings and the failure to pay the Outstanding Fees, the Issuer is not in default of any of the requirements of the *Securities Act* (Ontario) or the rules and regulations made pursuant thereto. The Issuer is not in default of the FFCTO. The Issuer's SEDAR+ and SEDI profiles are up to date.

(o) The Issuer intends to allocate the proceeds from the Offering as follows:

Description	Cost
Filing fees associated with obtaining this Order and the full revocation order for the FFCTO	$15,000
Legal fees, accounting fees, and General administrative expense related to the filing of all outstanding continuous disclosure documents	$30,000
Legacy accounts payable including accounting and legal fees, consulting fees and outstanding transfer agent fees	$15,000
Total:	**$60,000**

(p) The Issuer reasonably believes that the Offering will be sufficient to bring its continuous disclosure obligations up to date, pay the Outstanding Fees, apply for a full revocation of the FFCTO, and provide it with sufficient working capital to continue its business.

(q) As the Offering would involve a trade of securities and acts in furtherance of trades, the Offering cannot be completed without a partial revocation of the FFCTO.

(r) Effective April 19, 2024, Ms. Andra Enescu was appointed as director of the Issuer. Other than the aforementioned appointment (the **Appointment**), there have been no changes to the Issuer's directors or executive officers since the date of the FFCTO.

(s) Since the issuance of the FFCTO, except for the Appointment and the Private Placement, there have not been any material changes in the business, operations or affairs of the Issuer that have not been disclosed to the public.

(t) The Offering will be completed in accordance with all applicable laws.

(u) Prior to completion of the Offering, the Issuer will:

a. provide all participants in the Offering with the following:

i. a copy of the FFCTO; and

ii. a copy of this Order; and

b. obtain, and provide upon request to the Principal Regulator, from each participant in the Offering a signed and dated acknowledgment which clearly states that all of the Issuer's securities, including the securities issued in connection with the Offering, will remain subject to the FFCTO, and that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

(v) Upon the issuance of this Order, the Issuer will issue a press release announcing the order and the intention to complete the Offering as well as file a material change report. Upon completion of the Offering, the Issuer will issue a press release and file a material change report. As other material events transpire, the Issuer will issue appropriate press releases and file a material change report as applicable.

Order

4. The Principal Regulator is satisfied that a partial revocation of the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

5. The decision of the Principal Regulator under the Legislation is that the FFCTO is partially revoked solely to permit the trades in securities of the Issuer (including for greater certainty, acts in furtherance of trades in securities of the Issuer) that are necessary for and are in connection with the Offering, provided that:

(a) prior to completion of the Offering, the Issuer will:

(i) provide to each subscriber under the Offering a copy of the FFCTO;

(ii) provide to each subscriber under the Offering a copy of this Order; and

(iii) obtain from each subscriber under the Offering a signed and dated acknowledgment, which clearly states that all of the Issuer's securities, including the Common Shares issued in connection with the Offering, will remain subject to the FFCTO, and that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future;

(b) the issuer will make available a copy of the written acknowledgements referred to in paragraph 5(a)(iii) to staff of the Principal Regulator on request;

(c) this Order only varies the FFCTO and does not provide an exemption from the prospectus requirement; and

(d) this Order will terminate on the earlier of (A) the closing of the Offering and (B) 60 days from the date hereof.

DATED this 24th day of June, 2024.

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

OSC File #: 2024/0326

B.2.2 Pointe West Golf Club Corp. – s. 1(10)

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – issuer cannot avail itself of the simplified procedure because: (1) its securities, including debt securities, are not beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide, and (2) the Filer cannot represent that it is not in default of securities requirements in any jurisdiction – relief granted.

Statutes Cited

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

July 2, 2024

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

AND

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

AND

IN THE MATTER OF
POINTE WEST GOLF CLUB CORP.
(the Filer)

ORDER
(Subsection 1(10))

Background

The Ontario Securities Commission (the **OSC**) has received an application from the Filer for an order under the securities legislation of Ontario (the **Legislation**) that the Filer has ceased to be a reporting issuer in Ontario (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications, the OSC is the principal regulator for this application.

Interpretation

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

Representations

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

The Filer

1. The Filer was incorporated as a corporation under the *Business Corporations Act* (Ontario) on December 31, 1989.

2. Further to a special meeting of shareholders of the Filer that was held on September 20, 2021, the shareholders of the Filer approved amendments to the articles and by-laws of the Filer such that the Filer is now a shareholder only golf club. The Filer is also a “for profit” corporation.

3. The Filer is not a “private issuer” within the meaning of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**). However, the Filer is currently a reporting issuer in Ontario. The shares of the Filer do not trade on any stock exchange.

4. No securities of the Filer, including debt securities, are traded in Canada or any other country on a marketplace as defined in National Instrument 21-102 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

5. Since the Filer's initial public offering in 1992, the Filer has not taken steps to create a market for its securities, including debt securities and, in particular, it has never offered securities to the public in Ontario or any other jurisdiction in Canada by way of a prospectus offering.

6. There has never been any disruption in the annual meetings of the Filer's shareholders and all continuous disclosure documents that the Filer has been required to deliver to its shareholders, including proxy solicitation materials in relation to its annual meetings, have been delivered to the holders of its common shares and Class A shares that are entitled to receive them.

7. The Filer is not in default of its obligations under the securities laws of Ontario, except that:

   (a) From September 22, 2021 to May 1, 2024 (the **Period**), the Filer purported to rely on the business combination and reorganization exemption contained in subsection 2.11(b) of NI 45-106 (the **Business Combination and Reorganization Exemption**) in connection with the distribution of its Class A shares. However, staff of the OSC have informed the Filer that the Business Combination and Reorganization Exemption did not appear to be available for use by the Filer during the Period and may therefore be considered a breach of securities legislation; and

   (b) the Filer did not file its annual general meeting materials for 2024 or quarterly filings that were due on May 30, 2024 on SEDAR+.

8. The Filer is not eligible to cease to be a reporting issuer pursuant to the simplified procedure in Section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as the Filer has more than 400 voting securityholders in Ontario (each a **Member**).

9. The Filer will not be a reporting issuer in any jurisdiction in Canada immediately following the granting of the Order Sought.

The Filer's Outstanding Shares

10. The share capital of the Filer currently consists of an unlimited number of common shares and 600 Class A shares. Currently, 445 common shares and 435 Class A shares of the Filer have been issued.

Special Meeting of the Filer's Shareholders

11. The Board of Directors of the Filer (the **Board**), after careful consideration, determined that it was in the Filer's best interests to cease to be a reporting issuer in Ontario. Accordingly, the Filer held a special meeting of its Members on Monday, April 15, 2024 at 7:00 pm (the **Special Meeting**) to pass a resolution:

   (a) to have the Filer cease to be reporting issuer in Ontario (the **Cease to be a Reporting Issuer Resolution**);

   (b) to amend By-Law No. 1 (2022) of the Filer (the **By-Law**) to ensure that the Filer cannot issue any new shares from treasury, increase the number of shares of the Filer or change any of the rights of the shares of the Filer without the prior written consent of the OSC (**By-Law Resolution #1**); and

   (c) to amend the By-Law:

      (i) to clarify that the rights of a "Non-Shareholder Member" and the benefits of having a "Non-Shareholder Membership" do not include the ability to use the golfing facilities of the Filer;

      (ii) to give the Board the ability, if necessary, to impose a fee on a Member who wants to transfer their shares of the Filer to someone else pursuant to an applicable prospectus exemption in NI 45-106 or a decision document granting exemptive relief from the prospectus requirements under the Act; and

      (iii) to make certain non-material administrative corrections to the By-Law

      (collectively, **By-Law Resolution #2**).

12. At the Special Meeting, 51 voting Members out of a possible 435 voting Members were present in person. In addition, there were 364 voting Members, out of a possible 435 voting Members, who were present in person or by proxy at the Special Meeting (i.e., approximately 83.7% attendance).

13. The results at the Special Meeting, were that the Members present in person or by proxy at the Special Meeting approved:

   (a) the Cease to be a Reporting Issuer Resolution by 99.5%;

(b) By-Law Resolution #1 by 99.7%; and

(c) By-Law Resolution #2 by 97.5%.

14. A press release was issued on June 7, 2024, announcing that the Filer has applied to the OSC to cease to be a reporting issuer in Ontario, and that if the Order Sought is granted, the Filer will not be a reporting issuer in any jurisdiction in Canada immediately following the granting of the Order Sought. As of the date hereof, the Filer has not received any objections as a result of the news release.

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.

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

OSC File #: 2024/0280

B.2.3 BMR GP Inc. – s. 74(1)

Headnote

Trades by applicant or licensed real estate agents in condohotel units included in a rental program are not subject to section 25 or 53 of the Securities Act (Ontario) provided that purchasers receive certain disclosure prior to entering into an agreement of purchase and sale.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
Condominium Act, S.O. 1998, c. 19, as am.
Real Estate and Business Brokers Act, 2002, S.O. 2002, c. 30, Sch. C., as am.
Ontario Securities Commission Rule 14-501 Definitions.

July 3, 2024

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

AND

IN THE MATTER OF
BMR GP INC.

ORDER
(Subsection 74(1))

Background

WHEREAS BMR GP Inc. (the **Applicant**) has filed an application with the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 74(1) of the Act that the sale by the Applicant, agents of the Applicant (the **Applicant Agents**) licensed under the *Real Estate and Business Brokers Act*, S.O. 2002, Chapter R.4, as amended (the **REBB Act**), Project Entities (as defined in paragraph 2 below), and Project Entity Agents (as defined in paragraph 25 below) of condominium units (the **Condohotel Units**) within certain condohotels (the **Condohotels**) to be built by the Applicant or the Project Entities (as defined in paragraph 2 below) on land known as the "Village Core" (the **Village Core Lands**) located next to Blue Mountain Ski Resort (the **Resort**) in The Town of Blue Mountains, Ontario is exempt from sections 25 and 53 of the Act;

AND WHEREAS the Applicant has requested that the application and this order (together, the **Confidential Material**) be kept confidential and not be made public until the earliest of: (i) the date on which the Applicant and/ or the Applicant Agents begin to market the sale of the Condohotel Units; (ii) the date on which the Applicant advises that there is no longer any need for the Confidential Material to remain confidential; or (iii) the date that is 90 days after the date of a decision of the Commission (the **Confidentiality Relief**)

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

AND UPON the Applicant having represented to the Commission as follows:

Representations

1. The Applicant is a subsidiary of Freed Corp., a leading developer and operator of resorts in Ontario. The Applicant is the general partner of BMR Limited Partnership, the beneficial owner of the Village Core Lands.

2. The Applicant is developing part of the Village Core Lands by constructing, in phases, either directly or through project limited partnerships or special project entities (collectively, the **Project Entities** or, individually, a **Project Entity**), dwelling units to be constructed as apartment style condominium units which will function as Condohotels or full-time residential units, as permitted by the zoning by-law referred to in paragraph 12 below (each phase, a **Village Core Project**). Limited portions of the developments may be freehold (and therefore excluded from condominium registration) in order to provide flexibility of access and use of non-residential areas such as parking or ancillary retail spaces. The retail spaces may be constructed as either a part of the Condohotel, their own separate condominium or freehold. The Applicant's Condohotel Units will further support and enhance the Resort's village environment that will be attractive to both frequent and infrequent users of the Resort's facilities.

3. The Project Entities will be used to develop the Village Core Lands in phases and each phase may contain one or more Condohotels. The Applicant or affiliates of the Applicant will supervise the development, construction and marketing of each Project Entity's Condohotel, and will also provide administrative services to each Project Entity. The Applicant and/or Project Entity may elect directly or through an affiliate to retain some of the Condohotel Units in order to participate in the Rental Program described in paragraph 14 below.

4. A Condohotel is a condominium complex which consists of a number of self-contained Condohotel Units and common areas and common facilities that are available for use by the owners and other occupants of Condohotel Units.

5. It is expected that each Condohotel Unit will have a living area, a kitchen and at least one bathroom and a sleeping area/bedroom, and will be sold with the option of being fully furnished.

6. The common areas and common facilities of a Condohotel will generally consist of central interior hallways and may also include one or more of underground parking, a lounge area, a pool and spa facility and additional space that may be required to support the rental management operation of the Condohotel as more particularly described in paragraph 14 below.

7. In addition to his or her own Condohotel Unit, each owner of a Condohotel Unit will be entitled to a proportionate share of the relevant Condohotel's common property and the common facilities and other assets of the condominium corporation (the **Condohotel Corporation**) that will be created pursuant to the *Condominium Act*, 1998 S.O. 1998, Chapter 19, as amended (the **Condominium Act**).

8. Each owner of a Condohotel Unit will be responsible for expenses, such as heat, light, power, cable television (which may be offered by the property manager), telephone line charges and real property taxes, that are directly attributable to the Condohotel Unit, and will also be responsible for his or her proportionate share of certain utilities and other expenses related to the common property of the Condohotel.

9. Common expenses and repair reserve funds in respect of the common areas will be determined by the Condohotel Corporation and will be payable by each owner of a Condohotel Unit.

10. The Applicant or Project Entity, as the case may be, will cause the Condohotel Corporation to enter into a property management agreement with a qualified property manager, which shall be a qualified third party or an affiliate of the Applicant, and the property manager shall manage and administer the Condohotel's common property and shall be paid a management fee for its services. It is expected that any property management agreement will be on market terms and be subject to termination provisions typical for agreements with condominium corporations. Depending on the ownership structure, a separate property manager may be retained to manage the retail spaces and will be paid a management fee for its services.

11. An independent third party not related to the Applicant owns and operates the Resort.

12. The Village Core Project is subject to a comprehensive scheme of land use regulation pursuant to a zoning by-law (the **By-Law**), which establishes certain criteria that must be met by multi-unit developments, such as a Condohotel, that are to be established on the Village Core Lands.

13. For purposes of the By-Law, a Condohotel will be structured and operated as a "Village Commercial Resort Unit" which is defined by the By-Law to mean one room or a group of rooms forming a single commercial accommodation unit within a Village Commercial Resort Unit Complex in which:

    (a) culinary and sanitary facilities are provided for the exclusive use of the unit; and

    (b) access to the unit is provided by a private entrance from a common hallway inside the building; and

    (c) is not used or designated as a principal residence, but

    does not mean or include a residential dwelling unit, hotel unit, a motel unit, an inn unit, a lodge unit, a dormitory unit, a hostel unit, or any other use defined in the By-Law.

    The term "Village Commercial Resort Unit Complex" – is defined as a building or group of buildings containing 10 or more Village Commercial Resort Units which:

        (i) is serviced by a central lobby facility; and

        (ii) is part of a rental or lease management program, including housekeeping services, with a minimum of 80% of the Village Commercial Resort Units restricted to occupancy by any one individual person for one or more periods of time not to cumulatively exceed a total of 120 days per year; and

(iii) the remaining 20% may be exempt from the 120 day per year occupancy limitation; and

(iv) contain accessory recreational and/or commercial uses; and

(v) the maximum number of Village Commercial Resort Units that may be exempted under subsection (iii) above shall be 256.

14. In order to comply with the By-Law, every owner of a Condohotel Unit that comprises the 80% of units with restricted occupancy will be required to enter into either a rental management agreement (the **Rental Management Agreement**) or rental pooling management agreement (the **Rental Pooling Management Agreement**) with either the Applicant, an affiliate of the Applicant or a qualified third party, in order to (i) permit the establishment and operation of a Condohotel rental or lease arrangement program (the **Rental Program**) either by way of a rental management arrangement or a rental pooling arrangement; and (ii) ensure that the terms of any ruling and order granted by the Commission are complied with. If the Rental Program is designed as a rental management arrangement, each owner of a Condohotel Unit will be required to enter into a Rental Management Agreement with either the Applicant, an affiliate of the Applicant or a qualified third party, as the case may be (the **Unit Manager**). If the Rental Program is designed as a rental pooling arrangement, each owner of a Condohotel Unit will be required to enter into a Rental Pooling Management Agreement with either the Applicant, an affiliate of the Applicant or a qualified third party, as the case may be (the **Rental Pool Manager**). The Unit Manager or the Rental Pool Manager, as applicable, will be the exclusive agent for the rental of each owner's Condohotel Unit. In accordance with the By-Law, up to 20% of such owners may be permitted, to opt out of participation in the Rental Program so long as at least 80% of owners of Condohotel Units continue to participate in the Rental Program (**Rental Program Participants**). Owners of Condohotel Units who have opted out of the Rental Program may subsequently become Rental Program Participants by opting into the Rental Program in accordance with the terms thereof.

15. A Rental Management Agreement would require the Unit Manager so retained by a Rental Program Participant to generate revenue for the Rental Program Participant by renting the Rental Program Participant's Condohotel Unit to third parties and generally maintaining the Condohotel Unit for such purpose.

16. A Rental Pooling Management Agreement would require a Rental Program Participant to participate in an arrangement whereby revenues derived from, and/or expenses relating to, the rental of the Rental Program Participant's Condohotel Unit by the Rental Pool Manager would be pooled with revenues derived from, and/or expenses relating to, the rental of all other Condohotel Units located in the same Condohotel that are owned by Rental Program Participants and all such pooled revenues and expenses would be shared by such Rental Program Participants in accordance with their proportionate interests in the Condohotel (a **Rental Pool**).

17. The Unit Manager or Rental Pool Manager, as the case may be, will (i) determine the rental rates for the Condohotel Units; (ii) coordinate the rental of Condohotel Units; (iii) collect all rental payments and charges; (iv) deposit the rent revenues and pooling revenues of the Rental Program into operating accounts under the exclusive control of the Unit Manager or Rental Pool Manager pursuant to the terms of the Rental Management Agreement or Rental Pooling Management Agreement, as the case may be; and (v) operate, supervise, manage, clean and maintain the Condohotel Units.

18. Maintenance fees and repair costs for each Condohotel Unit which participates in the Rental Program, including charges for annual deep cleaning, furniture and appliance repair and normal "wear-and-tear", will be payable by the owner of the Condohotel Unit. In the event that a Condohotel Unit is damaged by a guest who rents such Condohotel Unit, the owner will be ultimately responsible for the repair costs relating to such damage (to the extent such cost cannot be recovered from the guest), but the Unit Manager or Rental Pool Manager, as the case may be, and the owner will co-operate in recovering such costs from any guest which may have caused such damage.

19. Individual expenses incurred in connection with an owner's personal use of his/her Condohotel Unit, including items such as room service charges and telephone bills, shall be paid after each period of personal use by the owner. The Unit Manager or Rental Pool Manager, as the case may be, may deduct any unpaid individual expenses incurred by an owner from that owner's aggregate revenue distribution. Each owner of a Condohotel Unit will be responsible to the Unit Manager or Rental Pool Manager, as the case may be, for any shortfall between the owner's aggregate revenue distribution and any of the costs associated with such owner's Condohotel Unit. In the event that the Unit Manager or Rental Pool Manager, as the case may be, elects to deduct any unpaid individual expenses incurred by an owner from that owner's aggregate revenue distribution, a penalty charge may also be applied by the Unit Manager or Rental Pool Manager. The owner of a Condohotel Unit will not be responsible for personal use charges incurred by guests of the Unit Manager or Rental Pool Manager, as the case may be.

20. The Unit Manager or Rental Pool Manager, as the case may be, will be responsible for all operating costs of the Condohotel other than certain fees, charges and expenses listed in the Rental Management Agreement or Rental Pooling Management Agreement, as applicable (the **Fees, Charges and Expenses**) that are to be paid by the owners of the Condohotel Units in connection with the earning of revenues for the Condohotel. The Rental Management Agreement or Rental Pooling Management Agreement, as applicable, will include a description of how such costs associated with the

operation and maintenance of the Condohotel Units will be allocated between the Unit Manager or Rental Pool Manager, as applicable, and the owner of a Condohotel Unit. The Unit Manager or Rental Pool Manager, as the case may be, will be entitled to deduct the Fees, Charges and Expenses from each Condohotel Unit owner's aggregate revenue distribution. In the event that the aggregate revenues from the Rental Program do not cover the full amount of the Fees, Charges and Expenses, then the owners of the Condohotel Units will be responsible for such shortfall.

21. The Unit Manager or Rental Pool Manager, as the case may be, will be entitled to receive a fee for managing the Rental Program that is based upon an allocation of rental revenue between the Rental Program Participants and the Unit Manager or Rental Pool Manager generated by the Rental Program. Distributions, applicable expenses, and fees will be calculated and paid in accordance with the Rental Management Agreement or the Rental Pooling Management Agreement, as applicable, anticipated to be on a monthly or quarterly basis.

22. Additional revenues from the Rental Program may be derived from various services provided to, and various amenities available to, Rental Program Participants and guests who rent Condohotel Units in the Rental Program.

23. It is expected that any Rental Management Agreement or Rental Pooling Management Agreement would have an initial term of not more than ten years and four subsequent terms of not more than three years each. It would renew automatically at the end of each term unless terminated in accordance with its terms which may permit each Condohotel Unit owner to provide the Unit Manager or Rental Pool Manager, as the case may be, with written notice of termination no less than 90 days prior to the end of the relevant term or may require termination only with the approval of a prescribed majority of the Condohotel Unit owners within a Condohotel or within a group of Condohotels that is serviced by a common check-in facility.

24. In accordance with the By-Law, Rental Program Participants will be provided with the right to occupy their Condohotel Units for no more, and no less, than 120 days per calendar year without restriction save and except for restrictions on use that are reasonably required to facilitate the orderly management and administration of a Condohotel by a qualified Unit Manager or Rental Pool Manager which may include advance notice of use requirements, limits on maximum number of consecutive days of use, and peak period minimum use commitments.

25. Condohotel Units will be offered for sale in Ontario through one or more of the Applicant, an Applicant Agent, a Project Entity and an agent of a Project Entity licensed under the REBB Act (a **Project Entity Agent**).

26. The offering of Condohotel Units will be made in compliance with the Condominium Act.

Initial Sales

27. The Applicant, an Applicant Agent, a Project Entity or a Project Entity Agent will deliver to an initial purchaser of a Condohotel Unit, before an agreement of purchase and sale is entered into, an offering memorandum (the **Disclosure Document**) in the form of a disclosure statement required under the Condominium Act which will also include additional information in the body of the disclosure statement relating to the real estate securities aspects of the offering prepared substantially in accordance with the form and content requirements of B.C. Form 45-512F under the *Securities Act* (British Columbia) R.S.B.C. 1996, c. 418, as amended (**Form 45-512F**), including, but not limited to:

    (a) a description of the Village Core Project and the offering of Condohotel Units;

    (b) a summary of the material features of the Rental Pooling Management Agreement and/or Rental Management Agreement;

    (c) a description of the continuous reporting obligations of the Condohotel Corporation, the Rental Pool Manager or Unit Manager, as the case may be, to owners of Condohotel Units as more particularly described in paragraphs 32 and 33 below;

    (d) a description of the risk factors that make the offering of Condohotel Units a risk or speculation;

    (e) a description of the contractual right of action available to purchasers of Condohotel Units as more particularly described in paragraph 29 below; and

    (f) a certificate signed by the president or chief executive officer and chief financial officer of either: (i) the Applicant; (ii) the Project Entity or in the event that the Project Entity is a project limited partnership, the general partner of the Project Entity; or (iii) its successor, as the case may be, in the following form:

        “The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made”.

28. An initial purchaser of a Condohotel Unit will have a statutory right under the Condominium Act to rescind an agreement to purchase a Condohotel Unit within ten days of receiving the Disclosure Document or a material amendment to the Disclosure Document.

29. Purchasers of Condohotel Units will be provided with a contractual right of action as defined in Commission Rule 14-501 – "*Definitions*". The Disclosure Document will describe the contractual right of action, including any defences available to the Applicant or Project Entity, as the case may be, the limitation periods applicable to the exercise of the contractual right of action, and will indicate that the rights are in addition to any other right or remedy available to the purchaser.

30. Prospective purchasers of Condohotel Units will not be provided with rental or cash flow guarantees or any other form of financial projection or commitment on the part of the Applicant, the Project Entity, the Unit Manager or the Rental Pool Manager, as the case may be, save and except for (i) the budget that must be delivered to an initial purchaser of a Condohotel Unit pursuant to the Condominium Act, and (ii) examples of financial calculations solely for the purpose of better explaining to prospective purchasers of Condohotel Units how the rental revenue is allocated or revenue pooling proceeds are calculated, as the case may be, which sample calculations will be included in the Disclosure Document.

31. The economic value of a Condohotel will be attributable primarily to its real estate component because Condohotel Units will be advertised and marketed as resort properties and will not be advertised or marketed with reference to the expected economic benefits of the Rental Pooling Management Agreement or Rental Management Agreement.

32. A Rental Pooling Management Agreement will impose an irrevocable obligation on the Condohotel Corporation or Rental Pool Manager to send to each owner of a Condohotel Unit:

    (a) audited annual financial statements for the Rental Pool that have been prepared and delivered in accordance with sections 4.1 and 4.2 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) as if the Rental Pool was a reporting issuer for purposes of the Act; and

    (b) interim unaudited financial statements for the Rental Pool that have been prepared and delivered in accordance with sections 4.3 and 4.4 of NI 51-102 as if the Rental Pool was a reporting issuer for purposes of the Act.

33. A Rental Management Agreement will impose an irrevocable obligation on the Condohotel Corporation or Unit Manager to send to each Rental Program Participant statements of revenues and expenses for his, her or its Condohotel Unit for each quarter or such shorter period as may be stated in the Rental Management Agreement, on or before the 60th day after the date to which they are made up.

Subsequent Resales

34. A Rental Pooling Management Agreement or Rental Management Agreement, as the case may be, and the Declaration of the Condohotel Corporation (the **Declaration**) will impose an irrevocable obligation on the Rental Pool Manager or Unit Manager or the Condohotel Corporation (if not delivered by the preceding persons), as applicable, to deliver to a subsequent prospective purchaser, upon reasonable notice of an intended sale by the owner of a Condohotel Unit, and before an agreement of purchase and sale is entered into:

    (a) the most recent audited annual financial statements (which include financial statements for the prior comparative year) and, if applicable, interim unaudited financial statements for the Rental Pool (collectively **Financial Statements**); and

    (b) either (i) quarterly statements of revenues and expenses for the Condohotel Unit for the two-year period preceding the entering into of the agreement of purchase and sale for the Condohotel Unit but only to the extent that the Condohotel Unit was subject to the Rental Management Agreement during such two-year period; or (ii) to the extent that the Condohotel Unit was subject to the Rental Management Agreement for less than two-years, the quarterly statements of revenues and expenses for the Condohotel Unit for such period preceding the entering into of the agreement of purchase and sale for the Condohotel Unit that the Condohotel Unit was subject to the Rental Management Agreement (the **Quarterly Statements**, and collectively with the Financial Statements, the **Financial Information**).

35. A Rental Pooling Management Agreement or Rental Management Agreement, as the case may be, and the Declaration will impose an irrevocable obligation on:

    (a) the Rental Pool Manager, Unit Manager or the Condohotel Corporation (if not delivered by the preceding persons), as the case may be, to deliver the Disclosure Document to a subsequent prospective purchaser of a Condohotel Unit upon receiving reasonable notice of a proposed sale of the Condohotel Unit that is to take place either prior to, or within 12 months of, the issuance of permission to occupy the relevant Condohotel Unit; and

(b) the Rental Pool Manager, Unit Manager or the Condohotel Corporation (if not delivered by the preceding persons), as the case may be, to deliver a summary of the Disclosure Document (the **Disclosure Document Summary**) to a subsequent prospective purchaser of a Condohotel Unit upon receiving reasonable notice of a proposed sale of the Condohotel Unit that is to take place any time following the expiration of a period of 12 months from the date of issuance of permission to occupy the relevant Condohotel Unit.

36. A Disclosure Document Summary that is delivered to a prospective purchaser of a Condohotel Unit which is subject to a Rental Pooling Management Agreement will include:

(i) items 1, 2(1), 4, 5, 6, 8(1), (2), (3) and (4), 9(b) and 15 of Form 45-512F with respect to the proposed sale, modified as necessary to reflect the operation of the Rental Pool and the form of disclosure, and

(ii) items 11(2), (3) and (4) of Form 45-512F with respect to the Rental Pool Manager under the Rental Pooling Management Agreement modified so that the period of disclosure runs from the date of the certificate attached to the Disclosure Document Summary,

and will be certified by the Rental Pool Manager in the form of the certificate required pursuant to item 17 of Form 45-512F.

37. A Disclosure Document Summary that is delivered to a prospective purchaser of a Condohotel Unit which is subject to a Rental Management Agreement will include,

(i) items 1, 2(1), 4, 5, 6, 8(1), (2), (3) and (4), 9(b) and 15 of Form 45-512F with respect to the proposed sale, modified as necessary to reflect the operation of the rental management arrangement and the form of disclosure;

(ii) items 11(2), (3) and (4) of Form 45-512F with respect to the Unit Manager under the Rental Management Agreement modified so that the period of disclosure runs from the date of the certificate attached to the Disclosure Document Summary; and

(iii) a summary of the Unit Manager's past experience that includes items 11(2), (3) and (4) of Form 45-512F with respect to the Unit Manager modified so that the period of disclosure runs from the date of the certificate attached to the Disclosure Document Summary,

and will be certified by the Unit Manager in the form of the certificate required pursuant to item 17 of Form 45-512F.

38. A Rental Pooling Management Agreement or Rental Management Agreement, as the case may be, and the Declaration will impose an irrevocable obligation on each owner of a Condohotel Unit to provide:

(a) the Rental Pool Manager or Unit Manager, as the case may be, and the Condohotel Corporation with reasonable notice of a proposed sale of the Condohotel Unit; and

(b) a subsequent prospective purchaser of a Condohotel Unit with notice of his, her or its right to obtain from the Rental Pool Manager, Unit Manager or the Condohotel Corporation (if not delivered by the preceding persons), as the case may be, Financial Information and the Disclosure Document or Disclosure Document Summary, as the case may be.

39. A Rental Pooling Management Agreement and Rental Management Agreement will not require purchasers of Condohotel Units to give any person any assignment of their right to vote in accordance with the Condominium Act or condominium bylaws, or to waive notice of meetings of the condominium corporation in respect of the Condohotel.

Order

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the distribution of a Condohotel Unit by the Applicant, an Applicant Agent, a Project Entity and a Project Entity Agent, is exempt from sections 25 and 53 of the Act, provided that:

(a) every initial purchaser receives all of the documents and information referred to in paragraph 27 above, and a copy of this ruling, prior to entering into an agreement of purchase and sale;

(b) every initial purchaser receives the ten (10) day period for rescission described in paragraph 28, above; and

(c) any subsequent trade of a Condohotel Unit shall be a "distribution" for the purposes of the Act, unless:

(i) the seller of the subject Condohotel Unit is not a developer or an agent acting on such developer's behalf;

(ii) the seller of the subject Condohotel Unit provides written notice to the Unit Manager or Rental Pool Manager, as the case may be, and the Condohotel Corporation of his, her or its intention to sell his, her or its Condohotel Unit;

(iii) the prospective purchaser of such Condohotel Unit receives, prior to entering into an agreement of purchase and sale, all of the documents and information referred to in paragraph 34 and 35 above, as the case may be; and

(iv) the seller, or an agent acting on the seller's behalf, does not advertise, market, promise or otherwise represent any projected economic benefits of the Rental Program to any prospective purchaser.

AND IT IS RULED, that the Confidentiality Relief is granted.

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

OSC File #: 2024/0163

B.3
Reasons and Decisions

B.3.1 Capital International Asset Management (Canada), Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future investment funds granted an exemption from paragraphs 2.5(2)(a), 2.5(2)(a.1) and 2.5(2)(c) of NI 81-102 to invest up to 10% of net assets, in aggregate, in securities of SICAV Funds governed by the laws of Luxembourg and UCITS Funds governed by the Central Bank of Ireland – Underlying foreign funds are subject to similar investment restrictions and disclosure requirements as top funds – Relief granted subject to conditions – Decision includes revocation of prior relief from paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 granted to certain investment funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 2.5(2)(a.1), 2.5(2)(c) and 19.1.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.

July 3, 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
CAPITAL INTERNATIONAL ASSET MANAGEMENT (CANADA), INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of existing and future investment funds that are or will be managed by the Filer (the **Funds**), for a decision under the securities legislation of the principal regulator (the **Legislation**) that:

(a) revokes and replaces the 2020 Decision (as defined below) and the 2008 Decision (as defined below);

(b) amends the 2017 Decision (as defined below), such that the portion of the 2017 Decision granting the Underlying Fund Relief (as defined in the 2017 Decision) is revoked and replaced by this decision; and

(c) exempts each Fund from the following provisions of National Instrument 81-102 *Investment Funds* (**NI 81-102**):

(i) paragraphs 2.5(2)(a) and (a.1) to permit each Fund to purchase and/or hold securities of Underlying Funds, which are SICAV Funds and/or UCITS Funds (each as defined below) even though the Underlying Funds are not subject to NI 81-102; and

(ii) paragraph 2.5(2)(c) to permit each Fund to purchase and/or hold securities of Underlying Funds even though the Underlying Funds are not reporting issuers in any province or territory of Canada (collectively, the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and NI 81-102 have the same meanings if used in this decision, unless otherwise defined. Additionally, the following terms have the following meanings:

Companies Act means the *Companies Act 2014* (Ireland) as amended, all enactments which are to be read as one with, or construed or read together with, or as one with, the *Companies Act 2014* (Ireland) and every statutory modification and re-enactment thereof for the time being in force.

CSSF means Commission de Surveillance du Secteur Financier.

EU Directives means *EU Council Directive 2009/65/EC of 13 July 2009 on the Coordination of Laws, Regulations and Administrative Provisions relating to UCITS*, as amended, including but not limited to, Commission Directive 2010/43/EC, Commission Directive 2010/44/EC, and Commission Directive 2014/91/EC.

KIID means a Key Investor Information Document prepared by a UCITS Corporation for each of the Underlying Funds which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101 or an ETF facts document prepared under NI 41-101.

NI 41-101 means National Instrument 41-101 *General Prospectus Requirements*.

NI 81-101 means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

SICAV means Société d'Investissement à Capital Variable, an open-end investment company, governed by the laws of Luxembourg.

SICAV Funds means each of the existing sub-funds of an umbrella SICAV with UCITS status and other sub-funds of an umbrella SICAV with UCITS status established in the future.

UCITS means Undertaking for Collective Investments in Transferable Securities and refers to the investment funds authorized by the European Union as investment funds suitable to be distributed in more than one country in Europe.

UCITS Corporations means investment companies with variable capital, incorporated in Ireland pursuant to the Companies Act and the UCITS Regulations.

UCITS Funds means each of the existing sub-funds of the UCITS Corporations and other sub-funds of the UCITS Corporations established in the future under one of the UCITS Corporations.

UCITS Notices means the series of UCITS notices, memorandums, guidelines and letters issued by the Central Bank of Ireland or the CSSF, as the case may be.

UCITS Regulations means the regulations issued by European Union member states that implement the EU Directives.

Underlying Fund means a SICAV Fund or a UCITS Fund.

Underlying Fund Manager means the promoter, investment manager and distributor of an Underlying Fund.

Representations

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

The Filer

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

2. The Filer is registered in the categories of (a) exempt market dealer in the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan, (b) portfolio manager in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and

Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan and (c) investment fund manager in the Provinces of Newfoundland and Labrador, Ontario and Quebec.

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

4. The Filer acts, or will act, as the investment fund manager of each Fund.

The Previous Decisions

5. In previous decisions granted to the Filer on January 13, 2020 (the **2020 Decision**), August 25, 2017 (the **2017 Decision**) and April 16, 2008 (the **2008 Decision**), the Filer was granted relief from paragraphs 2.5(2)(a) and (c) to permit Capital Group Monthly Income Portfolio (Canada), Capital Group World Bond Fund (Canada) and Capital Group Core Plus Fixed Income Fund (Canada), respectively, to purchase and/or hold securities of an Underlying Fund, even though the Underlying Fund is not subject to NI 81-102 and is not a reporting issuer in any province or territory of Canada. The Filer is requesting that the 2020 Decision and the 2008 Decision be revoked and replaced with this decision and the 2017 Decision be amended such that the portion of the 2017 Decision granting the Underlying Fund Relief (as defined in the 2017 Decision) is revoked and replaced by this decision, because the 2020 Decision, the 2008 Decision, and the portion of the 2017 Decision granting the Underlying Fund Relief did not apply to all Funds that are or will be managed by the Filer.

The Funds

6. Each Fund is, or will be, an investment fund organized and governed by the laws of a Jurisdiction. Each Fund will be a reporting issuer in the Jurisdiction(s) in which its securities are distributed.

7. Each Fund is, or will be, governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities.

8. Each existing Fund is not in default of securities legislation in any of the Jurisdictions.

9. Each investment by a Fund in securities of an Underlying Fund will be made in accordance with the investment objectives of the Fund and will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

10. Subject to compliance with NI 81-102, the investment objectives and strategies of each Fund would permit the Fund to invest in securities of the Underlying Funds.

The Underlying Funds

11. A Fund may, from time to time, invest up to 10% of its net asset value (at time of purchase) in securities of an Underlying Fund.

12. The UCITS Funds are sub-funds of a UCITS Corporation and are subject to the UCITS Regulations.

13. The SICAV Funds are sub-funds of an umbrella SICAV with UCITS status under the laws of Luxembourg and are subject to UCITS Regulations.

14. The Underlying Funds are conventional mutual funds subject to investment restrictions and practices that are substantially similar to those applicable to the Funds. The Underlying Funds are available for purchase by the public and are generally not considered hedge funds. Each of the Underlying Funds is considered to be an "investment fund" and a "mutual fund" within the meaning of applicable Canadian securities legislation.

15. The Underlying Funds qualify as UCITS and the securities of the Underlying Funds are distributed in accordance with the UCITS Regulations. Each UCITS Fund is regulated by the Central Bank of Ireland and each SICAV Fund is regulated by the CSSF.

16. The Underlying Funds are qualified for purchase by way of a prospectus, relating to the UCITS Corporations and the umbrella SICAVs, and an annex to the prospectus pertaining to each sub-fund of the UCITS Corporations and the umbrella SICAVs, including each of the Underlying Funds. In addition to the prospectus and prospectus supplement, the UCITS Corporations and the umbrella SICAVs prepare a KIID for each of the Underlying Funds.

17. An Underlying Fund Manager serves as the promoter, investment manager and general distributor of each sub-fund of the UCITS Corporations and the umbrella SICAVs. An Underlying Fund Manager, subject to the supervision of the directors of the UCITS Corporations or the umbrella SICAV, as the case may be, is responsible for the investment management, general distribution and marketing of the Underlying Funds. The Underlying Fund Manager provides an investment program for the Underlying Funds and manages the investment of the Underlying Funds' assets.

18. An Underlying Fund Manager, being subject to regulatory oversight by the Central Bank of Ireland or CSSF, is subject to substantially equivalent regulatory oversight as the Filer, which is principally regulated by the OSC. In discharging its duties, the Underlying Fund Manager must conduct its business with due skill, care and diligence.

19. The Underlying Funds are subject to the following regulatory requirements and restrictions pursuant to, and among others, the EU Directives, which are substantially similar to the requirements and restrictions set forth in NI 81-102:

    (a) Each Underlying Fund is subject to a robust risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets.

    (b) Each Underlying Fund is generally restricted to investing a maximum of 10% of its net assets in a single issuer.

    (c) Each Underlying Fund is subject to investment restrictions designed to limit its holdings of illiquid securities to 10% or less of its net asset value.

    (d) Each Underlying Fund is subject to investment restrictions designed to limit holdings of transferrable securities which are not listed on a stock exchange or regulated market to 10% or less of the Underlying Fund's net asset value.

    (e) The rules governing the use of derivatives by the Underlying Funds are comparable to the rules regarding the use of derivatives under NI 81-102 with respect to the types of derivatives allowed to be used and counterparty concentration. For Funds that are not alternative funds, the differences between the two regimes relate to: (i) counterparty credit ratings; (ii) maximum exposure to options; and (iii) having to hold cash and collateral together with the market value of the derivatives equal to the underlying market exposure of the derivatives (on a mark-to-market basis) where the funds use derivatives for investment purposes.

    (f) The rules governing securities lending by the Underlying Funds are comparable to the rules regarding securities lending under NI 81-102 including, the inability to pledge non-cash collateral and the right to immediately recall the securities loaned. The differences between NI 81-102 and the rules pertaining to the Underlying Funds relate to the following: (i) the type and amount of collateral; (ii) the person who may be appointed as agent for securities lending; (iii) the types of securities that may be purchased with collateral received; and (iv) the overall securities lending limits.

    (g) Each Underlying Fund makes, or will make, its net asset value of its holdings available to the public at the close of business each business day, as set out in the Underlying Funds' prospectus.

    (h) Each Underlying Fund is required to prepare a prospectus and annex to the prospectus that discloses material facts pertaining to each Underlying Fund. The prospectus, together with the corresponding prospectus supplement, provide disclosure that is similar to the disclosure required to be included in a simplified prospectus under NI 81-101 or in a prospectus under NI 41-101.

    (i) Each Underlying Fund publishes a KIID which contains disclosure similar to that required to be included in a fund facts document prepared under NI 81-101 or an ETF facts document under NI 41-101.

    (j) Each Underlying Fund is subject to continuous disclosure obligations which are similar to the disclosure obligations of the Funds under National Instrument 81-106 *Investment Funds Continuous Disclosure*.

    (k) The Underlying Fund Manager is subject to approval by the Central Bank of Ireland or the CSSF to permit it to manage and provide portfolio management advice to each Underlying Fund and is subject to an investment management agreement which sets out a duty of care and a standard of care requiring the Underlying Fund Manager to act in the best interest of each Underlying Fund and the shareholders of each Underlying Fund.

    (l) All activities of the Underlying Fund Manager must be conducted at all times in accordance with the UCITS Regulations, the UCITS Notices and the investment policy of each Underlying Fund and are at all times subject to the supervision of the board of directors of the UCITS Corporation.

    (m) The auditor of each Underlying Fund is required to prepare an audited set of accounts for each Underlying Fund at least annually.

Investment by the Funds in the Underlying Funds

20. The investment objective and strategies of each Fund are, or will be, disclosed in each Fund's prospectus or simplified prospectus and any Fund that invests in an Underlying Fund will be permitted to do so in accordance with its investment objectives and strategies.

21. In particular, the investment strategies of each Fund stipulate, or will stipulate, that the Fund may invest a portion of its assets in other investment funds, domestic or foreign, which will permit each Fund to invest in an Underlying Fund.

22. The prospectus or simplified prospectus of each Fund provides, or will provide, all disclosure mandated for investment funds investing in other investment funds.

23. There will be no duplication of management fees or incentive fees as a result of an investment by a Fund in an Underlying Fund.

24. The amount of loss that could result from an investment by a Fund in an Underlying Fund will be limited to the amount invested by the Fund in such Underlying Fund.

25. No sales charges or redemption fees will be paid by a Fund relating to a subscription for, or redemption of, securities of an Underlying Fund.

Rationale for Investment in the Underlying Fund

26. The Filer believes that it is in the best interests of the Funds that they be permitted to invest in the Underlying Funds because such investment would provide an efficient and cost-effective way for the Funds to achieve diversification and obtain unique exposures to the markets in which the Underlying Funds invest.

27. The investment objectives and strategies of the Funds, which contemplate or will contemplate investment in global or international securities, permit or will permit the allocation of assets to global or international securities. As economic conditions change, the Funds may reallocate assets, including on the basis of asset class or geographic region. A Fund will invest in an Underlying Fund to gain exposure to certain unique strategies in global or international markets in circumstances where it would be in the best interests of the Fund to do so through an investment in an investment fund offered elsewhere rather than through investments in individual securities. For example, a Fund will invest in the Underlying Funds in circumstances where certain investment strategies preferred by the Funds are either not available or not cost effective to be implemented through investments in individual securities.

28. By investing in the Underlying Funds, the Funds will obtain the benefits of diversification, which would be more expensive and difficult to replicate using individual securities. This will reduce single issuer risk.

29. Investment by a Fund in an Underlying Fund meets, or will meet, the investment objectives of such Fund.

30. An investment by a Fund in securities of each Underlying Fund will represent the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Fund.

31. Absent the Exemption Sought, the investment restriction in paragraphs 2.5(2)(a)(i) and 2.5(2)(a.1)(i) of NI 81-102 would prohibit a Fund that is a mutual fund or alternative mutual fund, respectively, from purchasing or holding securities of an Underlying Fund because the Underlying Fund is not subject to NI 81-102.

32. Absent the Exemption Sought, the investment restriction in paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of an Underlying Fund because the Underlying Fund is not a reporting issuer in the local jurisdiction.

Decision

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

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

(a) the Underlying Funds qualify as UCITS and are distributed in accordance with the UCITS Regulations, which subject the Underlying Funds to investment restrictions and practices that are substantially similar to those that govern the Funds;

(b) the investment of the Funds in the Underlying Funds otherwise complies with section 2.5 of NI 81-102 when investing in the Underlying Funds, and the prospectus will provide all applicable disclosure mandated for investment funds investing in other investment funds;

(c) a Fund does not invest in an Underlying Fund if, immediately after the investment, more than 10% of its net assets, taken at market value at the time of the investment, would consist of investments in Underlying Funds; and

(d) a Fund shall not acquire any additional securities of an Underlying Fund and shall dispose of any securities of an Underlying Fund then held in the event the regulatory regime applicable to the Underlying Funds is changed in any material way.

"Darren McKall"
Manager, Investment Management Division
Ontario Securities Commission

Application File #:2024/0337
SEDAR Project #: 6140145

B.3.2 1832 Asset Management L.P. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act to permit the extension of a prospectus lapse date by 39 days to facilitate the consolidation of the funds' prospectus with the prospectus of different funds under common management – no conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

July 4, 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
1832 ASSET MANAGEMENT L.P.
(the Filer)

AND

DYNAMIC CREDIT ABSOLUTE RETURN FUND,
DYNAMIC CREDIT OPPORTUNITIES FUND
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limits for the renewal of the simplified prospectus of the Funds dated September 7, 2023, as amended by amendment no. 1 dated October 20, 2023 (the **Funds' Prospectus**) be extended to those time limits that would be applicable as if the lapse date of the Funds' Prospectus was October 16, 2024 (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 the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is an Ontario limited partnership, which is wholly-owned by the Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned by BNS with its head office located in Toronto, Ontario.

2. The Filer is registered as (i) a portfolio manager in all of the provinces of Canada and in the Northwest Territories and the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Québec, Newfoundland and Labrador and the Northwest Territories; and (iv) a commodity trading manager in Ontario.

3. The Filer is the investment fund manager of each of the Funds.

4. The Funds are alternative mutual funds for the purposes of National Instrument 81-102 Investment Funds established as a trust under the laws of the Jurisdiction.

5. Each Fund is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

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

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date of the Funds' Prospectus is September 7, 2024 (the **Current Lapse Date**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of the Funds would have to cease on the Current Lapse Date unless: (i) the Funds file a pro forma prospectus at least 30 days prior to the Current Lapse Date; (ii) the final prospectus is filed no later than 10 days after the Current Lapse Date; and (iii) a receipt for the final prospectus is obtained within 20 days of the Current Lapse Date.

8. The Filer is the investment fund manager of 6 other alternative mutual funds (the **Other Funds**) that currently distribute their securities to the public under a simplified prospectus that has a lapse date of October 16, 2024 (the **Other Funds' Prospectus**).

9. The Filer wishes to combine the Funds' Prospectus with the Other Funds' Prospectus in order to reduce renewal, printing and related costs. Offering the Funds and the Other Funds under one prospectus would facilitate the distribution of such funds in the Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. As the Funds and the Other Funds are managed by the Filer and are part of the same fund family, offering them under the same prospectus will allow investors to more easily compare their features.

10. It would be impractical to alter and modify all the dedicated systems, procedures and resources required to prepare the renewal of the Other Funds' Prospectus, and unreasonable to incur the costs and expenses associated therewith, so that it can be filed early to align with the renewal of the Funds' Prospectus.

11. The Filer may make minor changes to the features of the Other Funds as part of the process of renewing the Other Funds' Prospectus. The ability to file the simplified prospectus of the Funds with those of the Other Funds will ensure that the Filer can make the operational and administrative features of the Funds and the Other Funds consistent with each other, if necessary.

12. If the Exemption Sought is not granted, it will be necessary to file the Funds' Prospectus twice within a short period of time in order to consolidate the Funds' Prospectus with the Other Funds' Prospectus.

13. There have been no material changes in the affairs of the Funds since the date of the Funds' Prospectus, other than those for which amendments have been filed. Accordingly, the Funds' Prospectus represents current information regarding the Funds.

14. Given the disclosure obligations of the Filer and the Funds, should any material change in the business, operations or affairs of the Funds occur, the Funds' Prospectus will be amended as required under the Legislation.

15. New investors in the Funds will receive delivery of the most recently filed fund facts of the Fund. The Funds' Prospectus will remain available to investors upon request.

16. The Exemption Sought will not affect the accuracy of the information contained in the Funds' Prospectus and will therefore not be prejudicial to the public 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 Exemption Sought is granted.

"Darren McKall"
Manager, Investment Management
Ontario Securities Commission

Application File #: 2024/0366
SEDAR+ File #: 6146605

B.3.3 A.E. – s. 31

IN THE MATTER OF
STAFF'S RECOMMENDATION FOR THE REFUSAL OF
THE REACTIVATION OF REGISTRATION OF A.E.

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
UNDER SECTION 31 OF THE SECURITIES ACT (ONTARIO),
R.S.O. 1990, C. S.5,
AS AMENDED

Reasons for Decision

1. On June 21, 2024, I made the decision (with reasons to follow) refusing the application by A.E. for a reactivation of registration as a dealing representative with a mutual fund dealer. I also made the decision that the proceedings be closed to the public, that the record, including transcripts and all exhibits submitted at the opportunity to be heard (**OTBH**) pursuant to section 31 of the *Securities Act* (Ontario) (the **Act**), be sealed and not disclosed or made available to the public, and that the identity of A.E. be protected through the use of initials.

2. The OTBH was held on May 24, 2024. Mark Skuce, Senior Legal Counsel appeared and made submissions on behalf of staff (**Staff**) of the Ontario Securities Commission (**OSC**), and A.E. appeared and made submissions on their own behalf.

3. These are my reasons.

Background

4. On August 3, 2021, A.E. became registered as a dealing representative of a mutual fund dealer (**Sponsoring Firm A**).

5. On the evening of February 26, 2023, A.E. was pulled over by the police for driving 140 Km/hr in a 60 km/hr zone. A.E. admitted to drinking, failed a Breathalyzer test, was arrested and had their vehicle impounded. Later that evening, having previously failed three Breathalyzer tests, A.E. was released from police custody with an Appearance Notice dated February 27, 2023.

6. Section 3 of the Appearance Notice, titled "Alleged Offence", states that A.E. was alleged to have committed the offence of "Operation while impaired – blood alcohol concentration (80 plus) CC 320.14(1)(b)"; an offence under the *Criminal Code*, R.S.C. 1985, c. C-46, commonly referred to as "driving over 80".

7. At the time of the arrest, A.E. was registered as a representative of Sponsoring Firm A. As part of the terms and conditions of employment with Sponsoring Firm A, A.E. was subject to a Code of Conduct which, under the heading "Demonstrating Personal Integrity: Criminal Record", requires employees to "inform their manager or Human Resources as soon as possible when charged with a criminal offence, and again if found guilty of, or plead guilty or no contest to, a criminal offence, including providing information related to the situation, unless prohibited by local law […] If unsure whether a charge, guilty finding or plea should be reported, employees should discuss the situation with their manager or Human Resources". A.E. acknowledged to have received training on the Code of Conduct.

8. A.E. did not report the driving over 80 charge to Sponsoring Firm A and did not return to work. Immediately after the arrest, A.E. took personal time off and was later approved for leave of absence due to short-term disability until their resignation effective May 18, 2023.

9. On March 7, 2023, approximately 8 days after the arrest and while A.E. was off work from Sponsoring Firm A, A.E. applied to a position with another mutual fund dealer (**Sponsoring Firm B**). A.E. received an offer letter dated May 2, 2023 to join Sponsoring Firm B starting on May 22, 2023. A.E. did not inform Sponsoring Firm B of the driving over 80 charge at any time during the interview process.

10. On May 31, 2023, the OSC received a Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* (**Form F7**) for the reinstatement of A.E.'s registration with Sponsoring Firm B.

11. On June 13, 2023, Staff advised Sponsoring Firm B that A.E. was not eligible to use Form F7 because Form F7 is available to individuals previously registered only if there has been no change to prescribed items in their permanent record, including their criminal record information and, therefore, A.E. would be required to submit a Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form F4**) for a reactivation of registration.

12. On September 13, 2023, a Form F4 was submitted with the OSC for the reactivation of registration of A.E. as a dealing representative of Sponsoring Firm B. This Form F4 submission disclosed the driving over 80 charge.

13. On November 2, 2023, A.E. attended a voluntary interview with Staff.

14. On January 19, 2024, A.E. forwarded to Staff a letter from A.E.'s defense lawyer stating that the driving over 80 charge had been withdrawn by the Crown on January 10, 2024.

Summary of Submissions

Staff's submissions

15. Staff alleges that A.E. failed to provide true and complete disclosures on multiple occasions and provided a series of conflicting and unreasonable explanations for failing to provide true and complete disclosures.

16. Specifically, Staff alleges that

    (i) while registered as a representative at Sponsoring Firm A, A.E. was charged with driving over 80 and failed to disclose this criminal charge to Sponsoring Firm A as required

    (ii) in applying to transfer their registration from Sponsoring Firm A to Sponsoring Firm B, A.E. filed a statutory application form (*i.e.,* Form F7) that falsely omitted reference to the then outstanding criminal charge

    (iii) when called upon by Sponsoring Firm B to account for the failure to disclose the criminal charge, A.E. claimed to have relied on legal counsel not to disclose the criminal charge, which was false as no such legal advice was given to A.E.

17. Staff contends that A.E. had multiple opportunities to inform Sponsoring Firm A and Sponsoring Firm B of the driving over 80 charge or seek clarification from personnel at either firm or the OSC on whether A.E. had an obligation as a mutual fund dealing representative or applicant for registration to report the events of February 27, 2023. Instead, A.E. offered multiple, and sometimes conflicting, explanations for not disclosing the driving over 80 charge, including that A.E. did not understand that they had been charged and believed that the obligation to disclose this information would only arise upon being found guilty of the charge, which explanation was neither honestly held nor reasonable.

18. Staff contends that, upon being asked by Sponsoring Firm B to confirm that A.E. had chosen not to disclose the criminal charge on the advice of legal counsel, A.E. responded "Yes, that is correct", but subsequently admitted to Staff that "Nobody told me not to disclose my charges to my employer specifically wording it that way, they just said to take time and I figured since I am not returning to [Sponsoring Firm A], and I was off on short-term disability I would not need to tell [Sponsoring Firm A] until my return if I decided to return".

19. At a minimum, Staff alleges that A.E.'s purported misunderstanding about being criminally charged or the obligation to disclose such information to A.E.'s sponsoring firm was the result of recklessness or wilful blindness, which is inconsistent with the integrity required of a registered individual.

20. Staff also contends that the withdrawal of the driving over 80 charge by the Crown on January 10, 2024 is no longer relevant to the matter of A.E.'s fitness for registration at this time.

A.E.'s submissions

21. A.E. admitted to the non-disclosure to both Sponsoring Firm A and Sponsoring Firm B. A.E. agreed that the driving over 80 charge should have been disclosed but stated that the reasons for this non-disclosure were due to embarrassment and misunderstanding of the legal implications associated with the criminal charge.

22. A.E. also contends that, following the incident on the evening of February 26, 2023 and early morning of February 27, 2023, A.E. experienced immense personal distress and embarrassment, which significantly impacted A.E.'s ability to continue working. After the arrest, A.E. applied and was approved for short-term disability, sought counselling, and was diagnosed with an adjustment disorder with A.E. "experiencing moderate impairment in decision making, concentration/focus, and insight/judgement". A.E. claims to have been unaware of the obligation to inform Sponsoring Firm A of the events and that A.E. had not been advising mutual fund clients within the last year at Sponsoring Firm A.

23. A.E. also alleges that, when applying for reinstatement of registration with Sponsoring Firm B, which A.E. did only to be closer to home because of the suspension of their driver's licence and not to avoid disclosure of the criminal charge, A.E. genuinely believed there were no charges to disclose. While completing the criminal background check questionnaire for the role with Sponsoring Firm B, A.E. took a screenshot of one of the questions which, in A.E.'s view, contained language in support of A.E.'s decision not to disclose the driving over 80 charge.

24. A.E. also submitted a letter of reference from A.E.'s manager in Sponsoring Firm B, a supportive email from A.E.'s manager in Sponsoring Firm A, along with a record of performance awards and nominations obtained between January 2020 and January 2023 while employed by Sponsoring Firm A.

Law and Analysis

25. Subsection 27(1) of the Act provides that the Director shall register a person applying for registration unless it appears to the Director that the person is not suitable for registration under the Act or that the registration is otherwise objectionable. Subsection 27(2) sets out the test of suitability for registration by requiring the Director to consider the requirements prescribed in the regulations, including requirements relating to proficiency, solvency and integrity, and such other factors as the Director considers relevant.

26. The question before me is whether A.E. lacks the integrity required for registration under the Act and whether A.E's registration would be otherwise objectionable.

Registration Information, Obligation to Disclose and Integrity

27. Pursuant to National Instrument 33-109 *Registration Information* (**NI 33-109**), applications for registration are made in a prescribed form, Form F4, that requires the applicant to disclose various items of information that are used to assess an applicant's suitability for registration. If an application is granted, the information contained in Form F4 becomes the registered individual's permanent record. Item 14.1 of Form F4 asks the applicant the following question: Are there any outstanding or stayed charges against you alleging a criminal offence that was committed?

28. CSA Staff Notice 33-320 *The Requirement for True and Complete Applications for Registration* (**CSA Staff Notice 33-320**) describes the application process, including Form F4, as an integral part of the registration regime. CSA Staff Notice 33-320 alerts stakeholders to the seriousness of providing false or misleading applications for registration. It provides the example of a registrant that is charged with a criminal offence and the requirement of the registrant to update their information within the prescribed number of days after the charge, adding that it is not acceptable to wait to disclose a criminal charge until after the registrant has been found not guilty at trial.

29. CSA Staff Notice 33-320 also references the decision in *Re Thomas* (1972), OSCB 118, in which the OSC stated that:

> The keystone to the registration system is the application form. A desire and an ability to answer the questions in it with candour in many respects can be said to be the first test to which the applicant is put.

30. In *Re John Doe* (2010), 33 OSCB 1371, a case which also involved the non-disclosure of a criminal record in an application for registration, the Director stated that:

> […] even if the Applicant somehow was honestly mistaken in the chain of inaccurate disclosure he provided to OSC staff (which I doubt) I agree with the statement in *Re Doe* [(2007), ABASC 296] that integrity is broader than dishonesty and encompasses a certain duty of care in one's work product. The Applicant had a duty to carefully complete documents relating to his registration, including his initial application for registration. In my view, he did not meet this duty.

31. Any changes to the information in a registered individual's permanent record, including changes to Item 14.1, require an update in another prescribed form delivered to the regulator within 15 days in accordance with NI 33-109.

Non-disclosure of criminal charge to Sponsoring Firm A

32. After the arrest, A.E. had at least two interactions with their reporting manager and at least one interaction with human resources at Sponsoring Firm A in relation to A.E.'s time off and leave of absence requests. In each interaction, A.E. chose not to disclose or seek clarification on whether the events ought to be disclosed to Sponsoring Firm A.

33. If A.E. had informed Sponsoring Firm A of the driving over 80 charge, Sponsoring Firm A would have been able to update A.E.'s registration information in accordance with NI 33-109.

Non-disclosure of criminal charge to Sponsoring Firm B

34. During the interview process with Sponsoring Firm B, which involved two interviews and a criminal background check questionnaire, or after starting with Sponsoring Firm B on May 22, 2023, A.E. again had multiple opportunities to either disclose the criminal charge or seek clarification on whether the criminal charge should be disclosed to Sponsoring Firm B. A.E. was deliberate in avoiding disclosure.

35. In applying to transfer their registration from Sponsoring Firm A to Sponsoring Firm B, A.E. was not eligible to use Form F7. The Form F7 process (known as "reinstatement of registration") is intended to allow individuals to move between registered firms without having to undergo the comparatively lengthy process of a Form F4 review.

36. Form F7 contains general instructions pertaining to the eligibility to use that form, including the requirement for there to have been no changes to criminal disclosure information in Item 14 of the individual's Form F4 since the individual left their former sponsoring firm. Form F7 also contains a warning that it is an offence under securities legislation to knowingly give false or misleading information to the regulator, and requires that the applicant certify as true, among other

statements, that the applicant has read and understood the form, have discussed the form with a branch manager, supervisor, officer or partner of their sponsoring firm and to the best of their knowledge they are satisfied that the applicant understood all matters within the form, and to the best of the applicant's knowledge and after reasonable inquiry, all of the information provided on the form is true and complete.

37. Upon being asked by Sponsoring Firm B to confirm that A.E. had chosen not to disclose the criminal charge on the advice of legal counsel, A.E. responded with a false statement, as later admitted by A.E.

Explanations for non-disclosure

38. I am not persuaded that A.E.'s short-term disability is a reasonable excuse for not disclosing the criminal charge to Sponsoring Firm A. While on leave from Sponsoring Firm A, days after the arrest, A.E. applied for a similar job at Sponsoring Firm B, suggesting that A.E. was in fact able to return to work. It appears that A.E. chose not to return to Sponsoring Firm A because A.E.'s driver's licence had been suspended. Further, by A.E.'s own admission, A.E. incorrectly believed that as long as they did not return to work to Sponsoring Firm A due to short-term disability A.E. would not need to report the driving over 80 charge.

39. Regarding A.E.'s belief that they had not been formally charged, I find that belief was neither honestly held nor reasonable. Similar to the decision in *Re Thomas*, while A.E. may have never had any previous encounters with the police and the language used in the Appearance Notice may have appeared technical and complex, I am again not persuaded that A.E. did not appreciate the significance of the arrest and the allegation that they had committed a criminal offence. A.E. either knew or ought to have known that this information was relevant to their professional standing as a registered individual.

40. The effectiveness of the registration process would be significantly diminished if applicants for registration could avoid disclosing detrimental information on the basis of unreasonable assumptions, forgetfulness, or misunderstandings. The OSC must be reasonably confident that the individuals to whom it grants the privilege of registration will discharge their professional obligations to their clients honestly and diligently.

41. I was not persuaded by any of A.E.'s explanations for the non-disclosure of the criminal charge. Overall, I found the various explanations to be unreasonable. A.E.'s non-disclosure of the criminal charge is inconsistent with what is expected of a registrant and the standard set out in *Re John Doe*.

Future Fitness for Registration

42. While I have decided that A.E.'s application should be refused, I do not think that A.E. should be barred from re-applying for registration in the future. Having heard from A.E. at the OTBH, I am of the view that A.E. is remorseful for their actions.

43. The decision in *Re Sawh* (2016), 39 OSCB 2477 set out the following six factors that must be considered in making a determination on an applicant's suitability for registration after a finding by the Director or the Commission that the applicant was not suitable for registration. Such determination includes evaluating the evidence supporting each of the factors prior to making a decision on the subsequent application for registration:

    a. the applicant must show by a sufficient course of conduct that they can be trusted in performing business duties;

    b. the applicant must introduce evidence of other independent, trustworthy persons with whom the applicant has been associated since the prior refusal, suspension or revocation of registration;

    c. a sufficient period of time must have elapsed for the purposes of general and specific deterrence;

    d. where proficiency is at issue, the applicant must demonstrate how they have specifically remediated their proficiency;

    e. the applicant must demonstrate that the misconduct that led to the prior refusal, suspension or revocation is unlikely to recur in the future by no longer engaging in business with non-compliant business associates; and

    f. the applicant must demonstrate remorse and take full responsibility for their past conduct.

44. If A.E. can demonstrate in the future their fitness for registration, taking into consideration the factors above, A.E. can re-apply for registration at that time.

July 3, 2024

"Felicia Tedesco"
Deputy Director,
Registration, Inspections and Examinations Division

B.3.4 PIMCO Canada Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) – relief from the requirement in section 11.2 of NI 31-103 to designate one individual to be the ultimate designated person (UDP), and instead be permitted to designate two individuals as UDPs in respect of two distinct operational divisions of the Filer.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 11.2 and 15.1(1).
Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, s. 3.6(3).

June 24, 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
PIMCO CANADA CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief, pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), from the requirement contained in section 11.2 of NI 31-103 to designate an individual to be the ultimate designated person (**UDP**), in order to permit the Filer to designate and register two individuals as UDPs in respect of two distinct lines of businesses of the Filer (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 (**Principal Regulator**), 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 all of the jurisdictions in Canada outside of Ontario (together with the Jurisdiction, the **Filing 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 the Province of Nova Scotia. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as (i) an investment fund manager in Ontario, Quebec and Newfoundland and Labrador; (ii) a portfolio manager in each of the provinces of Canada; (iii) an exempt market dealer in each of the provinces of Canada; (iv) a commodity trading manager in Ontario; and (v) an adviser under the *Commodity Futures Act* (Manitoba).

3. The Filer is not in default of any of the requirements of the securities legislation in any Jurisdiction of Canada.

Operational Structure

4. The Filer operates two distinct operating lines of securities business based on the nature of the services provided (each a **Division** and collectively, the **Divisions**):

   (a) one Division (the **Retail Division**), undertakes the retail line of business of the Filer, which includes the management of investment funds. The Retail Division is responsible for the creation of investment funds (which includes establishing the product mandate), as well as directing the business, operations and affairs of the investment funds managed by the Filer. This includes monitoring adherence to the investment objective of the investment funds, conducting investment activities of the investment funds, marketing of the proprietary investment funds to registered dealers, as well as oversight of the funds' service providers;

   (b) the other Division (the **Institutional Division**), undertakes the institutional line of business of the Filer, which includes providing managed account services, and

distributing investment products managed by the Filer's affiliates, to institutional clients. The Institutional Division offers fully discretionary accounts to institutional investors that it manages and also acts as the dealer for the sale of investment products managed by the Filer and its affiliates to non-discretionary institutional clients as an exempt market dealer.

5. Each Division has separate and distinct senior management and operating structures.

The UDPs

6. Currently, the Divisions share the same UDP. The Filer does not have a CEO; instead, the Filer has a President who is the UDP, and who will be retiring on June 30, 2024. The Filer intends to replace the President with two co-heads.

7. Currently, the person with the title President has ultimate responsibility and oversight of both the Retail Division and the Institutional Division. With the retirement of the President, the Board of Directors of the Filer (the **Board**) is transitioning responsibility and oversight of each Division to its head (each a **Division Head**) in order to position the Filer to handle its business and to address succession planning. The Division Heads will, together, be the co-heads of the Filer.

8. If the exemption sought is granted, the Filer intends to have two UDPs. The Division Heads, being the most senior officer of each Division, will each be designated and registered as UDP for their respective Division.

9. The Division Heads, regardless of their title from time to time, will each have the role that is the functional equivalent of a chief executive officer in respect of the Division for which they are responsible and will be the most senior and final decision maker for their Division. This means that each UDP fulfills the following roles for their respective Division:

   (a) supervises, oversees and otherwise is responsible for running the Division;

   (b) provides clear leadership and promotes a culture of compliance within the Division;

   (c) implements the objectives, strategy and plans for the Division;

   (d) is accountable for the operations and financial performance of the Division;

   (e) is the individual that the executive management within the Division report to;

   (f) is accountable for reporting at least annually to the Board with respect to the Division;

   (g) promotes compliance with industry rules and applicable securities laws and applicable securities laws;

   (h) supervises the activities of the Filer directed toward ensuring compliance with industry rules and applicable securities law requirements;

   (i) is responsible for the overall conduct of and supervision of its employees;

   (j) ensures that supervisory policies and procedures are developed and implemented and adequately reflect the regulatory requirements;

   (k) has ultimate authority over compliance-related matters for the Division.

10. While the Division Heads will work together to run the Filer, there will be no line of reporting between the Division Heads. Each Division Head will have direct access to the Board and will report independently to the Board in respect of the Division for which they are responsible.

11. No other executive officer of the Filer will have the authority to overrule a decision of the applicable Division Head or control either of the Division Head's access to the Board. For clarity, neither Division Head will have the authority to overrule a decision of the other Division Head in connection with the Division over which that person is not the division head.

12. The Filer's Compliance team has been, and will continue to be, led by a single Chief Compliance Officer (the **CCO**). The CCO of the Filer will have direct access to each UDP and the Board.

Reasons for the Exemption Sought

13. Under section 11.2 of NI 31-103, a registered firm is required to designate and have registered an individual to be the UDP (the **UDP Requirement**). The UDP must be: (i) the chief executive officer of the registered firm or, if the firm does not have a chief executive officer, an individual acting in a capacity similar to a chief executive officer; (ii) the sole proprietor of the registered firm; or (iii) an officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only in the division and the firm has significant other business activities. Applications to designate and register UDPs must be submitted pursuant to the process set out in National Instrument 33-109, *Registration Information*.

14. Granting the Exemption Sought would be consistent with the policy objectives that the UDP Requirement is intended to achieve because:

   (a) the Divisions are independent operations that are distinct from each other; and

(b) the Division Heads shall be the most senior executive members of their respective Divisions.

15. Granting of the Exemption Sought will allow the Filer to operate with enhanced compliance effectiveness, since one UDP would not be required to divide their time between the compliance oversight of two Divisions, including one Division over which they are not the ultimate decision maker. Granting the Exemption Sought will also increase the UDP's ability to respond quickly to address the Filer's compliance needs.

16. Accordingly, the Filer submits that aligning the UDPs and the compliance structure with the Filers business model would be effective in fulfilling the policy objectives of the UDP Requirement and will facilitate maintaining an effective compliance program.

Decision

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

18. The decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) Each Division shall have its own UDP, who shall be the equivalent of the chief executive officer in respect of the Division for which they are the UDP;

(b) Only one individual shall be the UDP of each Division;

(c) Each UDP has direct access to the Board; and

(d) Each UDP shall fulfill the responsibilities set out in section 5.1 of NI 31-103, and any successor provision thereto, in respect of the Division for which they are designated UDP.

"Jason Tan"
Manager, Registration
Registration, Inspections and Examinations Division
Ontario Securities Commission

OSC File #: 2024/0251

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B.4
Cease Trading Orders

B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Amcomri Entertainment Inc.	June 12, 2024	July 2, 2024
PharmaCielo Ltd.	May 7, 2024	July 3, 2024
XTM Inc.	July 3, 2024	
Datable Technology Corporation	July 3, 2024	
Nass Valley Gateway Ltd.	July 3, 2024	
Pangenomic Health Inc.	July 3, 2024	
ParcelPal Logistics Inc.	July 3, 2024	
Plant Veda Foods Ltd.	July 3, 2024	
Payfare Inc.	June 18, 2024	July 4, 2024
BYT Holdings Ltd.	December 3, 2021	July 4, 2024
SWMBRD Sports Inc.	July 5, 2024	
Mobilum Technologies Inc.	July 5, 2024	
Perk Labs Inc.	July 5, 2024	
Neptune Wellness Solutions Inc.	July 5, 2024	
Nepra Foods Inc.	October 6, 2023	July 5, 2024
Tantalex Lithium Resources Corporation	July 8, 2024	
Danavation Technologies Corp.	July 8, 2024	
Anaergia Inc.	April 8, 2024	July 8, 2024
TAAT Global Alternatives Inc.	July 8, 2024	

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Nickel 28 Capital Corp.	May 31, 2024	July 3, 2024
XTM Inc.	April 30, 2024	July 3, 2024
Cybeats Technologies Corp.	April 30, 2024	July 4, 2024

Company Name	Date of Order	Date of Lapse
Mydecine Innovations Group Inc.	May 9, 2024	July 8, 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	
Perk Labs Inc.	April 4, 2024	
XTM Inc.	April 30, 2024	July 3, 2024
Cybeats Technologies Corp.	April 30, 2024	July 4, 2024
Organto Foods Inc.	May 8, 2024	
Magnetic North Acquisition Corp.	May 8, 2024	
Mydecine Innovations Group Inc.	May 9, 2024	July 8, 2024
FRX Innovations Inc.	May 10, 2024	
Nickel 28 Capital Corp.	May 31, 2024	July 3, 2024

B.6
Request for Comments

B.6.1 Proposed OSC Rule 11-502 Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed Companion Policy 11-502 Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed OSC Rule 11-503 (Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders; Proposed Companion Policy 11-503 (Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders – Modernize the Process to Distribute Disgorged Amounts to Harmed Investors

NOTICE AND REQUEST FOR COMMENT

PROPOSED OSC RULE 11-502
DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

PROPOSED COMPANION POLICY 11-502
DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

PROPOSED OSC RULE 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

PROPOSED COMPANION POLICY 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

MODERNIZE THE PROCESS TO DISTRIBUTE DISGORGED AMOUNTS TO HARMED INVESTORS

July 11, 2024

Introduction

The Ontario Securities Commission (the **OSC** or the **Commission**) is publishing the following for a 90-day comment period, expiring October 9, 2024:

- Proposed OSC Rule 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders* (the **Rule**)
- Proposed Companion Policy 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders* (the **CP**)
- Proposed OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders* (the **CFA Rule**)
- Proposed Companion Policy 11-503 *(Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders* (the **CFA CP**)

Collectively, the Rule and the CFA Rule are referred to as the **Proposed Rule,** and the CP and the CFA CP are referred to as the **Proposed Companion Policy** in this Notice.

We are issuing this Notice to solicit comments on the Proposed Rule and the Proposed Companion Policy that establishes a process to distribute money received by the Commission under disgorgement orders to harmed investors. This process is intended to be streamlined, transparent, and efficient, and is designed to support better and timelier investor redress.

Importantly, this new process is an additional tool available to the Commission to return money to harmed investors. The Commission will also continue using other existing tools for this purpose, including using no contest settlements and receiverships, in appropriate cases.

We welcome all comments on this publication. The Proposed Rule and Proposed Companion Policy are available on the Commission's website at www.osc.ca.

As part of the implementation of this framework, the Commission will develop plain language resources to assist investors to better understand the new statutory distribution framework and the process to apply for payments under this framework.

Substance and Purpose

On November 2, 2023, the Government introduced Bill 146, *Building a Stronger Ontario Together Act (Budget Measures), 2023*[1] (**Bill 146**). Bill 146 included legislative amendments to the *Securities Act* (Ontario)[2] (the **OSA**), the *Commodity Futures Act* (Ontario)[3] (the **CFA**), and the *Securities Commission Act, 2021*[4] (the **SCA**). These amendments establish a new statutory framework governing the distribution of money received by the Commission under disgorgement orders[5] to investors who incurred direct financial losses as a result of the contravention of Ontario securities law or Ontario commodity futures law giving rise to the disgorgement order. These legislative amendments follow on recommendations of the Capital Markets Modernization Taskforce[6] (**Taskforce**) and the Auditor General of Ontario[7] to establish such a framework.

Bill 146 received Royal Assent on December 4, 2023, but the amendments related to this new statutory distribution framework will come into force at a later date to be named by proclamation of the Lieutenant Governor. The new statutory distribution framework will apply to disgorgement orders issued on or after the date the legislative amendments come into force. It is anticipated that the Proposed Rule and the Proposed Companion Policy will come into force at the same time as the legislative amendments.

The new statutory distribution framework provides that regulations (which may take the form of an OSC rule or a regulation made by the Lieutenant Governor in Council) will address:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

The Proposed Rule and the Proposed Companion Policy are being published for comment to address these matters.

In setting the circumstances in which disgorged funds received by the Commission are required to be distributed, the Proposed Rule takes a broad approach. It is proposed that the Commission will make disgorged funds received available for distribution in all cases unless:

(1) the disgorgement was ordered in relation to a contravention of the "insider trading and tipping" prohibition under section 76 of the OSA, or

(2) the amount received is too small to justify the costs of distributing it.

Other than in the above circumstances, funds will be made available for distribution to potential harmed investor applicants through a notice and claims process that can be conducted by either a court-appointed administrator or directly by the Commission following the process established under the rule. While the method of distribution will depend on the circumstances of the case, it is anticipated that most distributions will be conducted through a court-appointed administrator.

Background

Tribunal's Authority to Order Sanctions, including Disgorgement

Under the OSA and the CFA, the Tribunal has the authority to make orders imposing a range of sanctions. These sanctions are intended to prevent future harm to investors and the capital markets by deterring future misconduct by the respondent or others generally. They are not imposed to remedy past harms or compensate harmed investors.[8] In addition to non-monetary sanctions,

1 1st Sess, 43rd Leg, Ontario, 2023 (assented to 4 December 2023).
2 R.S.O. 1990, c. S.5.
3 R.S.O. 1990, c. C.20.
4 S.O. 2021, c. 8, Sched. 9.
5 Disgorgement orders may be made by the Capital Markets Tribunal (**Tribunal**) under paragraph 10 of subsection 127(1) of the OSA and paragraph 10 of subsection 60(1) of the CFA, or by the Superior Court of Justice under paragraph 15 of subsection 128(3) of the OSA and paragraph 11 of subsection 60.2(3) of the CFA.
6 Capital Markets Modernization Taskforce, *Capital Markets Modernization Taskforce – Final Report*, (2021) at 107.
7 Office of the Auditor General of Ontario, *Value-for-Money Audit: Ontario Securities Commission*, (2021) at 32.
8 For a discussion of the Commission's regulatory mandate under section 127 of the OSA, see the Supreme Court of Canada's decision in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 (CanLII), [2001] 2 SCR 132.

the Tribunal may order two types of monetary sanctions: (1) administrative penalties, and (2) disgorgement.[9] Respondents may also be required to make other monetary payments under Tribunal orders approving settlement agreements.

Disgorgement is an equitable remedy that aims to deprive a wrongdoer of illegally obtained amounts. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another. Accordingly, amounts ordered to be disgorged are quantified based on evidence of amounts obtained by a respondent as a result of their non-compliance with the OSA or the CFA and not on the basis of any related losses that may have been incurred by an aggrieved person or company.

Currently, monetary sanctions and settlement payments received by the Commission may be used to pay for the Commission's costs of enforcing orders of the Tribunal and may also be allocated by the Commission in accordance with subsection 19 (2) of the SCA. Specifically, this provision allows the Commission to allocate the funds:

(1) to or for the benefit of third parties,

(2) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, or

(3) for any other purpose specified in the regulations[10].

Under the new statutory distribution framework, and in circumstances prescribed by regulations, the Commission must make amounts received under disgorgement orders available for distribution to harmed investors. Administrative penalties and settlement payments will continue to be dealt with in accordance with subsection 19 (2) of the SCA.[11] In addition, disgorged amounts that the Commission is unable to distribute under the new framework and disgorged amounts that are not subject to the distribution requirement under the Proposed Rule must be dealt with in accordance with subsection 19 (2) of the SCA. For clarity, disgorged amounts that are not subject to the distribution requirement under the Proposed Rule are either amounts that do not meet the threshold for distribution, or amounts received in relation to a contravention of the "insider trading and tipping" provision under section 76 of the OSA.

Court's Authority to Order Disgorgement

Under the OSA and the CFA, the Ontario Superior Court of Justice is also authorized to order a person or company that has not complied with or is not complying with Ontario securities law or Ontario commodity futures law to disgorge any amounts obtained as a result of the non-compliance. Currently, amounts disgorged under such orders are payable to the Minister of Finance. Under the legislative amendments, these amounts will be payable to the Commission and must be made available for distribution to harmed investors in accordance with the new statutory distribution framework.

Importantly, in contrast to the Tribunal, the Ontario Superior Court of Justice also has a range of additional remedial powers. These remedial powers include the ability to require a person or company that has not complied with or is not complying with Ontario securities law or Ontario commodity futures law to compensate or make restitution to an aggrieved person or company. Similarly, if a person or company is convicted of an offence under the OSA or the CFA, the Ontario Court of Justice may order the convicted person or company to make restitution or pay compensation in relation to the offence to an aggrieved person or company. It is anticipated that in cases that are brought before the courts, the Commission will continue to seek compensation and/or restitution orders in appropriate circumstances. Any money received as a result of these court orders is payable by the respondent directly to the named aggrieved party and is not subject to the new statutory distribution framework.

Current Practice Relating to Monetary Sanctions Received by the Commission

There is currently no statutory requirement or prescribed process to distribute monetary sanctions received by the Commission to harmed investors. However, the Commission's practice is to allocate these funds to investors who were directly harmed by the conduct giving rise to the payment if it is practicable in the circumstances to carry out a distribution. This assessment is made before any other possible uses for funds received in a given case are considered and includes a consideration of whether there is an appropriate mechanism to carry out the distribution.

In most cases, a claims-based process is necessary to identify harmed investors and quantify and verify their financial losses. Currently, the only avenue for the administration of a claims-based process under the OSA and CFA is a receivership. Section 129 of the OSA and section 60.3 of the CFA allow the OSC to apply to the Superior Court of Justice for an order appointing a

[9] The Tribunal's authority to order disgorgement was added to the OSA and the CFA in 2002 based on the recommendation of the Five Year Review Committee Final Report which noted that the primary purpose of the disgorgement remedy is to deprive the wrongdoer of ill-gotten gains. See Five Year Review Committee, *Five Year Review Committee Final Report - Reviewing the Securities Act (Ontario)*, (2003) at 218.

[10] On February 5, 2024, a new Ontario Regulation 28/24 was made which specifies that the Commission may allocate funds for two additional purposes: (1) to enhance its information technology, data acquisition and data analytics capabilities; and (2) to fund the activities of the Commission's Office of Economic Growth and Innovation.

[11] When funds are received in respect of amounts owing by a respondent under an order or settlement agreement, the Commission's practice is to apply the amount received first towards any unpaid disgorgement, then towards administrative penalties and finally, towards costs.

receiver over the property of any person or company if it is appropriate for the due administration of Ontario securities law or Ontario commodity futures law. The OSC has relied on section 129 of the OSA to have a receiver appointed by the court to manage a claims process to distribute monetary sanctions to harmed investors. However, this approach is generally only suitable in circumstances where the amount available for distribution is sufficient to bear the costs of a receivership.

There is currently no alternative process for carrying out distributions that are smaller in value or less complex. In these situations, the OSC has generally sought the assistance of the Ontario Ministry of the Attorney General (**MAG**) to carry out the distribution using the civil forfeiture and claims adjudication process under the *Civil Remedies Act, 2001*.[12] The MAG distribution process requires the MAG to first obtain a forfeiture order from the court over the funds held by the Commission. There may be additional steps associated with this claims process, including, for example, seeking orders from the Tribunal to permit sharing of investor related information obtained during the underlying enforcement matter.

In limited circumstances, where there were a very small number of identifiable investors with readily quantifiable losses, the Commission has directly distributed funds to these harmed investors.

Importantly, there are other mechanisms to return money to harmed investors at various stages of an enforcement proceeding. For example, in relevant cases, respondents can pay investors directly under the terms of a settlement agreement approved by the Tribunal[13], or receivers can be appointed to preserve or recover assets for investors[14]. The OSC will continue to use these other avenues depending on the circumstances of the case.

Recommendations and Consultations

In January 2021, the Taskforce[15] recommended that a statutory process be put in place to support the distribution of disgorged funds to harmed investors. Specifically, the Taskforce recommended that this process should apply in cases where funds have been collected and there is sufficient evidence to establish that investors suffered direct financial losses. In making this recommendation, the Taskforce noted the importance of distributing ill-gotten gains recovered through the OSC's collection efforts to investors who were harmed. This is important because investors may not be able to independently recover funds from the respondent. The Taskforce recommended that these distributions be carried out through a court-supervised process. The Taskforce noted that the proposed model would only apply to disgorgement amounts that are collected by the OSC, and not to administrative penalties or settlement payments. The latter would continue to be allocated to third parties or used for other purposes authorized in securities legislation.

In October 2021, the Ontario government undertook a public consultation on a draft *Capital Markets Act* (the **CMA**) which was developed as part of its Capital Markets Modernization Review. Section 120 of the draft CMA addresses the distribution of disgorged funds to harmed investors. This provision requires that these funds be distributed to persons who incurred direct financial losses and satisfy the conditions, restrictions and requirements established under OSC rules. The provision contemplated that these distributions would be carried out either through a court-appointed administrator or by the OSC in accordance with rules established by the OSC.

Subsequently, the Auditor General of Ontario, in the December 2021 Value for Money Audit[16] of the OSC, recommended that the Ontario Ministry of Finance work with the OSC to ensure that monetary sanctions collected by the OSC are distributed to harmed investors in an effective and timely manner, after reviewing the process in other jurisdictions. The Auditor General's report noted that the Ministry had expressed support for improving the OSC's ability to distribute disgorged funds to harmed investors and had initiated work to consult on a framework based on recommendations of the Taskforce through the publication of the draft CMA.

Distribution Frameworks in Other Jurisdictions

In developing the Proposed Rule and the Proposed Companion Policy, the Commission has reviewed and considered the above-mentioned recommendations and consultations as well as comparable frameworks across different jurisdictions. While the Proposed Rule and the Proposed Companion Policy draw on elements of each of these frameworks, the British Columbia Securities Commission (**BCSC**) framework served as the starting point for the Proposed Rule and the Proposed Companion Policy.

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12 S.O. 2001, c. 28.

13 These payments are case, fact, and respondent specific. In some years payments may be minimal and in other years uncommonly high. In respect of the latter, see for example, the excess fee cases that were resolved with regulated market participants in the last 10 years: **IPC Securities Corporation (Re), 2018 ONSEC 29, Assante Capital Management Ltd. (Re), 2017 ONSEC 45, BMO Nesbitt Burns Inc. et. al. (Re) (2017), 40 OSCB 57, Manulife Securities Incorporated (Re), 2017 ONSEC 29, Scotia Capital Inc. et. al. (Re) (2016), 39 OSCB 7211, CIBC World Markets Inc. et. al. (Re) (2017), 40 OSCB 957, Quadrus Investment Services Ltd. (Re) (2015), 38 OSCB 10093, CI Investments Inc. (Re) (2016), 39 OSCB 1739, TD Waterhouse Private Investment Counsel Inc. (Re) (2014), 37 OSCB 10742.**

14 For example, the Commission has recently successfully sought the appointment of receivers in the following matters: (1) Bridging Finance Inc. – receiver appointed on April 30, 2021, (2) Go-To Developments – receiver appointed on December 10, 2021; (3) Traynor Ridge Capital – receiver appointed on November 3, 2023; and (4) Traders Global Group Inc. and Muhammad Murtuza Kazmi – receiver appointed on December 21, 2023.

15 *Supra* note 6.

16 *Supra* note 7.

Canada

The BCSC and the Autorité des marchés financiers (**AMF**) both have statutory frameworks for distributing disgorged funds to harmed investors, but each take a different approach.

Under the BCSC's framework,[17] in all cases where the BCSC receives money from a disgorgement order, it must publish a notice and receive and consider applications for payment from the money collected. Claims can be made only by eligible applicants who, among other things, suffered pecuniary loss as a direct result of misconduct that resulted in an order that gave rise to a claims process under section 15.1 of the *Securities Act* (British Columbia)[18].

Under the AMF's framework, a distribution process initiates if Québec's Financial Markets Administrative Tribunal issues a disgorgement order and if "the proof justifying the order" shows that persons have sustained a loss in the course of the non-compliance. In these cases, the tribunal will order the AMF to provide to the tribunal the process for the distribution of disgorged amounts unless there is evidence that the distribution process itself would cost more than is available for distribution.[19]

In February 2023, the Canadian Investment Regulatory Organization of Canada published a distribution of disgorged funds proposal for public comment.[20] This proposal would allow investors who suffered direct financial losses because of the contravention giving rise to a disgorgement payment to make a claim for disgorged funds. Claims can only be made following the completion of enforcement proceedings and payment of sanctions.

As described above, in Ontario, another analogous statutory process exists under the *Civil Remedies Act, 2001*. This process allows the MAG to ask the court for an order to freeze, take possession of, and forfeit to the Crown, property that is determined to be a proceed or instrument of unlawful activity. Once the funds are forfeited to the Crown, notice of a claims process is posted on a website of the Government of Ontario and mailed to the last known address, if available, of any known victims of the specific unlawful activity. Notice is not required to be posted where, having regard to the number of potential claimants and the amount available for distribution, the amount payable to each claimant would be too small to justify the administrative costs of adjudicating claims.

United States

The U.S. Securities and Exchange Commission (**SEC**) also has a statutory framework to distribute disgorgement and civil monetary penalties to harmed investors. In the United States, funds collected by the SEC may be distributed to harmed investors through the creation of what is called a "fair fund".[21] The SEC publishes a notice of a proposed plan of disgorgement or a proposed Fair Fund plan for public comment. The plan may provide for these funds to be paid to the United States Treasury. This occurs where the costs of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors.

A third-party administrator may be appointed to administer the distribution or it may be administered by an SEC employee. If the administrator is not an SEC employee, the administrator may file an application for fees for completed services, and upon approval by the SEC or a hearing officer, may be paid a reasonable fee for those services. Unless otherwise ordered, fees and other expenses of administering the plan must be paid first from the interest earned on the funds, and if the interest is not sufficient, then from the funds available for distribution.

New Ontario statutory distribution framework

In brief, Bill 146 provides that:

- In circumstances prescribed by the regulations, money received under a disgorgement order must be distributed to persons or companies who,
    - incurred direct financial losses as a result of the contravention giving rise to the payment; and
    - satisfy the conditions, restrictions and requirements set out in the regulation.[22]

17 British Columbia Securities Commission, "Returning Funds to Investors" (last visited May 8, 2024), online: https://www.bcsc.bc.ca/enforcement/administrative-enforcement/administrative-sanctions/returning-funds-to-investors.
18 RSBC 1996, c 418.
19 *Securities Act,* CQLR c V-1.1, s. 262.2.
20 Canadian Investment Regulatory Organization, "Proposal on Distributing Funds Disgorged and Collected through New SRO Disciplinary Proceedings to Harmed Investors" (February 1, 2023), online: https://www.ciro.ca/news-room/publications/proposal-distributing-funds-disgorged-and-collected-through-new-sro-disciplinary-proceedings-harmed.
21 U.S. Securities and Exchange Commission, "Investor Bulletin: How Victims of Securities Law Violations May Recover Money" (June 21, 2018), online: https://www.sec.gov/resources-investors/investor-alerts-bulletins/how-victims-securities-law-violations-may-recover-money.
22 OSA, s. 128.1 (2); CFA, s. 60.2.1 (2).

- Distributions may be carried out by a court-appointed administrator or directly by the OSC in accordance with the regulation.[23]

- Certain administrative costs relating to distributions (carried out either using a court-appointed administrator or directly by the OSC) are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulation, from money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA.[24]

- Any money received by the Commission that is not subject to the distribution requirement, or any money remaining after payments are made to harmed investors or towards the payment of administrative costs, shall be dealt with in accordance with subsection 19 (2) of the SCA.[25]

The legislative amendments create a flexible framework for distributions allowing for OSC rules or Lieutenant Governor in Council regulations to address:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;

- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;

- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and

- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

The next section summarizes the key provisions of the Proposed Rule and the Proposed Companion Policy.

Summary of the Proposed Rule and the Proposed Companion Policy

Part 1 – Definitions and interpretation

Part 1 sets out definitions relevant to the Proposed Rule. “Eligible applicant” is a key definition which describes who may apply for payment from the disgorged amount.

Part 2 – Requirement to distribute

Part 2 sets out that disgorged amounts received by the Commission must be distributed in accordance with the OSA, the CFA and the Proposed Rule and also sets out the circumstances where a distribution is not required.

The Commission has generally adopted the approach followed by the BCSC where money received by the Commission must be subject to a claims process in all cases. However, the Proposed Rule provides some exceptions to this requirement: (1) where the disgorgement was ordered in relation to a contravention of the “insider trading and tipping” prohibitions under section 76 of the OSA, or (2) where the amount received by the Commission is too small to justify the costs of distributing it.

Insider Trading Prohibition Exception

If the Commission received disgorged amounts related to a contravention of the “insider trading and tipping” prohibitions under section 76 of the OSA, it is proposed that a distribution would not be required. While insider trading and tipping causes harm to the fairness and the integrity of the capital markets as whole, it may be difficult to establish that this conduct has caused direct financial harm to particular investors or to quantify any such losses. In this regard, it should be noted that while section 134 of the OSA establishes statutory civil liability relating to insider trading, which includes certain considerations for the court in calculating damages (depending on whether the plaintiff purchased or sold securities), that calculation is distinct from how the Tribunal typically calculates disgorgement in regulatory cases (i.e., based on the amounts obtained by the respondent as a result of the contravention). Any disgorged amount received in insider trading and tipping cases will be dealt with in accordance with subsection 19 (2) of the SCA. Under section 19(2) of the SCA, the Commission continues to have the discretion to allocate the disgorged amount to or for the benefit of third parties. In an exceptional case, this could include allocating the disgorged amount to a person or company who incurred a direct financial loss as a result of the insider trading or tipping that resulted in the disgorgement order.

[23] OSA, s. 128.1 (4) and (10); CFA, s. 60.1.2 (4) and (10).
[24] OSA, s. 128.1 (9) and (12); CFA, s. 60.1.2 (9) and (12).
[25] OSA, s. 128.1 (14)-(15); CFA, s. 60.1.2 (14)-(15).

Partial Amounts Received Exception

Consistent with the AMF, SEC, and MAG distribution frameworks, the Proposed Rule provides that the Commission is not required to make a distribution if the amount received by the Commission is too small to justify the costs of a distribution. The application of this exception will take into account the value of the amount received under the disgorgement order, the number of potential eligible applicants, and the anticipated costs of administering a distribution. This exception is intended to ensure that distributions remain cost effective.

Historically, collection rates from regulated market participants have been much higher than from respondents sanctioned on, for example, matters related to fraud. This is because assets are typically non-existent or inaccessible in fraud matters. When collection steps are required, the Commission often collects amounts on an incremental basis. Based on the Commission's experience, it may take as long as three years to fully assess the likelihood of potential recovery and make those recoveries. To account for this practical reality, subsection 2 (2) requires the Commission to hold these amounts for three years or until sufficient amounts are collected to warrant carrying out a distribution. This three-year period is intended to give the Commission adequate time to make reasonable efforts to take collection steps before considering using the lesser amounts received for other purposes authorized under subsection 19 (2) of the SCA. The Proposed Rule also provides the Commission with discretion to hold the funds for potential distribution for a longer period if there is ongoing collections activity or if regular payments are being received that could be used for a potential distribution.

Part 3 – Publication of disgorgement amounts and notice of claims process

Section 3 of the Proposed Rule requires the Commission to publish and update the amount of money it has received under disgorgement orders other than disgorgement orders arising from a contravention of the "insider trading and tipping" prohibitions under section 76 of the OSA. If a distribution is required, section 4 of the Proposed Rule requires the Commission to post a notice of the claims process.

Requiring the Commission to publish and update prescribed information on its website is a critical component of the new statutory distribution framework. Public access to this information will increase transparency and allow investors to stay informed about the status of amounts received and make claims at the appropriate time.

Part 4 – Requirement to update claims application

Sections 5 and 6 of the Proposed Rule set out the requirement for investors to update their claims applications. It is the investor's responsibility to ensure that the Commission or the administrator has correct and up-to-update information about their claim. The Commission may deny an investor's claim if the investor provides untrue or misleading information to the Commission.

Part 5 – Claims process if no court-appointed administrator

Similar to the SEC model, the OSA and the CFA provide that distributions may be carried out either by a court-appointed administrator or directly by the OSC. While the method of distribution will depend on the circumstances of the case, it is anticipated that most distributions will be conducted by a court-appointed administrator. Part 5 of the Proposed Rule sets out the process to be followed if there is no court-appointed administrator and a distribution is being carried out directly by the OSC.

Section 8 of the Proposed Rule describes the information that will be included in the notice of the claims process. This notice will provide investors with key information needed to make a claim, including a deadline to file a claim.

Section 9 of the Proposed Rule describes the requirements to file a claim. The Proposed Companion Policy provides guidance on the information applicants can expect to provide to support their claim. This information is important because the Proposed Rule's distribution process is claims-based and relies on harmed investors to submit information to prove their claims. Recall, disgorgement is a remedy focused on the amount obtained by the respondent as a result of the contravention. Disgorgement is not focused on "who lost what". Accordingly, the information gathered by the Commission in the investigation or proceeding that led to the disgorgement order may not identify each harmed investor or substantiate their financial losses. Therefore, it is the investor's responsibility to provide their best information so the Commission can make determinations about claims.

There may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors. In these cases, the Commission may adapt the claim form to allow for a confirmation of claims process.[26] A confirmation of claims process is generally a simpler, more efficient, and less burdensome process for applicants.

[26] Under such a process, the claim form may invite an applicant to do one of the following: (1) confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted, (2) decline to make a claim, or (3) make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 10 sets out how the Commission will determine whether to make a payment to an applicant and if so, the amount of the payment. Section 10 also sets out when payments will be prorated among eligible applicants, and when to decline making an individual payment on the basis that the amount is too small to justify the costs of paying the claim.

Investors who are eligible to receive payments under the Proposed Rule are not precluded from also seeking to recover their losses from other sources such as through filing a civil claim in court or making a complaint to the Ombudsman for Banking Services and Investments (**OBSI**). However, the Proposed Rule requires applicants to disclose any payments that have been or may be received from other sources to prevent double recovery.

Section 11 of the Proposed Rule provides applicants with the opportunity to file additional supporting documentation before the Commission denies all or part of a claim. Additional supporting documentation must be filed within the prescribed timeframe.

Subsection 12 (1) of the Proposed Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make partial installment payments to the remaining eligible applicants. In these cases, the Commission will hold back a portion of the disgorged amount in respect of the disputed claim.

Section 13 of the Proposed Rule deals with residual funds. It specifies that if there are funds that the Commission is unable to distribute, these funds will be dealt with in accordance with the provisions of the OSA, the CFA and the SCA.

Section 14 of the Proposed Rule allows the Commission to commence a direct claims process under Part 5 of the Proposed Rule and later apply to the court for the appointment of an administrator to complete the distribution. This flexibility to pivot after claims have been received is important in cases where the Commission did not originally have sufficient information about harmed investors and their estimated losses to determine the appropriate method to distribute the disgorged amount.

Part 6 – Administrative costs

The legislative amendments contemplate that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that has been allocated for this purpose.

For distributions carried out by a court-appointed administrator, administrative costs that are eligible for payment include the reasonable costs incurred by the administrator in carrying out the distribution.

For distributions carried out directly by the Commission in accordance with Part 5 of the Proposed Rule, administrative costs that are eligible for payment are confined to the reasonable costs of obtaining external advice relating to the distribution.

Sanction and settlement money that may be allocated by the Commission to pay the above-mentioned administrative costs includes:

- administrative penalties,
- settlement payments, and
- amounts disgorged to the Commission that are not subject to the distribution requirement.[27]

These funds are held in a separate account by the Commission and may be allocated by the Commission for purposes authorized in subsection 19 (2) of the SCA. Currently, the Commission is authorized to allocate these funds: (1) to or for the benefit of third parties, (2) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, or (3) for any other purpose specified in the regulations[28]. The legislative amendments will add a new subclause to subsection 19 (2). This new subclause will authorize the Commission to allocate these funds to pay administrative costs in relation to the distribution of disgorged amounts under the new statutory distribution framework.

The Proposed Rule provides the framework for the payment of administrative costs for each distribution. This framework aims to minimize the amount of administrative costs being paid out of the disgorged amount being distributed. This benefits eligible investors by improving their recovery of financial losses from within the pool of funds being distributed. Specifically, section 15 provides that administrative costs for each distribution would be paid:

(1) first, from the allocation of any administrative penalty or settlement money received by the Commission in relation to the same proceeding that gave rise to the disgorged amount that is being distributed,

[27] This may include administrative penalties, settlement payments and disgorged amounts held by the Commission prior to the coming into force of the legislative amendments, other than money the Commission has set aside for potential allocation to harmed investors.

[28] *Supra* note 10.

(2) next, from the allocation of other unrelated sanction and settlement money held by the Commission in such an amount as the Commission considers to be appropriate after considering a non-exhaustive list of factors, and

(3) finally, if any administrative costs remain, from the disgorged amount that is being distributed.

Part 7 – Reporting

Section 16 of the Proposed Rule requires the Commission to publish a report on each completed distribution within a prescribed timeframe. These reports will promote transparency and awareness about the results of distributions being conducted under the new statutory distribution framework.

The Commission will monitor data relating to the administration of this framework and may consider future modifications to its approach, which could include future amendments to the Proposed Rule and/or Proposed Companion Policy.

Anticipated Costs and Benefits

Please refer to Annex E for the Commission's regulatory impact analysis of the Proposed Rule.

Alternatives Considered

No other alternatives were considered given that the legislative amendments require the regulations to establish a process to distribute disgorged funds to harmed investors. However, the Proposed Rule and the Proposed Companion Policy were informed by the distribution frameworks in the other jurisdictions set out above.

Reliance on Unpublished Studies

The Commission is not relying on any significant unpublished study, report, or other written material in connection with the Proposed Rule and the Proposed Companion Policy.

Rule-making Authority

The Commission's authority to make rules respecting the administration and distribution of disgorged amounts under section 128.1 of the OSA and section 60.2.1 of the CFA will be provided under paragraph 54.2 of subsection 143 (1) of the OSA and paragraph 40 of subsection 65 (1) of the CFA, respectively, following proclamation of this rulemaking authority.

The Commission's authority to make rules respecting the use of money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA to pay administrative costs in relation to the distribution of disgorged amounts will be provided under paragraph 54.3 of subsection 143 (1) of the OSA and paragraph 41 of subsection 65 (1) of the CFA, respectively, following proclamation of this rulemaking authority.

Contents of Annexes

The following annexes form part of this Notice:

- Annex A – Proposed OSC Rule 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders*
- Annex B – Proposed Companion Policy 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders*
- Annex C – Proposed OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders*
- Annex D – Proposed Companion Policy 11-503 *(Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders*
- Annex E – Regulatory Impact Analysis
- Annex F – Excerpts from Bill 146 with respect to amendments to the OSA, the CFA and the SCA

Request for Comments

We welcome your comments on the Proposed Rule and the Proposed Companion Policy.

Please submit your comments in writing on or before October 9, 2024. If you are sending your comments by email, you should also send an electronic file containing the submissions using Microsoft Word.

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-8122
Email: comments@osc.gov.on.ca

Comments received will be posted on the OSC website at www.osc.ca. Therefore, you should not include personal information directly in your comments. It is important that you state on whose behalf you are making the submission.

Content may be moderated so that all posts are respectful and professional.

Questions

Please refer your questions to:

Cullen Price
Manager
General Counsel's Department
(647) 501-8195
cprice@osc.gov.on.ca

Tara Lamacraft
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ANNEX A

PROPOSED OSC RULE 11-502
DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument:

"administrator" means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 128.1 (4) of the *Securities Act*;

"approved claim amount" means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

"disgorgement order" means an order made under paragraph 10 of subsection 127 (1) or paragraph 15 of subsection 128 (3) of the *Securities Act*;

"eligible applicant" means a person or company that

(a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and

(b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

PART 2
REQUIREMENT TO DISTRIBUTE

Circumstances where a distribution is required

2. (1) The distribution requirement in subsection 128.1 (2) of the *Securities Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where any of the following apply:

(a) the money has been received under a disgorgement order arising from a contravention of section 76 of the *Securities Act*;

(b) in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants.

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants until the earlier of

(a) 3 years from the date of the final disposition of the disgorgement order, and

(b) the date that the Commission receives sufficient amounts under the disgorgement order to satisfy the threshold for distribution described in paragraph (b) of subsection (1).

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the disgorgement order, the amount received under the disgorgement order is insufficient to satisfy the threshold for distribution described in paragraph (b) of subsection (1).

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to satisfy the threshold for distribution described in paragraph (b) of subsection (1) and if:

(a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or

(b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the disgorgement order described in subsections (2) and (3) begins on the later of

(a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and

(b) the exhaustion of the appeal process if an appeal is filed.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Publication of money received under disgorgement orders

3. (1) If the Commission receives money under a disgorgement order, other than a disgorgement order arising from a contravention of section 76 of the *Securities Act*, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

Publication of notice of claims process

4. (1) If a distribution of money is required under this Instrument, notice of the claims process must be posted on the Commission's website and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

(a) if there is an administrator, a claims process order made by the court;

(b) if there is no administrator, Part 5 of this Instrument.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Requirement to update claims application

5. If a person or company has made an application for a payment as described in subsection 128.1 (3) of the *Securities Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

Claim denial – misleading or untrue information

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

(a) the person or company fails to comply with section 5;

(b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Application

7. This Part applies if there is no administrator.

Content of the notice of claims process

8. (1) If there is no administrator, the notice described in section 4 must include all of the following information:

(a) the proceeding under which the disgorgement order was made;

(b) the amount of money received under the disgorgement order;

(c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;

(d) a description of how an eligible applicant can make a claim;

(e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);

(f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;

(g) an address, including an electronic address, where claims should be filed;

(h) a statement that a claim that does not comply with this Instrument will be denied;

(i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this Instrument, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 128.1(4) of the *Securities Act*;

(j) any other information that the Commission considers appropriate.

Claim requirements

9. (1) An applicant must use a claim form provided by the Commission.

(2) Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

(3) The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

(4) The claim must be filed on or before the final day for filing and must be updated in accordance with section 5.

Determining eligibility and amount of payment

10. (1) After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

(a) the applicant is an eligible applicant in respect of the disgorgement order;

(b) the amount of the applicant's direct financial loss can be quantified;

(c) sufficient proof of the direct financial loss has been provided.

(2) When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

(a) the amount of money received under the disgorgement order;

(b) the direct financial loss suffered by the eligible applicant;

(c) the direct financial losses suffered by all eligible applicants;

(d) any other information the Commission considers appropriate in the circumstances.

(3) When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

(a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;

(b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

(4) The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

Opportunity to provide additional supporting documentation

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within 30 days from the date the notice was delivered.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including electronic address, provided in the applicant's claim form.

(3) The notice in subsection (1) is deemed to have been delivered

(a) by registered mail or courier, on the earlier of the date on the delivery receipt and the fifth day after sending, and

(b) electronically or digitally, on the day of delivery.

No payment until all claims are determined

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back a portion of the disgorged amount in respect of the disputed claim and make partial installment payments to the remaining eligible applicants.

Residual funds

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 128.1 (14) of the *Securities Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021.*

Election to seek appointment of administrator following final day for filing a claim

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of subsection 8 (1), the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

PART 6
ADMINISTRATIVE COSTS

Payment of administrative costs

15. (1) In this section:

"administrative costs" include any of the following costs referred to in subsections 128.1 (9) and (12) of the *Securities Act*:

(a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;

(b) reasonable costs incurred by an administrator in connection with court orders made under section 128.1 of the *Securities Act*;

(c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this Instrument.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 128.1 (9) or (12) of the *Securities Act* must be made as follows:

(a) first, from any administrative penalty or settlement money received by the Commission in relation to the same proceedings that gave rise to the disgorged amount that is the subject of the distribution, if such money has

been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;

(b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);

(c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

(a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;

(b) the amount of any payment already made under paragraph (a) of subsection (2);

(c) the value of the disgorged amount that is the subject of the distribution;

(d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount, or the value of the approved claim amount, if, at the time the payment is made, the Commission or the administrator, as applicable, has determined that amount.

PART 7
REPORTING

Reporting

16. (1) The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

(2) The report under subsection (1) must contain all of the following information:

(a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;

(b) the method of distribution;

(c) the estimated or total number of harmed investors, if known;

(d) the total number of applicants;

(e) the total number of eligible applicants who received a payment;

(f) the total value of all approved claims;

(g) the total amount distributed to eligible applicants;

(h) the value of any administrative costs paid from the disgorged amount;

(i) the percentage of each eligible applicant’s approved claim amount paid under the distribution.

ANNEX B

PROPOSED COMPANION POLICY 11-502
DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

PART 1
GENERAL COMMENTS

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-502 *Distribution of Amounts Paid to the OSC under Disgorgement Orders* (the **Rule**) together with related provisions of the *Securities Act* (Ontario) (the **OSA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario securities law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the OSA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 128.1 of the OSA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

Background

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive capital markets and confidence in capital markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario securities law.

When a person or company is alleged to have contravened Ontario securities law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario securities law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.[i] The Commission, exercising its prosecutorial discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The primary purpose of a disgorgement order is not to compensate investors, but to prevent a wrong-doer from keeping amounts they obtained as a result of the misconduct. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the OSA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.[ii]

The OSA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.[iii]

The distribution process set out in the OSA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on "who lost what". Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant's responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

Method of Distribution

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

Section 1 - Definitions

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

Definition of Eligible Applicant

Persons or companies

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as "eligible applicants". The definition of an eligible applicant includes any person or company that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order.

Direct financial losses

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a "direct financial loss" may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.

- in other cases, an investor's "direct financial loss" could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent's contravention),
- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,
- financial losses relating to the loss of an opportunity,
- interest on any financial loss, and
- non-financial losses.

PART 2
REQUIREMENT TO DISTRIBUTE

Subsection 2 (1) - Circumstances where a distribution is required

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where any of the following apply:

- the disgorgement was ordered in relation to a contravention of the prohibition against "insider trading and tipping" under section 76 of the OSA;
- the amount received is too small to justify the costs of distributing it.

Money received by the Commission that fits within these exceptions will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.[iv]

Subsections 2 (2) to (5) - Partial amounts received

The Commission's approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,
- the status of any steps taken by the Commission to recover additional amounts owing under the order,
- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and
- the time that has passed from either the date of the final disposition of the order, or if the order has been appealed, the date the appeal was resolved.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario securities law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants until the earlier of 3 years from the date of the final disposition of the disgorgement order and the date that the Commission receives sufficient amounts under the disgorgement order to justify the costs of a distribution. In circumstances where the disgorgement order has been appealed, this 3-year period runs from the date the appeal has been resolved.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that meets the threshold for carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,
- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and
- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would satisfy the threshold for carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would satisfy the threshold for carrying out a distribution.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission. The second step is the publication of the notice of claims process.

Section 3 - Publication of money received under disgorgement orders

Except in the case of money received in relation to the insider trading and tipping prohibitions under section 76 of the OSA, for each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding under which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;
- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and
- any other information the Commission considers appropriate.

Section 4 - Publication of notice of claims process

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, including information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through press releases, social media channels, and investor advocacy organizations.

If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will also attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Sections 5 and 6 - Requirement to update claims application

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;
- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Section 7 – Application

Part 5 of the Rule applies if there is no administrator.

Section 8 - Contents of the notice of claims process

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding under which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

Section 9 - Claim requirements

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information;
- information about the claim, including:
    - the applicant's direct financial losses and the amount claimed;
    - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
    - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
    - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
    - the applicant's involvement in the misconduct, if any;
    - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;

- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 10 - Determining eligibility and amount of payment

Subsections 10 (1) to (3) - Claim Determinations

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule. The Commission will make these determinations after considering recommendations from Commission staff who will review all claims.

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

Subsection 10 (4) - Prorated payments

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

Subsection 10 (5) - Exception

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than $50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

Section 11 - Opportunity to provide additional supporting documentation

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have 30 days from the date the notice was delivered to file the additional supporting documentation.

Section 12 - No payment until all claims are determined

Subsection 12 (1) of the Proposed Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make partial installment payments to the remaining eligible applicants. In these cases, the Commission will hold back a portion of the disgorged amount in respect of the disputed claim.

Section 13 - Residual funds

In practice, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not deposited their cheques after 90 days following the issuance of the cheque. The purpose of the Commission's efforts to contact these eligible applicants is to ensure that they have a reasonable opportunity to participate in the distribution. Approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued will be dealt with in accordance with subsection 19 (2) of the SCA[v].

Section 14 - Election to seek appointment of administrator following final day for filing a claim

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

PART 6
ADMINISTRATIVE COSTS

Section 15 - Payment of administrative costs

The OSA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,[vi] or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution[vii].

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

(1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.

(2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:

- the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
- the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation the same proceeding as the disgorged amount that is the subject of the distribution,
- the value of the disgorged amount that is the subject of the distribution, and
- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount if that amount has been determined by the Commission or the administrator.

(3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

PART 7
REPORTING

Section 16 - Reporting

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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i The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained a result of non-compliance with Ontario securities law is found in paragraph 10 of subsection 127 (1) of the OSA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law is found in paragraph 15 of subsection 128 (3) of the OSA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 122 of the OSA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

ii The legislative framework for distributing money disgorged to the Commission is found in section 128.1 of the OSA.

iii Subsections 128.1 (4) and (10) of the OSA set out the two methods of distribution.

iv Subsection 128.1 (15) of the OSA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

(i) to or for the benefit of third parties,

(ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,

(iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 128.1 (9) or (12) of the OSA, or

(iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

v Subsection 128.1 (14) of the OSA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote iv for information on limits to the use of funds under subsection 19 (2) of the SCA.

vi Subsection 128.1 (9) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.

vii Subsection 128.1 (12) of the OSA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

ANNEX C

PROPOSED OSC RULE 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument:

"administrator" means one or more persons or companies appointed by the Superior Court of Justice to administer and distribute all or any part of the disgorged amount under subsection 60.2.1(4) of the *Commodity Futures Act*;

"approved claim amount" means, for each distribution, the total value of recognized direct financial losses of all persons or companies that filed claims and whose claims were approved by the Commission or the administrator, as the case may be;

"disgorgement order" means an order made under paragraph 10 of subsection 60 (1) or paragraph 11 of subsection 60.2 (3) of the *Commodity Futures Act*;

"eligible applicant" means a person or company that

(a) incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order, and

(b) did not directly or indirectly engage in the contravention that gave rise to the disgorgement order.

PART 2
REQUIREMENT TO DISTRIBUTE

Circumstances where a distribution is required

2. (1) The distribution requirement in subsection 60.1 (2) of the *Commodity Futures Act* applies to money received by the Commission under a disgorgement order, other than in circumstances where in the opinion of the Commission, the costs of administering the distribution would not justify making the distribution given the value of the amount received under the disgorgement order and the number of potential eligible applicants.

(2) In circumstances where the Commission has received only part of the amount payable under the disgorgement order, the Commission must hold the amount for potential distribution to eligible applicants until the earlier of

(a) 3 years from the date of the final disposition of the disgorgement order, and

(b) the date that the Commission receives sufficient amounts under the disgorgement order to satisfy the threshold for distribution described in subsection (1).

(3) The Commission is not required to make a distribution if, after 3 years from the date of the final disposition of the disgorgement order, the amount received under the disgorgement order is insufficient to satisfy the threshold for distribution described in subsection (1).

(4) Despite subsection (3), the Commission may hold amounts received for potential future distribution to eligible applicants for a longer period if the Commission is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe to satisfy the threshold for distribution described in subsection (1) and if:

(a) there is an ongoing action, application or other proceeding to recover additional amounts owing under the disgorgement order, or

(b) the disgorgement order or a settlement or other agreement provides that payments under the disgorgement order may be made at a future date.

(5) The final disposition of the disgorgement order described in subsections (2) and (3) begins on the later of

(a) the expiry of the applicable time for the filing of an appeal of the proceeding in which the disgorgement order was issued, and

(b) the exhaustion of the appeal process if an appeal is filed.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Publication of money received under disgorgement orders

3. (1) If the Commission receives money under a disgorgement order, it must publish the amount of money received under the disgorgement order.

(2) Information described in subsection (1) must be posted on the Commission's website and must be updated to include any additional amounts received under the disgorgement order within 30 days after the end of each calendar quarter.

Publication of notice of claims process

4. (1) If a distribution of money is required under this Instrument, notice of the claims process must be posted on the Commission's website and must set out the period within which an eligible applicant may file a claim.

(2) An eligible applicant may file a claim by submitting an application in accordance with one of the following:

(a) if there is an administrator, a claims process order made by the court;

(b) if there is no administrator, Part 5 of this Instrument.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Requirement to update claims application

5. If a person or company has made an application for a payment as described in subsection 60.2.1 (3) of the *Commodity Futures Act*, and the information provided in the application changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading, the person or company must report the change to the Commission or the administrator promptly.

Claim denial – misleading or untrue information

6. The Commission may deny the claim for payment of a person or company if any of the following apply:

(a) the person or company fails to comply with section 5;

(b) the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Application

7. This Part applies if there is no administrator.

Content of the notice of claims process

8. (1) If there is no administrator, the notice described in section 4 must include all of the following information:

(a) the proceeding under which the disgorgement order was made;

(b) the amount of money received under the disgorgement order;

(c) a statement that any eligible applicants are entitled to make a claim for payment from the disgorged amount;

(d) a description of how an eligible applicant can make a claim;

(e) the final day for filing a claim, which must be at least 90 days from the date of the notice posted on the Commission's website in accordance with subsection 4 (1);

(f) an address, including an electronic address, and telephone number to which inquiries about potential claims may be directed;

(g) an address, including an electronic address, where claims should be filed;

(h) a statement that a claim that does not comply with this Instrument will be denied;

(i) a statement that, after the final day for filing a claim referred to in paragraph (e), the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount instead of having the Commission distribute the amount in accordance with sections 10 to 13 of this Instrument, in which case, any claims received by the Commission on or before the final day for filing a claim referred to in paragraph (e), will be provided to the administrator to be administered in accordance with an order made by the court under subsection 60.2.1 (4) of the *Commodity Futures Act*;

(j) any other information that the Commission considers appropriate.

Claim requirements

9. (1) An applicant must use a claim form provided by the Commission.

(2) Unless the claim form provides otherwise, the claim must include a description of the direct financial loss incurred by the applicant and the amount claimed, supported by documentary evidence.

(3) The claim must identify any other sources from which payment for the amount claimed by the applicant under this section has been paid, is payable or may be payable to the applicant, and the amount of that payment.

(4) The claim must be filed on or before the final day for filing and must be updated in accordance with section 5.

Determining eligibility and amount of payment

10. (1) After reviewing all claims filed in accordance with section 9, the Commission may make a payment to the applicant from money received under a disgorgement order if the Commission is satisfied that all of the following apply:

(a) the applicant is an eligible applicant in respect of the disgorgement order;

(b) the amount of the applicant's direct financial loss can be quantified;

(c) sufficient proof of the direct financial loss has been provided.

(2) When determining the amount to be paid to an eligible applicant, the Commission must consider all of the following:

(a) the amount of money received under the disgorgement order;

(b) the direct financial loss suffered by the eligible applicant;

(c) the direct financial losses suffered by all eligible applicants;

(d) any other information the Commission considers appropriate in the circumstances.

(3) When determining an applicant's direct financial loss for the purposes of this section, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

(a) whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;

(b) whether the applicant benefitted from the contravention that gave rise to the disgorgement order.

(4) The Commission must prorate payments among eligible applicants if, having considered the matters under subsection (2), the Commission determines that the money the Commission received under the disgorgement order is insufficient to pay the approved claim amount.

(5) Even if an applicant is eligible to receive a payment in accordance with this section, the Commission may decline to make a payment to the applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of paying it.

Opportunity to provide additional supporting documentation

11. (1) The Commission must not deny all or part of a claim without providing an applicant with a written notice and an opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount, which must be filed by the applicant within 30 days from the date the notice was delivered.

(2) The notice in subsection (1) must be provided by the Commission by registered mail, courier, or electronic or digital transmission to the applicant's last known address, including electronic address, provided in the applicant's claim form.

(3) The notice in subsection (1) is deemed to have been delivered

(a) by registered mail or courier, on the earlier of the date on the delivery receipt and the fifth day after sending, and

(b) electronically or digitally, on the day of delivery.

No payment until all claims are determined

12. (1) No payments must be made to an eligible applicant until all the claims filed in accordance with section 9 have been considered and the amount to be paid to each eligible applicant is determined by the Commission under section 10.

(2) Despite subsection (1), if an applicant has filed additional supporting documentation in respect of a disputed claim in accordance with section 11, the Commission may hold back a portion of the disgorged amount in respect of the disputed claim and make partial installment payments to the remaining eligible applicants.

Residual funds

13. After 180 days following the date payments are issued to eligible applicants, if the Commission is unable to distribute an amount approved for payment to an eligible applicant, then the amount belongs to the Commission in accordance with subsection 60.2.1 (14) of the *Commodity Futures Act* and must be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021.*

Election to seek appointment of administrator following final day for filing a claim

14. Despite sections 10 to 13 and following the final day for filing a claim specified in the notice in accordance with paragraph (e) of subsection 8 (1), the Commission may apply to the Superior Court of Justice for the appointment of an administrator to distribute the disgorged amount if the Commission considers that this would be appropriate given the nature or volume of claims received.

PART 6
ADMINISTRATIVE COSTS

Payment of administrative costs

15. (1) In this section:

"administrative costs" include any of the following costs referred to in subsections 60.2.1 (9) and (12) of the *Commodity Futures Act*:

(a) reasonable costs incurred by an administrator, before their appointment, in connection with the disgorged amount;

(b) reasonable costs incurred by an administrator in connection with court orders made under section 60.2.1 of the *Commodity Futures Act*;

(c) reasonable costs incurred by the Commission to obtain external advice related to a distribution of the disgorged amount under Part 5 of this Instrument.

(2) The payment of administrative costs in relation to the distribution of disgorged amounts under subsection 60.2.1 (9) or (12) of the *Commodity Futures Act* must be made as follows:

(a) first, from any administrative penalty or settlement money received by the Commission in relation to the same proceedings that gave rise to the disgorged amount that is the subject of the distribution, if such money has been allocated for the purpose of paying such administrative costs under subclause 19 (2) (b) (iii) of the *Securities Commission Act, 2021*;

(b) if any administrative costs remain after the payment described in paragraph (a), then from any other money that has been allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* in such an amount as the Commission considers appropriate, having regard for the factors described in subsection (3);

(c) if any administrative costs remain after the payments described in paragraphs (a) and (b), then from the disgorged amount that is the subject of the distribution.

(3) In determining the amount payable under paragraph (b) of subsection (2), the Commission must consider factors including but not limited to:

(a) the balance of any amount allocated by the Commission for the purpose of paying administrative costs under subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* that is available for such payments;

(b) the amount of any payment already made under paragraph (a) of subsection (2);

(c) the value of the disgorged amount that is the subject of the distribution;

(d) the estimated financial losses of persons or companies that incurred direct financial losses as a result of the contravention giving rise to the payment of the disgorged amount, or the value of the approved claim amount, if, at the time the payment is made, the Commission or the administrator, as applicable, has determined that amount.

PART 7
REPORTING

Reporting

16. (1) The Commission must publish a report no later than 60 days after the date on which money received by the Commission under a disgorgement order is fully distributed.

(2) The report under subsection (1) must contain all of the following information:

(a) the amount of money received by the Commission under the disgorgement order that was the subject of the distribution;

(b) the method of distribution;

(c) the estimated or total number of harmed investors, if known;

(d) the total number of applicants;

(e) the total number of eligible applicants who received a payment;

(f) the total value of all approved claims;

(g) the total amount distributed to eligible applicants;

(h) the value of any administrative costs paid from the disgorged amount;

(i) the percentage of each eligible applicant’s approved claim amount paid under the distribution.

ANNEX D

PROPOSED COMPANION POLICY 11-503
(COMMODITY FUTURES ACT) DISTRIBUTION OF AMOUNTS PAID TO THE OSC UNDER DISGORGEMENT ORDERS

PART 1
GENERAL COMMENTS

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission (the **Commission**) interprets and applies OSC Rule 11-503 *(Commodity Futures Act) Distribution of Amounts Paid to the OSC under Disgorgement Orders* (the **Rule**) together with related provisions of the *Commodity Futures Act* (Ontario) (the **CFA**).

The Rule establishes the framework for distribution of money received by the Commission under disgorgement orders to investors who incurred direct financial losses as a result of a contravention of Ontario commodity futures law. This framework includes:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

To assist harmed investors, in addition to explaining how the Commission interprets and applies the provisions of the CFA and the Rule, this Companion Policy summarizes key aspects of the legislative framework and the Rule relating to distributions. This Companion Policy should be read together with the Rule and section 60.2.1 of the CFA. To the extent there is any conflict between this Companion Policy, the legislation and the Rule, the legislation and the Rule prevail.

Background

The Commission works to protect investors from unfair, improper or fraudulent practices; foster fair, efficient and competitive commodity futures markets and confidence in those markets; foster capital formation; and contribute to the stability of the financial system and the reduction of systemic risk. This mandate is achieved by administering and enforcing compliance with Ontario commodity futures law.

When a person or company is alleged to have contravened Ontario commodity futures law, the Commission may bring enforcement proceedings before the Capital Markets Tribunal (the **Tribunal**) or the courts. The Tribunal and the courts can impose various monetary and non-monetary sanctions. Where the Tribunal has made a finding or the court has made a declaration that a person or company has not complied with Ontario commodity futures law, one of the orders they may make is an order that the person or company disgorge to the Commission any amounts obtained as a result of the non-compliance.[i] The Commission, exercising its prosecutorial discretion, selects cases, moves forward investigations, collects evidence, and calls witnesses as needed depending on the type of case being brought forward and the regulatory message being sent. Accordingly, a disgorgement order will not be applicable in all cases.

The primary purpose of a disgorgement order is not to compensate investors, but to prevent a wrong-doer from keeping amounts they obtained as a result of the misconduct. Disgorgement is distinct from restitution. Restitution is a remedy that aims to restore a person to the position they would have been in if not for the improper action of another.

The Commission makes reasonable efforts to collect monetary sanctions imposed by the Tribunal or the Superior Court of Justice, including collecting on disgorgement orders. In some situations, there may be little or no money, assets or property that can be seized for collections. However, to the extent the Commission can collect money under a disgorgement order, the CFA requires the Commission to distribute the money in accordance with the Rule to persons or companies who,

- incurred direct financial losses as a result of the contravention giving rise to the payment; and
- satisfy the conditions, restrictions and requirements set out in the Rule.[ii]

The CFA provides that such distributions may be carried out in the following ways:

- by an administrator appointed by the Superior Court of Justice following a process established by the court, or
- directly by the Commission following a process set out in Part 5 of the Rule.[iii]

The distribution process set out in the CFA is a claims-based process which relies on information submitted by applicants to prove their claims. Disgorgement is a remedy that focuses on the amount obtained by the respondent as a result of the contravention. The disgorgement remedy does not focus on "who lost what". Accordingly, the Commission may not have information to substantiate financial losses incurred by specific harmed investors. Therefore, it is the applicant's responsibility to provide their best information so that the Commission or administrator can make determinations about their claim.

Method of Distribution

There are two potential methods of distribution. The first involves the Commission seeking an administrator to be appointed by the court. The second is the Commission conducting a distribution directly under Part 5 of the Rule.

The method of distribution selected by the Commission will depend on the circumstances of each case. It is anticipated that most distributions will be conducted by an administrator. The Commission will generally carry out the distribution directly under Part 5 of the Rule only if the Commission is satisfied that:

- the potential applicants can be readily identified and are small in number, and
- their financial losses can be readily quantified.

The geographic location of potential applicants may also be a relevant consideration for choosing the method of distribution.

In cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount, section 14 of the Rule allows the Commission to initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. It is expected that the Commission would rely on section 14 when appropriate, based on the nature or volume of the claims received. For example, the claims submitted to the Commission may indicate that there is a high volume of claims or complex issues that are better dealt with by an administrator.

Section 1 - Definitions

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in securities legislation, including, for greater certainty, in OSC Rule 14-501 *Definitions*.

Definition of Eligible Applicant

Persons or companies

Investors who are eligible for a payment from the disgorged amount received by the Commission are referred to in the Rule as "eligible applicants". The definition of an eligible applicant includes any person or company that incurred direct financial losses as a result of a contravention that gave rise to a disgorgement order provided that the person or company did not directly or indirectly participate in the conduct that resulted in the disgorgement order.

Eligible applicants can submit claims even if they were not identified in the course of the underlying enforcement investigation or proceeding. An eligible applicant will generally be a person or company that was harmed during the relevant time period when the contravention took place. This time period is typically defined in the relevant decision or settlement agreement accompanying the disgorgement order.

Direct financial losses

The Rule deals with contraventions that were found in proceedings or identified in settlement agreements that gave rise to disgorgement orders. Only financial losses that were directly caused by these contraventions are eligible for payment.

What constitutes a "direct financial loss" may depend on the nature of the contravention. For example:

- in a case where the underlying contravention involved a fraudulent investment scheme, a direct financial loss might include any of the amount invested in the scheme and any related fees the investor paid to the respondent (other than amounts that were repaid to the investor). However, indirect financial losses incurred by investors in this scheme, such as expenses incurred by withdrawing from a different investment in order to invest in the scheme, would not be eligible for payment from the disgorged amount.

- in other cases, an investor's "direct financial loss" could be confined to a fee paid by the investor to a respondent that the investor should not have paid, or was in excess of what they should have paid, due to conduct of the respondent such as a failure to maintain proper internal controls.

Types of losses that are not eligible for payment include:

- financial losses relating to conduct that was not proven in the proceeding (for example, financial losses resulting solely from a decrease in the value of an investment that is unrelated to the respondent's contravention),
- financial losses relating to conduct occurring outside of the relevant time period considered in the proceeding,
- financial losses relating to the loss of an opportunity,
- interest on any financial loss, and
- non-financial losses.

PART 2
REQUIREMENT TO DISTRIBUTE

Subsection 2 (1) - Circumstances where a distribution is required

The Rule provides that money received by the Commission under a disgorgement order must be distributed in circumstances other than where the amount received is too small to justify the costs of distributing it.

Money received by the Commission that fits within this exception will be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021* (the **SCA**), which limits the use of these funds to specific purposes.[iv]

Subsections 2 (2) to (5) - Partial amounts received

The Commission's approach to dealing with partial amounts received under a disgorgement order will vary depending on the particular circumstances of a case. Whether to distribute, hold, or not distribute these funds will depend on details such as the following:

- the amount received,
- the status of any steps taken by the Commission to recover additional amounts owing under the order,
- whether the order or an agreement such as a payment plan provides that payments under the order may be made at a future date, and
- the time that has passed from either the date of the final disposition of the order, or if the order has been appealed, the date the appeal was resolved.

The Commission makes reasonable efforts to enforce Tribunal and court orders, including collecting unpaid monetary sanctions and costs. Tribunal orders are routinely filed in the Superior Court of Justice. Under Ontario commodity futures law, Tribunal orders then become enforceable as though they are court orders. This allows the Commission to use a range of creditor remedies to collect amounts owing, which can include garnishment, seizure and sale of property, and registering liens. It is important to note that in these circumstances the Commission becomes an ordinary creditor of the respondent. There is no guarantee that any funds, assets, or property may be realized through creditor remedies. In addition, any funds, assets or property may be shared with other creditors based on any creditor priorities.

There may be situations where the Commission has received only part of the amount payable under the disgorgement order and that amount is not sufficient to justify the costs of administering a distribution. In these cases, the Rule requires the Commission to hold the amount received for potential distribution to eligible applicants until the earlier of 3 years from the date of the final disposition of the disgorgement order and the date that the Commission receives sufficient amounts under the disgorgement order to justify the costs of a distribution. In circumstances where the disgorgement order has been appealed, this 3-year period runs from the date the appeal has been resolved.

During this 3-year period, the Commission may receive a partial amount under the disgorgement order that meets the threshold for carrying out a distribution. In these cases, the Commission may consider the following factors before deciding whether to proceed with a distribution or hold the funds for an additional period to allow for further amounts to be recovered:

- the status of any ongoing collection efforts,

- the timing and amount of any future payments that are anticipated to be received under the terms of the order or a payment plan, and

- the anticipated costs of carrying out one or more distributions.

Following this 3-year period, the Commission may not recover sufficient amounts under the order to justify the costs of administering a distribution. In this case, the Rule provides that the Commission is not required to distribute the disgorged amount. However, there may be situations where there is ongoing collections activity at the end of this 3-year period. For example, there may be a court proceeding to recover additional amounts owing under the order. In these cases, the Rule provides the Commission with discretion to continue to hold amounts received for potential future distribution to eligible applicants beyond the 3-year period. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would satisfy the threshold for carrying out a distribution.

Similarly, there may be occasions where the order or a payment plan provides that payments under the order may be made at a future date beyond the 3-year period. In these situations, the Commission may decide to continue to hold the amounts received for potential future distribution to eligible applicants. The Commission may do this if it is of the opinion that sufficient additional amounts may be recovered within a reasonable timeframe that would satisfy the threshold for carrying out a distribution.

PART 3
PUBLICATION OF DISGORGEMENT AMOUNTS AND NOTICE OF CLAIMS PROCESS

Part 3 of the Rule involves two distinct steps. The first step is the publication of disgorged amounts received by the Commission. The second step is the publication of the notice of claims process.

Section 3 - Publication of money received under disgorgement orders

For each case where disgorgement is ordered, amounts received by the Commission under that order will be published on its website and updated to include additional amounts received within 30 days after the end of each calendar quarter (March 31, June 30, September 30 and December 31). As part of these quarterly updates, additional information relevant to the distribution will be added as it becomes available. Information published on the website will generally include:

- the proceeding under which the disgorgement order was made and the respondent(s) to that proceeding who are subject to that order;

- the amount owing individually and/or jointly by the respondents under the disgorgement orders, the amount received by the Commission, and any amounts outstanding in respect of these orders; and

- any other information the Commission considers appropriate.

Section 4 - Publication of notice of claims process

The Rule requires that a notice relating to how a distribution will be carried out will be published on the Commission's website, including information about how eligible applicants can make a claim and the deadline by which claims must be filed to be considered. In addition, the Commission may look to amplify the website posting through additional channels such as through press releases, social media channels, and investor advocacy organizations.

If the distribution is being carried out directly by the Commission under Part 5 of the Rule, the Commission will also attempt to send the notice to the last known address (including an electronic address), if available, of any known potential eligible applicants.

If the distribution is being carried out by an administrator, any additional notice requirements will be specified in the claims process order established by the court.

PART 4
REQUIREMENT TO UPDATE CLAIMS APPLICATION

Sections 5 and 6 - Requirement to update claims application

It is the applicant's responsibility to ensure that the Commission or the administrator has correct and up-to-date information about the claim.

Under a distribution carried out by the Commission under Part 5 of the Rule, a claim may be denied if any of the following apply:

- the person or company fails to promptly report any changes to the information provided in their application if the information changes in a material respect so that the information provided is now untrue or misleading or omits information that would make the information originally provided not untrue or misleading;

- the person or company makes a statement or provides information to the Commission in their application that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement or information not misleading.

PART 5
CLAIMS PROCESS IF NO COURT-APPOINTED ADMINISTRATOR

Section 7 - Application

Part 5 of the Rule applies if there is no administrator.

Section 8 - Contents of the notice of claims process

If the Commission elects to directly distribute money it has received under a disgorgement order using the process set out in Part 5 of the Rule, the Commission will publish a notice on its website explaining how eligible applicants can make a claim. This notice will include important information such as the name of the proceeding under which the disgorgement order was made, the amount that is being distributed, and the deadline for eligible applicants to file claims.

Applicants will generally have the option to either file claims electronically or using a paper form provided by the Commission. Applicants will have at least 90 days from the date of the notice to make a claim. Any claim filed after the final day for filing a claim specified in the notice will not be considered.

While this minimum 90-day period may allow simpler distributions to be completed relatively quickly, the Commission may set a period longer than 90 days depending on the circumstances of the case. For example, the Commission may establish a longer claims period if the Commission has limited information about potential applicants or if potential applicants are located outside of Canada.

If at the time the notice is posted, the amount received under the disgorgement order does not represent the full amount payable under the order, any additional amounts received under the order prior to the conclusion of the distribution will be included in the distribution.

Section 9 - Claim requirements

The claim form will be available on the Commission's website. Although the claim form may differ somewhat depending on the case, at a minimum, applicants can expect to provide the following information and documentary evidence to support their claim:

- applicant's name, address and contact information;
- information about the claim, including:
    - the applicant's direct financial losses and the amount claimed;
    - how the applicant believes the contraventions that gave rise to the disgorgement order directly resulted in the financial losses claimed by the applicant;
    - any amounts received from the relevant investment (e.g., dividends, interest income, capital gains, return of capital, etc.);
    - any other sources (e.g., other litigation action) from which payment for the loss claimed has been paid, is payable or may be payable to the applicant, and the amount of that payment;
    - the applicant's involvement in the misconduct, if any;
    - whether the Commission has ever denied the applicant's claim for this or any other loss;
- documentary evidence to support the claim such as account statements, records of wire or e-transfers, investment agreements, etc.;
- applicant's certification that the information in the form and where applicable, material submitted in support of the claim, is true and correct;
- updates to the information that has been provided to the Commission if there have been any changes;
- applicant's certification that they understand that after the final day for filing a claim, the Commission may apply to the Superior Court of Justice to have an administrator appointed to distribute the disgorged amount. In this

case, any claims received by the Commission on or before the final day for filing will be provided to the administrator to be administered under an order made by the court.

As noted above, it is the applicant's responsibility to provide their best information so that the Commission can make determinations about the claim. However, there may be cases where, prior to commencing a claims process, the Commission has sufficient information to assess the financial losses sustained by particular investors who were harmed by the conduct giving rise to the disgorgement order. In these cases, the claim form may invite applicants to do one of the following:

- confirm the accuracy and completeness of the claim amount assessed by the Commission, in which case no further documentary evidence will need to be submitted,
- decline to make a claim, or
- make a claim for a different amount, supported by documentation evidencing the amount claimed.

Section 10 - Determining eligibility and amount of payment

Subsections 10 (1) to (3) - Claim Determinations

After reviewing all claims filed under Part 5 of the Rule, the Commission will make claim determinations under section 10 of the Rule. The Commission will make these determinations after considering recommendations from Commission staff who will review all claims.

The Commission may make a payment to the applicant if the Commission is satisfied that all of the following apply:

- the applicant is an eligible applicant in respect of the disgorgement order;
- the amount of the applicant's direct financial loss can be quantified;
- sufficient proof of the direct financial loss has been provided.

When determining the amount to be paid to the eligible applicant, the Commission must consider all of the following:

- the amount of money received under the disgorgement order;
- the direct financial loss suffered by the eligible applicant;
- the direct financial losses suffered by all eligible applicants;
- any other information the Commission considers appropriate in the circumstances.

When determining an applicant's direct financial loss for the purposes of section 10, the Commission must not include any amount claimed by the applicant in respect of a loss of opportunity or interest on any loss, and must consider all of the following:

- whether the applicant received or is entitled to receive a payment from other sources for the direct financial loss resulting from the contravention that gave rise to the disgorgement order;
- whether the applicant benefitted from the contravention that gave rise the disgorgement order.

The Commission's practice will be to communicate the outcomes of its determinations to applicants in writing.

Subsection 10 (4) - Prorated payments

The Commission's practice will be to use the following formula to prorate payments under subsection 10 (4) of the Rule:

$$\frac{A \times B}{C}$$

where

A = the amount of money received by the Commission under the order less any administrative costs that have been deducted from the disgorged amount,

B = the financial loss suffered by the eligible applicant, and

C = the financial loss suffered by all eligible applicants.

Subsection 10 (5) - Exception

The Commission may decline to make a payment to an eligible applicant if, in the opinion of the Commission, the amount of the payment would be too small to justify the costs of making the payment. While the Commission has not established any specific monetary cut-off for declining payments, which may depend on the circumstances of the case, it is anticipated that payments of less than $50 will generally not be issued. In circumstances where the Commission declines to issue a payment to an eligible applicant under this subsection of the Rule, the amount that would have otherwise been payable to the applicant will be added back to the amount available for distribution to the remaining eligible applicants.

Section 11 - Opportunity to provide additional supporting documentation

Before the Commission denies all or part of a claim, the Commission will provide applicants with the opportunity to provide additional supporting documentation to substantiate their eligibility and any disputed amount. The Commission will provide the notice in writing and the applicant will have 30 days from the date the notice was delivered to file the additional supporting documentation.

Section 12 – No payment until all claims are determined

Subsection 12 (1) of the Proposed Rule provides that no payments shall be made until all claims filed under the Rule have been considered and the amount to be paid to each applicant has been determined. However, if there are any disputed claims, subsection 12 (2) allows the Commission to make partial installment payments to the remaining eligible applicants. In these cases, the Commission will hold back a portion of the disgorged amount in respect of the disputed claim.

Section 13 - Residual funds

In practice, in circumstances where payments are made by cheque, the Commission will undertake reasonable efforts to contact the eligible applicants who have not deposited their cheques after 90 days following the issuance of the cheque. The purpose of the Commission's efforts to contact these eligible applicants is to ensure that they have a reasonable opportunity to participate in the distribution. Approved claim amounts that the Commission is unable to distribute to eligible applicants after 180 days following the date payments are issued will be dealt with in accordance with subsection 19 (2) of the SCA[v].

Section 14 - Election to seek appointment of administrator following final day for filing a claim

There may be cases where the Commission does not have sufficient information about potential applicants and their estimated losses to evaluate the appropriate method to distribute the disgorged amount. In these cases, the Commission may initiate the claims process under Part 5 of the Rule and later apply to the court for the appointment of an administrator to complete the distribution. The approach taken will depend on the nature or volume of the claims received by the Commission, and may take into account factors such as:

- the number of claims received,
- the volume and complexity of the documentation that must be reviewed to evaluate the claims,
- the location of the applicants,
- any special requirements of applicants (for example, language requirements), and
- the resources and expertise required to conduct the distribution.

If the Commission seeks to have an administrator appointed to complete a distribution that was initiated under Part 5 of the Rule, the distribution will be governed by the court's claims process order instead of the Rule. In these circumstances, the Commission will give the administrator any information that was received from applicants following the initiation of the claims process.

PART 6
ADMINISTRATIVE COSTS

Section 15 - Payment of administrative costs

The CFA contemplates that certain administrative costs relating to distributions are eligible to be paid from the disgorged amount that is being distributed or, in accordance with the regulations, from other sanction and settlement money held by the Commission that it has allocated for this purpose. These costs include the reasonable costs incurred by an administrator in carrying out a distribution,[vi] or in the case of a distribution carried out directly by the Commission under the Rule, reasonable costs incurred by the Commission in obtaining external advice relating to the distribution[vii].

The sanction and settlement money that may be allocated by the Commission to pay these administrative costs includes administrative penalties, settlement payments, and amounts disgorged to the Commission that are not subject to the distribution requirement. These funds are held in a separate account by the Commission. The Commission's practice is to set aside funds

held in this account for various purposes authorized under subsection 19 (2) of the SCA on an annual basis. In keeping with this practice, the Commission may set aside some of these funds for potential use toward the payment of eligible administrative costs relating to distributions.

The Rule provides that for each distribution, administrative costs will be paid:

(1) First, from any administrative penalty or settlement money received by the Commission in relation to the same proceeding as the disgorged amount that is the subject of the distribution.

(2) Next, from other unrelated sanction and settlement money the Commission has set aside for potential payment of such costs, as described above, and in such an amount the Commission considers appropriate after considering factors including:

- the balance of funds set aside by the Commission for the purpose of paying administrative costs that is available for such payments,
- the amount of any administrative costs that have already been paid from administrative penalty or settlement money received by the Commission in relation the same proceeding as the disgorged amount that is the subject of the distribution,
- the value of the disgorged amount that is the subject of the distribution, and
- the estimated financial losses incurred by potential applicants as a result of the relevant contravention or the value of the approved claim amount if that amount has been determined by the Commission or the administrator.

(3) Finally, if any administrative costs remain, from the disgorged amount that is being distributed.

PART 7
REPORTING

Section 16 - Reporting

The Rule provides that the Commission will publish a report no later than 60 days following the conclusion of the distribution. This report will describe the results of the distribution. It will include data such as the percentage of each eligible applicant's approved claim amount paid under the distribution. The Commission's practice will be to anonymize any such data.

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i The Tribunal's authority to make an order requiring a person or company to disgorge to the Commission any amounts obtained a result of non-compliance with Ontario commodity futures law is found in paragraph 10 of subsection 60 (1) of the CFA. The authority of the Ontario Superior Court of Justice to make an order requiring a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario commodity futures law is found in paragraph 11 of subsection 60.2 (3) of the CFA.

In some cases, the Commission may lay quasi-criminal charges and prosecute alleged wrongdoers through the Ontario Court of Justice under section 55 of the CFA, which may result in a fine or imprisonment on conviction. Any such fine is not subject to the distribution framework under the Rule.

ii The legislative framework for distributing money disgorged to the Commission is found in section 60.2.1 of the CFA.

iii Subsections 60.2.1 (4) and (10) of the CFA set out the two methods of distribution.

iv Subsection 60.2.1 (15) of the CFA provides that if the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA.

Subsection 19 (2) of the SCA allows the Commission to allocate this money for the following purposes:

(i) to or for the benefit of third parties,

(ii) for use by the Commission or third parties for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,

(iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 60.2.1 (9) or (12) of the CFA, or

(iv) for any other purpose specified in the regulations. Purposes specified in O. Reg. 28/24 include certain technology and data enhancement expenditures of the Commission and funding activities of the Commission's Office of Economic Growth and Innovation.

v Subsection 60.2.1 (14) of the CFA provides that any disgorged amount remaining after payments are made to the applicants and towards administrative costs of the distribution belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the SCA. See Endnote iv for information on limits to the use of funds under subsection 19 (2) of the SCA.

vi Subsection 60.2.1 (9) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by an administrator.

vii Subsection 60.2.1 (12) of the CFA describes the administrative costs that are eligible for payment from other sanction and settlement money held by the Commission and described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the SCA where the distribution is carried out by the Commission following the process established under the Rule.

ANNEX E

REGULATORY IMPACT ANALYSIS

Introduction

The Commission is publishing this annex to supplement the OSC Notice and Request for Comment (the **Notice**) setting out the Commission's regulatory impact analysis of the Proposed Rule.

Unless otherwise defined in this Annex, defined terms or expressions used in this Annex share the meanings provided in the accompanying Notice.

As described in the Notice, prior to the passage of the legislative amendments contained in Bill 146, there was no statutory requirement or prescribed process for distributing sanction and settlement funds[1] to harmed investors. The legislative amendments create a statutory framework governing the distribution of money received by the Commission under disgorgement orders to harmed investors and provide that regulations (which may take the form of an OSC rule or a regulation made by the Lieutenant Governor in Council) will address:

- the circumstances in which money received by the Commission under disgorgement orders is required to be distributed;
- the eligibility requirements for investors seeking a payment from the disgorged amounts received by the Commission;
- a process for distributing disgorged amounts to harmed investors in cases where a court-appointed administrator is not used; and
- the use of other monetary sanctions and settlement payments received by the Commission to pay certain administrative costs in relation to the distribution of disgorged amounts.

The Proposed Rule and the Proposed Companion Policy are being published for comment to address these matters.

Current Practice Relating to Monetary Sanctions Received by the Commission

There is currently no statutory requirement or prescribed process to distribute monetary sanctions received by the Commission to harmed investors. However, the Commission is currently authorized under subsection 19 (2) of the SCA to allocate sanction and settlement money it receives, including money received under disgorgement orders, "to or for the benefit of third parties", which can include harmed investors. The Commission's current practice is to allocate such funds to investors who were directly harmed by the conduct giving rise to the payment if it is practicable in the circumstances to carry out a distribution. This assessment is made before any other possible uses for funds received in a given case are considered and includes a consideration of whether there is an appropriate mechanism to carry out the distribution.

In most cases, a claims-based process is necessary to identify the harmed investors and quantify and verify their losses. Currently, the only avenue for the administration of a claims-based process under the OSA and CFA is a receivership. Section 129 of the OSA or section 60.3 of the CFA allow the OSC to apply to the Superior Court of Justice for an order appointing a receiver over the property of any person or company if it is appropriate for the due administration of Ontario securities law or Ontario commodity futures law. The OSC has relied on section 129 of the OSA to have a receiver appointed by the court to manage a claims process to distribute monetary sanctions to harmed investors. However, this approach is generally only suitable in circumstances where the amount available for distribution is sufficient to bear the costs of a receivership.

There is currently no alternative process under the OSA and CFA for carrying out distributions that are smaller in value or less complex. In these situations, the OSC has generally sought the assistance of the Ministry of Attorney General (**MAG**) to carry out the distribution using the civil forfeiture and claims adjudication process under the *Civil Remedies Act, 2001* which requires the MAG to first obtain a forfeiture order from the court over the funds held by the Commission.[2] There may be additional steps associated with this claims process, including, for example, seeking orders from the Tribunal to permit sharing of investor related information obtained during the underlying enforcement matter.

In limited circumstances, where there were a very small number of identifiable investors with readily quantifiable losses, the Commission has directly distributed funds to these harmed investors.

[1] Sanction and settlement funds refer to moneys (disgorgement, administrative penalty and/or settlement payments) received by the Commission pursuant to an order issued by the Tribunal or under the terms of a settlement agreement approved by order of the Tribunal.

[2] S.O. 2001, c. 28.

New Statutory Framework

Going forward, the legislative amendments and the Proposed Rule will replace the current practice with a new statutory framework that will establish a process to distribute money received by the Commission under disgorgement orders to harmed investors. The legislative amendments provide that distributions may be carried out either by a court-appointed administrator or directly by the OSC. Distributions carried out by a court-appointed administrator will be carried out in accordance with the terms of an appointment and claims process order established by order of the court, which can be tailored to the circumstances of the case. Distributions carried out directly by the OSC will follow a claims process set out in the Proposed Rule, which can be used for smaller scale, more straightforward distributions. This approach provides the Commission with flexibility to determine on a case-by-case basis how best to carry out a distribution, having regard for the particular circumstances of the case and to adapt to the volume and complexity of distributions that may be required at any given time. The number and complexity of distributions that may be conducted at any given time is anticipated to vary depending on the nature of the enforcement proceedings that are concluded, whether disgorgement has been ordered, and the Commission's ability to collect amounts that have been ordered to be disgorged.

Historically, over the 10-year period between April 1, 2014 to March 31, 2024, disgorgement has been ordered in 75 cases and collected in 45 cases. An analysis of the cases where money has been collected (excluding cases relating to insider trading and where small amounts have been collected) shows that, the Commission may be required to conduct up to 7 distribution processes per year, with the average over the 10-year period being approximately 2 per year.

Affected Stakeholders

Given that the distribution of disgorged funds will take place after the conclusion of the enforcement proceeding against the respondents, the primary stakeholders affected by the Proposed Rule are investors and the Commission.

Through the implementation of the Proposed Rule, there will be a procedural and administrative process for the Commission to follow when carrying out distributions to harmed investors. As such, investors harmed by the conduct that resulted in the disgorgement order and who meet the eligibility requirements set out in the Proposed Rule will be able to apply for a payment from the disgorged funds being distributed. The Commission is impacted to the extent of developing, implementing and administering operational processes and procedures to be able to effectively operationalize the statutory framework. This includes overseeing the distributions conducted under the new framework and in certain cases, administering distributions directly.

Anticipated Benefits

Implementation of the Proposed Rule will lead to improved investor redress and outcomes and increase investor confidence in the capital markets.

The Proposed Rule will codify a process for, and streamline the OSC's ability to, distribute money received by the Commission under disgorgement orders to harmed investors in a transparent and efficient manner. Investors will be able to check the Commission's website to learn if, when and how much has been received by the Commission under a particular disgorgement order and whether or how a distribution will take place. This increased transparency is anticipated to lead to higher levels of participation in the claims process, which may occur several years after the order was issued (depending on whether collection actions were required to enforce the disgorgement order).

Historically, collection rates from regulated market participants have been much higher than from respondents sanctioned on matters related to fraud – where assets are typically non-existent or inaccessible. Importantly, the legislative amendments and the Proposed Rule may strengthen the OSC's ability to collect on its disgorgement orders in foreign jurisdictions where a respondent's assets may reside, as the presence of a notice and claims process governing disgorged amounts may be a factor that foreign courts consider to be relevant in supporting the enforceability of disgorgement orders.[3]

The implementation of the Proposed Rule will increase investor confidence in Ontario's capital markets and align the OSC with other Canadian and international securities regulators that have similar statutory frameworks. This will also address the recommendation of the Auditor General of Ontario that the OSC establish a timely and efficient process to support the distribution of disgorged funds to harmed investors, after reviewing the process in other jurisdictions.

Anticipated Costs

If implemented, the Proposed Rule will require the Commission to develop and implement processes and procedures to operationalize the framework to distribute disgorged funds to harmed investors. While it is anticipated that most distributions will be carried out by a court-appointed administrator, in some cases, the Commission may conduct distributions directly under the Proposed Rule.

If the Commission elects to apply to the court for the appointment of an administrator, the process will be similar to the process that is currently followed in appointing a receiver. In the Commission's experience, costs generally tend to vary depending on the

[3] See for example *Lathigee v. B.C. Secs. Comm'n*, 477 P.3d 352 (Nev. December 10, 2020).

size of the distribution, the volume and complexity of the claims, the location of the applicants, any special requirements of the applicants (for example, language requirements), and the resources and expertise required to conduct the distribution. In the three distributions of monetary sanction and settlement money distributed by the Commission conducted using a receiver, costs ranged from $60,000 to $320,000. The Proposed Rule contemplates that administrative costs will be paid through related and other sanctions and settlement money held by the Commission or if administrative costs remain, from the amount available for distribution. Accordingly, third party costs associated with carrying out distributions using a court-appointed administrator under the new framework will not impact the Commission's operational costs.

To support direct distributions by the Commission under the Proposed Rule, the Commission will be required to:

- develop and implement operational processes and procedures and update existing procedures;
- design, develop and implement in-house technology tools and systems, if needed, and update existing systems;
- build limited internal staff resources to administer direct distributions, including but not limited to preparing claims packages, reviewing claims, responding to investor questions, making and tracking payments, record keeping and reporting.

All of the above activities will impose one-time implementation costs and incremental ongoing costs on the Commission.

As part of the technology implementation, the Commission intends to develop and implement an online system to receive claims and as such, does not anticipate any material incremental costs to investors as a result of the Proposed Rule. If investors choose to mail their applications instead of using the Commission's online system, investors may incur mailing costs which may vary depending on the geographic location of the investors.

The Commission does not anticipate any corresponding material costs (initial or ongoing) associated with implementing the Proposed Rule on market participants.

On balance, we consider that the benefits associated with strengthening the investor protection framework in Ontario and increasing investor confidence in the capital markets by implementing this new statutory framework are proportionate to the costs, which will be primarily incurred by the Commission.

ANNEX F

EXCERPTS FROM BILL 146 WITH RESPECT TO AMENDMENTS TO THE *COMMODITY FUTURES ACT,* THE *SECURITIES ACT* AND THE *SECURITIES COMMISSION ACT, 2021*

EXPLANATORY NOTE

SCHEDULE 1
COMMODITY FUTURES ACT

Section 60.2 of the Act is amended to provide that certain disgorged amounts under court orders shall be paid to the Commission. New section 60.2.1 of the Act sets out the rules governing the distribution of money received under disgorgement orders made under the Act. The Commission is given the authority to make rules governing disgorged amounts.

SCHEDULE 10
SECURITIES ACT

Section 128 of the Act is amended to provide that certain disgorged amounts under court orders shall be paid to the Commission. New section 128.1 of the Act sets out the rules governing the distribution of money received under disgorgement orders made under the Act. The Commission is given the authority to make rules governing disgorged amounts.

SCHEDULE 11
SECURITIES COMMISSION ACT, 2021

Section 19 of the *Securities Commission Act, 2021*, which sets out rules governing the Commission's income, is amended to provide that certain money received by the Commission in respect of disgorgement orders is not required to be paid into the Consolidated Revenue Fund.

SCHEDULE 1
COMMODITY FUTURES ACT

6 Paragraph 11 of subsection 60.2 (3) of the Act is repealed and the following substituted:

11. An order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario commodity futures law.

7 The Act is amended by adding the following section:

Disgorgement orders

60.2.1 (1) This section applies with respect to orders made under paragraph 10 of subsection 60 (1) and paragraph 11 of subsection 60.2 (3).

Distribution of disgorged amount

(2) In the circumstances prescribed by the regulations, all or part of the disgorged amount received by the Commission shall be distributed in accordance with this section and the regulations to persons or companies who,

(a) incurred direct financial losses as a result of the contravention giving rise to the payment; and

(b) satisfy such conditions, restrictions and requirements as may be prescribed.

Application for payment

(3) If the regulations require a distribution, persons or companies described in subsection (2) may apply for a payment from the disgorged amount and shall do so in accordance with any applicable court order or regulation.

Court appointment of administrator

(4) On application by the Commission, the Superior Court of Justice may make an order appointing one or more persons or companies to administer and distribute all or any part of the disgorged amount if the court is satisfied that the appointment is appropriate for the due administration of Ontario commodity futures law.

Commission as court-appointed administrator

(5) The Commission may be appointed under subsection (4).

Powers and duties, etc.

(6) The court order shall specify the administrator's powers and duties and the process for distributing any disgorged amount and may include such terms as the court considers just and expedient in the circumstances.

Variation or revocation of order

(7) The court order may be varied or revoked by the court on application by the Commission or by the court-appointed administrator.

Payment to applicant

(8) The court-appointed administrator may, in accordance with the court order, make a payment to an applicant from the disgorged amount administered under the court order.

Administrative costs, court-appointed administrator

(9) The following administrative costs are eligible to be paid to a court-appointed administrator from the disgorged amount or, in accordance with the regulations, from money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021*:

1. The reasonable costs incurred by the administrator, before their appointment, in connection with the disgorged amount.

2. The reasonable costs incurred by the administrator in connection with court orders made under this section.

If no court-appointed administrator

(10) If the regulations require a distribution and there is no court-appointed administrator for all or a part of a disgorged amount, the Commission shall administer and distribute the disgorged amount or the part, as the case may be, in accordance with the regulations.

Same, payment to applicant

(11) The Commission may, in accordance with the regulations, make a payment to an applicant from the disgorged amount administered by the Commission under subsection (10).

Administrative costs, no court-appointed administrator

(12) In the circumstances described in subsection (10), the following administrative costs are eligible to be paid to the Commission from a disgorged amount or, in accordance with the regulations, from money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021*:

1. The reasonable costs of obtaining external advice related to a distribution of the disgorged amount.

Operating costs not recoverable

(13) The Commission's normal operating costs are not eligible to be paid as administrative costs under subsection (9) or (12).

Disgorged amount — distribution

(14) Any disgorged amount remaining after payments are made under subsections (8), (9), (11) and (12) belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

Disgorged amount — no distribution

(15) If the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

Limitation re participation in proceeding

(16) A person or company is not entitled to participate in a proceeding in which an order may be made under this section solely on the basis that the person or company may be eligible to receive a payment under subsection (8) or (11).

10 (1) Subsection 65 (1) of the Act is amended by adding the following paragraphs:

40. Respecting the administration and distribution of disgorged amounts under section 60.2.1.

41. Respecting the use of money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* to pay administrative costs in relation to the distribution of disgorged amounts under section 60.2.1 of this Act.

(2) Clause 65 (2) (a.1) of the Act is repealed.

SCHEDULE 10
SECURITIES ACT

8 Paragraph 15 of subsection 128 (3) of the Act is repealed and the following substituted:

15. An order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law.

9 The Act is amended by adding the following section:

Disgorgement orders

128.1 (1) This section applies with respect to orders made under paragraph 10 of subsection 127 (1) and paragraph 15 of subsection 128 (3).

Distribution of disgorged amount

(2) In the circumstances prescribed by the regulations, all or part of the disgorged amount received by the Commission shall be distributed in accordance with this section and the regulations to persons or companies who,

(a) incurred direct financial losses as a result of the contravention giving rise to the payment; and

(b) satisfy such conditions, restrictions and requirements as may be prescribed.

Application for payment

(3) If the regulations require a distribution, persons or companies described in subsection (2) may apply for a payment from the disgorged amount and shall do so in accordance with any applicable court order or regulation.

Court appointment of administrator

(4) On application by the Commission, the Superior Court of Justice may make an order appointing one or more persons or companies to administer and distribute all or any part of the disgorged amount if the court is satisfied that the appointment is appropriate for the due administration of Ontario securities law.

Commission as court-appointed administrator

(5) The Commission may be appointed under subsection (4).

Powers and duties, etc.

(6) The court order shall specify the administrator's powers and duties and the process for distributing any disgorged amount and may include such terms as the court considers just and expedient in the circumstances.

Variation or revocation of order

(7) The court order may be varied or revoked by the court on application by the Commission or by the court-appointed administrator.

Payment to applicant

(8) The court-appointed administrator may, in accordance with the court order, make a payment to an applicant from the disgorged amount administered under the court order.

Administrative costs, court-appointed administrator

(9) The following administrative costs are eligible to be paid to a court-appointed administrator from the disgorged amount or, in accordance with the regulations, from money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021*:

1. The reasonable costs incurred by the administrator, before their appointment, in connection with the disgorged amount.

2. The reasonable costs incurred by the administrator in connection with court orders made under this section.

If no court-appointed administrator

(10) If the regulations require a distribution and there is no court-appointed administrator for all or a part of a disgorged amount, the Commission shall administer and distribute the disgorged amount or the part, as the case may be, in accordance with the regulations.

Same, payment to applicant

(11) The Commission may, in accordance with the regulations, make a payment to an applicant from the disgorged amount administered by the Commission under subsection (10).

Administrative costs, no court-appointed administrator

(12) In the circumstances described in subsection (10), the following administrative costs are eligible to be paid to the Commission from a disgorged amount or, in accordance with the regulations, from money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021*:

1. The reasonable costs of obtaining external advice related to a distribution of the disgorged amount.

Operating costs not recoverable

(13) The Commission's normal operating costs are not eligible to be paid as administrative costs under subsection (9) or (12).

Disgorged amount — distribution

(14) Any disgorged amount remaining after payments are made under subsections (8), (9), (11) and (12) belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

Disgorged amount — no distribution

(15) If the regulations do not require a distribution, the disgorged amount belongs to the Commission and shall be dealt with in accordance with subsection 19 (2) of the *Securities Commission Act, 2021*.

Limitation re participation in proceeding

(16) A person or company is not entitled to participate in a proceeding in which an order may be made under this section solely on the basis that the person or company may be eligible to receive a payment under subsection (8) or (11).

11(2) Subsection 143 (1) of the Act is amended by adding the following paragraphs:

54.2 Respecting the administration and distribution of disgorged amounts under section 128.1.

54.3 Respecting the use of money described in subclause 19 (2) (b) (iii) or clause 19 (2) (c) of the *Securities Commission Act, 2021* to pay administrative costs in relation to the distribution of disgorged amounts under section 128.1 of this Act.

11(5) Clause 143 (2) (a.1) of the Act is repealed.

SCHEDULE 11
SECURITIES COMMISSION ACT, 2021

1 Subsection 19 (2) of the *Securities Commission Act, 2021* is repealed and the following substituted:

Exceptions

(2) The Commission shall pay into the Consolidated Revenue Fund money received by the Commission pursuant to an order under paragraph 9 of subsection 127 (1) of the *Securities Act* or paragraph 9 of subsection 60 (1) of the *Commodity Futures Act*, money received as payment to settle enforcement proceedings commenced by the Commission, and money described in subsections 128.1 (14) and (15) of the *Securities Act* or subsections 60.2.1 (14) and (15) of the *Commodity Futures Act*, other than,

(a) money to reimburse the Commission for costs incurred to enforce an order of the Tribunal or for costs to be incurred for that purpose;

(b) money that the Commission allocates,

(i) to or for the benefit of third parties,

(ii) for use, by the Commission or third parties, for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets,

(iii) for use to pay administrative costs in relation to the distribution of disgorged amounts in accordance with subsection 128.1 (9) or (12) of the *Securities Act* or subsection 60.2.1 (9) or (12) of the *Commodity Futures Act*, or

(iv) for any other purpose specified in the regulations;

(c) previously designated money that the Commission allocates for a purpose described in clause (a) or (b); or

(d) previously designated money that the Commission allocates for any additional purpose specified in the regulations.

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:
Hazelview Alternative Real Estate Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 28, 2024
NP 11-202 Final Receipt date Jul 5, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06141886

Issuer Name:
Sun Life Money Market Fund
Sun Life MFS Canadian Bond Fund
Sun Life Multi-Strategy Bond Fund
Sun Life MFS Global Core Plus Bond Fund (formerly, Sun Life Amundi Emerging Markets Debt Fund)
Sun Life Dynamic Equity Income Fund
Sun Life Dynamic Strategic Yield Fund
Sun Life Nuveen Flexible Income Fund
Sun Life MFS Canadian Equity Fund
Sun Life BlackRock Canadian Equity Fund
Sun Life MFS U.S. Equity Fund
Sun Life MFS U.S. Growth Fund
Sun Life MFS U.S. Mid Cap Growth Fund
Sun Life MFS U.S. Value Fund
Sun Life Risk Managed U.S. Equity Fund
Sun Life MFS Diversified Income Fund
Sun Life MFS Global Total Return Fund
Sun Life MFS Global Growth Fund
Sun Life MFS Global Value Fund
Sun Life MFS Low Volatility Global Equity Fund
Sun Life Schroder Global Mid Cap Fund
Sun Life MFS International Opportunities Fund
Sun Life MFS International Value Fund
Sun Life MFS Low Volatility International Equity Fund
Sun Life Aditya Birla India Fund
Sun Life JPMorgan International Equity Fund
Sun Life Schroder Emerging Markets Fund
Sun Life Milestone 2025 Fund
Sun Life Milestone 2030 Fund
Sun Life Milestone 2035 Fund
Sun Life Granite Conservative Portfolio
Sun Life Granite Moderate Portfolio
Sun Life Granite Balanced Portfolio
Sun Life Granite Balanced Growth Portfolio
Sun Life Granite Growth Portfolio
Sun Life Granite Income Portfolio
Sun Life Ganite Enhanced Income Portfolio
Sun Life Tactical Fixed Income ETF Portfolio
Sun Life Tactical Conservative ETF Portfolio
Sun Life Tactical Balanced ETF Portfolio
Sun Life Tactical Growth ETF Portfolio
Sun Life Tactical Equity ETF Portfolio
Sun Life Real Assets Private Pool
Sun Life Core Advantage Credit Private Pool
Sun Life Crescent Specialty Credit Private Pool
Sun Life KBI Global Dividend Private Pool
Sun Life KBI Sustainable Infrastructure Private Pool
Sun Life Wellington Opportunistic Fixed Income Private Pool
Sun Life Money Market Class
Sun Life Granite Conservative Class
Sun Life Granite Moderate Class

Sun Life Granite Balanced Class
Sun Life Granite Balanced Growth Class
Sun Life Granite Growth Class
Sun Life MFS International Opportunites Class
Sun Life MFS Global Growth Class
Sun Life MFS U.S. Growth Class
Principal Regulator – Ontario

Type and Date:
Final Simplified Prospectus dated Jun 28, 2024
NP 11-202 Final Receipt dated Jul 2, 2024

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Filing #06129225, 06129378 & 06129444

Issuer Name:
RBC Indigo Canadian Money Market Fund (formerly, HSBC Canadian Money Market Fund)
RBC Indigo U.S. Dollar Money Market Fund (formerly, HSBC U.S. Dollar Money Market Fund)
RBC Indigo Mortgage Fund (formerly, HSBC Mortgage Fund)
RBC Indigo Canadian Short/Mid Bond Fund (formerly, HSBC Canadian Short/Mid Bond Fund)
RBC Indigo Canadian Bond Fund (formerly, HSBC Canadian Bond Fund)
RBC Indigo Global Corporate Bond Fund (formerly, HSBC Global Corporate Bond Fund)
RBC Indigo Emerging Markets Debt Fund (formerly, HSBC Emerging Markets Debt Fund)
RBC Indigo Canadian Balanced Fund (formerly, HSBC Canadian Balanced Fund)
RBC Indigo Dividend Fund (formerly, HSBC Dividend Fund)
RBC Indigo Equity Fund (formerly, HSBC Equity Fund)
RBC Indigo Small Cap Growth Fund (formerly, HSBC Small Cap Growth Fund)
RBC Indigo Global Equity Fund (formerly, HSBC Global Equity Fund)
RBC Indigo Global Equity Volatility Focused Fund (formerly, HSBC Global Equity Volatility Focused Fund)
RBC Indigo U.S. Equity Fund (formerly, HSBC U.S. Equity Fund)
RBC Indigo European Fund (formerly, HSBC European Fund)
RBC Indigo AsiaPacific Fund (formerly, HSBC AsiaPacific Fund)
RBC Indigo Chinese Equity Fund (formerly, HSBC Chinese Equity Fund)
RBC Indigo Indian Equity Fund (formerly, HSBC Indian Equity Fund)
RBC Indigo Emerging Markets Fund (formerly, HSBC Emerging Markets Fund)
RBC Indigo HSBC Emerging Markets Fund II (formerly, HSBC Emerging Markets Fund II)
RBC Indigo U.S. Equity Index Fund (formerly, HSBC U.S. Equity Index Fund)
RBC Indigo International Equity Index Fund (formerly, HSBC International Equity Index Fund)
RBC Indigo Emerging Markets Equity Index Fund (formerly, HSBC Emerging Markets Equity Index Fund)
RBC Indigo Monthly Income Fund (formerly, HSBC Monthly Income Fund)
RBC Indigo U.S. Dollar Monthly Income Fund (formerly, HSBC U.S. Dollar Monthly Income Fund)
RBC Indigo Diversified Conservative Fund (formerly, HSBC World Selection Diversified Conservative Fund)
RBC Indigo Diversified Moderate Conservative Fund (formerly, HSBC World Selection Diversified Moderate Conservative Fund)
RBC Indigo Diversified Balanced Fund (formerly, HSBC World Selection Diversified Balanced Fund)
RBC Indigo Diversified Growth Fund (formerly, HSBC World Selection Diversified Growth Fund)
RBC Indigo Diversified Aggressive Growth Fund (formerly, HSBC World Selection Diversified Aggressive Growth Fund)
RBC Indigo Strategic Conservative Fund (formerly, HSBC Wealth Compass Conservative Fund)
RBC Indigo Strategic Moderate Conservative Fund (formerly, HSBC Wealth Compass Moderate Conservative Fund)

RBC Indigo Strategic Balanced Fund (formerly, HSBC Wealth Compass Balanced Fund)
RBC Indigo Strategic Growth Fund (formerly, HSBC Wealth Compass Growth Fund)
RBC Indigo Strategic Aggressive Growth Fund (formerly, HSBC Wealth Compass Aggressive Growth Fund)
RBC Indigo Canadian Money Market Pooled Fund (formerly, HSBC Canadian Money Market Pooled Fund)
RBC Indigo Mortgage Pooled Fund (formerly, HSBC Mortgage Pooled Fund)
RBC Indigo Canadian Bond Pooled Fund (formerly, HSBC Canadian Bond Pooled Fund)
RBC Indigo Global High Yield Bond Pooled Fund (formerly, HSBC Global High Yield Bond Pooled Fund)
RBC Indigo Global Inflation Linked Bond Pooled Fund (formerly, HSBC Global Inflation Linked Bond Pooled Fund)
RBC Indigo Emerging Markets Debt Pooled Fund (formerly, HSBC Emerging Markets Debt Pooled Fund)
RBC Indigo Canadian Dividend Pooled Fund (formerly, HSBC Canadian Dividend Pooled Fund)
RBC Indigo Canadian Equity Pooled Fund (formerly, HSBC Canadian Equity Pooled Fund)
RBC Indigo Canadian Small Cap Equity Pooled Fund (formerly, HSBC Canadian Small Cap Equity Pooled Fund)
RBC Indigo U.S. Equity Pooled Fund (formerly, HSBC U.S. Equity Pooled Fund)
RBC Indigo International Equity Pooled Fund (formerly, HSBC International Equity Pooled Fund)
RBC Indigo Emerging Markets Pooled Fund (formerly, HSBC Emerging Markets Pooled Fund)
RBC Indigo Global Real Estate Equity Pooled Fund (formerly, HSBC Global Real Estate Equity Pooled Fund)
Principal Regulator – British Columbia

Type and Date:
Final Simplified Prospectus dated Jun 27, 2024
NP 11-202 Final Receipt dated Jul 2, 2024

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Filing #6132369, 6132439, 6132467

Issuer Name:
Starlight Dividend Growth Class
Starlight Global Balanced Fund
Starlight Global Growth Fund
Starlight Global Infrastructure Fund
Starlight Global Real Estate Fund
Starlight North American Equity Fund
Principal Regulator – Ontario

Type and Date:
Final Simplified Prospectus dated Jun 28, 2024
NP 11-202 Final Receipt dated Jul 4, 2024

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Filing #06135770

Issuer Name:
CIBC 2025 Investment Grade Bond Fund
CIBC 2025 U.S. Investment Grade Bond Fund
CIBC 2026 Investment Grade Bond Fund
CIBC 2026 U.S. Investment Grade Bond Fund
CIBC 2027 Investment Grade Bond Fund
CIBC 2027 U.S. Investment Grade Bond Fund
CIBC 2028 Investment Grade Bond Fund
CIBC 2029 Investment Grade Bond Fund
CIBC 2030 Investment Grade Bond Fund
Principal Regulator – Ontario

Type and Date:
Final Simplified Prospectus dated Jul 2, 2024
NP 11-202 Final Receipt dated Jul 3, 2024

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Filing #06133499

Issuer Name:
RBC Canadian T-Bill Fund
RBC Canadian Money Market Fund
RBC Premium Money Market Fund
RBC $U.S. Money Market Fund
RBC Premium $U.S. Money Market Fund
RBC Canadian Short-Term Income Fund
RBC $U.S. Short-Term Government Bond Fund
RBC $U.S. Short-Term Corporate Bond Fund
RBC Short-Term Global Bond Fund
RBC Monthly Income Bond Fund
RBC Canadian Bond Index ETF Fund
RBC Canadian Government Bond Index Fund
RBC Bond Fund
RBC Global Bond Fund
RBC $U.S. Global Bond Fund
RBC Global Bond Index ETF Fund
RBC Canadian Corporate Bond Fund
RBC $U.S. Investment Grade Corporate Bond Fund
RBC Global Corporate Bond Fund
RBC High Yield Bond Fund
RBC $U.S. High Yield Bond Fund
RBC Global High Yield Bond Fund
RBC Strategic Income Bond Fund
RBC $U.S. Strategic Income Bond Fund
RBC Emerging Markets Foreign Exchange Fund
RBC Emerging Markets Bond Fund
RBC Emerging Markets Bond Fund (CAD Hedged)
BlueBay Global Monthly Income Bond Fund
BlueBay Global Sovereign Bond Fund (Canada)
BlueBay Global Investment Grade Corporate Bond Fund (Canada)
BlueBay $U.S. Global Investment Grade Corporate Bond Fund (Canada)
BlueBay European High Yield Bond Fund (Canada)
BlueBay Global High Yield Bond Fund (Canada)
BlueBay $U.S. Global High Yield Bond Fund (Canada)
BlueBay Emerging Markets Bond Fund (Canada)
BlueBay Emerging Markets Local Currency Bond Fund (Canada)
BlueBay Emerging Markets Corporate Bond Fund
BlueBay Emerging Markets High Yield Corporate Bond Fund (Canada)
BlueBay Global Convertible Bond Fund (Canada)
RBC Conservative Bond Pool
RBC Core Bond Pool
RBC $U.S. Core Bond Pool
RBC Core Plus Bond Pool
RBC $U.S. Core Plus Bond Pool
RBC Managed Payout Solution
RBC Managed Payout Solution – Enhanced
RBC Managed Payout Solution – Enhanced Plus
RBC Monthly Income Fund
RBC U.S. Monthly Income Fund
RBC Balanced Fund
RBC Global Balanced Fund
RBC Emerging Markets Balanced Fund
RBC Conservative Growth & Income Fund
RBC Balanced Growth & Income Fund
RBC Global Growth & Income Fund
RBC Select Very Conservative Portfolio
RBC Select Conservative Portfolio
RBC Select Balanced Portfolio
RBC Select Growth Portfolio
RBC Select Aggressive Growth Portfolio
RBC Select Choices Conservative Portfolio
RBC Select Choices Balanced Portfolio
RBC Select Choices Growth Portfolio
RBC Select Choices Aggressive Growth Portfolio
RBC Global Very Conservative Portfolio
RBC Global Conservative Portfolio
RBC Global Balanced Portfolio
RBC $U.S. Global Balanced Portfolio
RBC Global Growth Portfolio
RBC Global All-Equity Portfolio
RBC Global Choices Very Conservative Portfolio
RBC Global Choices Conservative Portfolio
RBC Global Choices Balanced Portfolio
RBC Global Choices Growth Portfolio
RBC Global Choices All-Equity Portfolio
RBC Retirement Income Solution
RBC Retirement 2020 Portfolio
RBC Retirement 2025 Portfolio
RBC Retirement 2030 Portfolio
RBC Retirement 2035 Portfolio
RBC Retirement 2040 Portfolio
RBC Retirement 2045 Portfolio
RBC Retirement 2050 Portfolio
RBC Retirement 2055 Portfolio
RBC Retirement 2060 Portfolio
RBC Target 2025 Education Fund
RBC Target 2030 Education Fund
RBC Target 2035 Education Fund
RBC Target 2040 Education Fund
RBC Canadian Dividend Fund
RBC Canadian Equity Fund
RBC QUBE Canadian Equity Fund
RBC QUBE Low Volatility Canadian Equity Fund
RBC Trend Canadian Equity Fund
RBC Canadian Equity Index ETF Fund
RBC Canadian Index Fund
RBC O'Shaughnessy Canadian Equity Fund
RBC O'Shaughnessy All-Canadian Equity Fund
RBC Canadian Equity Income Fund
RBC Canadian Mid-Cap Equity Fund
RBC Canadian Small & Mid-Cap Resources Fund
RBC North American Value Fund
RBC North American Growth Fund
RBC U.S. Dividend Fund
RBC U.S. Dividend Currency Neutral Fund
RBC U.S. Equity Fund
RBC U.S. Equity Currency Neutral Fund
RBC QUBE U.S. Equity Fund
RBC QUBE Low Volatility U.S. Equity Fund
RBC QUBE Low Volatility U.S. Equity Currency Neutral Fund
RBC U.S. Equity Value Fund
RBC U.S. Equity Index ETF Fund
RBC U.S. Equity Currency Neutral Index ETF Fund
RBC U.S. Index Fund
RBC O'Shaughnessy U.S. Value Fund (Unhedged)
RBC O'Shaughnessy U.S. Value Fund
RBC U.S. Mid-Cap Growth Equity Fund
RBC U.S. Mid-Cap Growth Equity Currency Neutral Fund
RBC U.S. Mid-Cap Value Equity Fund
RBC U.S. Small-Cap Core Equity Fund

RBC U.S. Small-Cap Value Equity Fund
RBC O'Shaughnessy U.S. Growth Fund
RBC O'Shaughnessy U.S. Growth Fund II
RBC Life Science and Technology Fund
RBC International Dividend Growth Fund
RBC International Equity Fund
RBC International Equity Currency Neutral Fund
RBC International Equity Currency Neutral Index ETF Fund
RBC O'Shaughnessy International Equity Fund
RBC European Equity Fund
RBC European Mid-Cap Equity Fund
RBC Asian Equity Fund
RBC Asia Pacific ex-Japan Equity Fund
RBC China Equity Fund
RBC Japanese Equity Fund
RBC Emerging Markets Multi-Strategy Equity Fund
RBC Emerging Markets Dividend Fund
RBC Emerging Markets ex-China Dividend Fund
RBC Emerging Markets Equity Fund
RBC Emerging Markets ex-China Equity Fund
RBC Emerging Markets Equity Focus Fund
RBC QUBE Low Volatility Emerging Markets Equity Fund
RBC Emerging Markets Equity Index ETF Fund
RBC Emerging Markets Small-Cap Equity Fund
RBC Global Dividend Growth Fund
RBC Global Dividend Growth Currency Neutral Fund
RBC Global Equity Fund
RBC Global Equity Focus Fund
RBC Global Equity Focus Currency Neutral Fund
RBC Global Equity Leaders Fund
RBC Global Equity Leaders Currency Neutral Fund
RBC QUBE Global Equity Fund
RBC QUBE Low Volatility Global Equity Fund
RBC QUBE Low Volatility Global Equity Currency Neutral Fund
RBC Global Equity Index ETF Fund
RBC O'Shaughnessy Global Equity Fund
RBC QUBE Low Volatility All Country World Equity Fund
RBC Global Energy Fund
RBC Global Precious Metals Fund
RBC Global Resources Fund
RBC Global Technology Fund
RBC Vision Fossil Fuel Free Short-Term Bond Fund
RBC Vision Bond Fund
RBC Vision Fossil Fuel Free Bond Fund
RBC Vision Balanced Fund
RBC Vision Fossil Fuel Free Balanced Fund
RBC Vision Canadian Equity Fund
RBC Vision QUBE Fossil Fuel Free Low Volatility Canadian Equity Fund
RBC Vision Fossil Fuel Free Emerging Markets Equity Fund
RBC Vision Global Equity Fund
RBC Vision Fossil Fuel Free Global Equity Fund
RBC Private Short-Term Income Pool
RBC Private Income Pool
RBC Private Canadian Dividend Pool
RBC Private Fundamental Canadian Equity Pool
RBC Private Canadian Equity Pool
RBC Private U.S. Large-Cap Value Equity Pool
RBC Private U.S. Large-Cap Value Equity Currency Neutral Pool
RBC Private U.S. Growth Equity Pool
RBC Private U.S. Large-Cap Core Equity Pool
RBC Private U.S. Large-Cap Core Equity Currency Neutral Pool
RBC Private U.S. Small-Cap Equity Pool
RBC Private EAFE Equity Pool
RBC Private Overseas Equity Pool
RBC Private Global Growth Equity Pool
RBC Private World Equity Pool
BlueBay Global Alternative Bond Fund (Canada)
RBC QUBE Market Neutral World Equity Fund
RBC QUBE Market Neutral World Equity Fund (CAD Hedged)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 27, 2024
NP 11-202 Final Receipt dated Jun 28, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135511, 06135452, 06135456, 06135460, 06135480 & 06135487

Issuer Name:
JPMorgan Nasdaq Equity Premium Income Active ETF
JPMorgan US Equity Premium Income Active ETF
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Jul 5, 2024
NP 11-202 Preliminary Receipt dated Jul 5, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06154301

Issuer Name:
CI Canadian All Cap Equity Income Class
CI Canadian All Cap Equity Income Fund
CI Canadian Core Fixed Income Private Trust
CI Canadian Equity Income Private Trust
CI Corporate Bond Class
CI Energy Private Trust
CI Global High Yield Fixed Income Private Trust
CI Global Infrastructure Fund
CI Global Infrastructure Private Trust
CI Global Investment Grade Class
CI Global Investment Grade Fund
CI Global Real Estate Private Trust
CI Global REIT Class
CI Global REIT Fund
CI International Equity Income Private Trust
CI Money Market Class
CI Mosaic Balanced ETF Portfolio Class
CI Mosaic Balanced Growth ETF Portfolio Class
CI Mosaic Balanced Income ETF Portfolio Class
CI Mosaic Growth ETF Portfolio Class
CI Mosaic Income ETF Portfolio Class
CI North American Dividend Fund
CI North American Small/Mid Cap Equity Class
CI North American Small/Mid Cap Equity Fund
CI Precious Metals Class
CI Precious Metals Fund
CI Precious Metals Private Trust
CI Resource Opportunities Class
CI U.S. Equity & Income Fund
CI U.S. Equity Class
CI U.S. Equity Currency Neutral Class
CI U.S. Equity Fund
CI U.S. Equity Private Trust
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 26, 2024
NP 11-202 Final Receipt dated Jul 2, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135506

Issuer Name:
Mackenzie FuturePath Canadian Balanced Fund
Mackenzie FuturePath Canadian Core Fund
Mackenzie FuturePath Canadian Core Plus Bond Fund
Mackenzie FuturePath Canadian Dividend Fund
Mackenzie FuturePath Canadian Equity Balanced Fund
Mackenzie FuturePath Canadian Fixed Income Portfolio
Mackenzie FuturePath Canadian Growth Fund
Mackenzie FuturePath Canadian Money Market Fund
Mackenzie FuturePath Canadian Sustainable Equity Fund
Mackenzie FuturePath Global Balanced Fund
Mackenzie FuturePath Global Core Fund
Mackenzie FuturePath Global Core Plus Bond Fund
Mackenzie FuturePath Global Equity Balanced Fund
Mackenzie FuturePath Global Equity Balanced Portfolio
Mackenzie FuturePath Global Equity Portfolio
Mackenzie FuturePath Global Fixed Income Balanced Portfolio
Mackenzie FuturePath Global Growth Fund
Mackenzie FuturePath Global Neutral Balanced Portfolio
Mackenzie FuturePath Global Value Fund
Mackenzie FuturePath Monthly Income Balanced Portfolio
Mackenzie FuturePath Monthly Income Conservative Portfolio
Mackenzie FuturePath Monthly Income Growth Portfolio
Mackenzie FuturePath Shariah Global Equity Fund
Mackenzie FuturePath US Core Fund
Mackenzie FuturePath US Growth Fund
Mackenzie FuturePath US Value Fund
Mackenzie FuturePath USD US Core Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 27, 2024
NP 11-202 Final Receipt dated Jul 2, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06125599

Issuer Name:
DFA Canadian Core Equity Fund
DFA Canadian Vector Equity Fund
DFA Five-Year Global Fixed Income Fund
DFA Global 40EQ-60FI Portfolio
DFA Global 50EQ-50FI Portfolio
DFA Global 60EQ-40FI Portfolio
DFA Global 70EQ-30FI Portfolio
DFA Global 80EQ-20FI Portfolio
DFA Global Equity Portfolio
DFA Global Fixed Income Portfolio
DFA Global Investment Grade Fixed Income Fund
DFA Global Real Estate Securities Fund
DFA Global Sustainability Core Equity Fund
DFA Global Targeted Credit Fund
DFA International Core Equity Fund
DFA International Vector Equity Fund
DFA U.S. Core Equity Fund
DFA U.S. Vector Equity Fund
DFA World Equity Portfolio
Principal Regulator – British Columbia
Type and Date:
Final Simplified Prospectus dated Jul 1, 2024
NP 11-202 Final Receipt dated Jul 3, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06129083

Issuer Name:
CI DoubleLine Total Return Bond US$ Fund
CI Enhanced Short Duration Bond Fund
CI Floating Rate Income Fund
CI Global Asset Allocation Private Pool
CI Global Climate Leaders Fund
CI Global Green Bond Fund
CI Global High Yield Credit Private Pool
CI Global Infrastructure Private Pool
CI Global Longevity Economy Fund
CI Global Real Asset Private Pool
CI Global REIT Private Pool
CI Global Short-Term Bond Fund
CI Global Sustainable Infrastructure Fund
CI Global Unconstrained Bond Fund
CI Munro Global Growth Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 28, 2024
NP 11-202 Final Receipt dated Jul 4, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06141779

Issuer Name:
Maple Leaf Resource Class
Principal Regulator – British Columbia
Type and Date:
Final Simplified Prospectus dated Jun 28, 2024
NP 11-202 Final Receipt dated Jul 2, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06134139

Issuer Name:
Sprott Physical Copper Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated Jul 3, 2024
NP 11-202 Final Receipt dated Jul 3, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06147898

Issuer Name:
Mackenzie Maximum Diversification All World Developed ex North America Index ETF
Mackenzie Maximum Diversification All World Developed Index ETF
Mackenzie Maximum Diversification Canada Index ETF
Mackenzie Maximum Diversification Developed Europe Index ETF
Mackenzie Maximum Diversification Emerging Markets Index ETF
Mackenzie Maximum Diversification US Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment No. 4 to Final Long Form Prospectus dated June 28, 2024
NP 11-202 Final Receipt dated Jul 4, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03545384

Issuer Name:
Mackenzie Maximum Diversification All World Developed Index Fund
Mackenzie Maximum Diversification Canada Index Fund
Mackenzie Maximum Diversification US Index Fund
Mackenzie Maximum Diversification Global Multi-Asset Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 3 to Final Simplified Prospectus dated June 28, 2024
NP 11-202 Final Receipt dated Jul 4, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06003460 & 06003419

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NON-INVESTMENT FUNDS

Issuer Name:
Dunbar Metals Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated July 5, 2024
NP 11-202 Preliminary Receipt dated July 5, 2024
Offering Price and Description:
Minimum: $200,000 / 2,000,000 Common Shares
Maximum: $1,000,000 / 10,000,000 Common Shares
at a price of $0.10 per Common Share
Filing # 06154455

Issuer Name:
Integral Metals Corp.
Principal Regulator – Alberta
Type and Date:
Preliminary Long Form Prospectus dated July 4, 2024
NP 11-202 Preliminary Receipt dated July 5, 2024
Offering Price and Description:
No securities are being offered pursuant to this Prospectus
Filing # 06154133

Issuer Name:
Cardiol Therapeutics Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 5, 2024
NP 11-202 Preliminary Receipt dated July 5, 2024
Offering Price and Description:
US $150,000,000 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06154251

Issuer Name:
Rektron Group Inc.
Principal Regulator – British Columbia
Type and Date:
Amendment to Long Form Prospectus dated June 28, 2024
NP 11-202 Amendment Receipt dated July 4, 2024
Offering Price and Description:
Units
Minimum of 4,400,000
Maximum of 7,000,000
USD$1.50 per Security
Filing # 06060621

Issuer Name:
TerrAscend Corp.
Principal Regulator – Ontario
Type and Date:
Amendment to Preliminary Shelf Prospectus dated July 3, 2024
NP 11-202 Amendment Receipt dated July 3, 2024
Offering Price and Description:
US$200,000,000 - Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06110561

Issuer Name:
i-80 Gold Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 21, 2024
NP 11-202 Final Receipt dated June 24, 2024
Offering Price and Description:
C$300,000,000 - COMMON SHARES, WARRANTS, DEBT SECURITIES, SUBSCRIPTION RECEIPTS, UNITS
Filing # 06132637

Issuer Name:
Mawson Finland Limited
Principal Regulator – Ontario
Type and Date:
Amendment to Long Form Prospectus dated June 20, 2024
NP 11-202 Amendment Receipt dated June 24, 2024
Offering Price and Description:
Minimum Offering: $2,000,000 or 2,000,000 Common Shares
Maximum Offering: $2,500,000 or 2,500,000 Common Shares
Price: $1.00 per Common Share and 15,424,735 Common Shares issuable upon the exercise of previously issued Special Warrants
Price: $1.00 per Common Share
Filing # 06102583

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Suspended (Regulatory Action)	Laurier Capital Funding Inc.	Exempt Market Dealer	February 1, 2024
Voluntary Surrender	GRYPHON INTERNATIONAL INVESTMENT CORPORATION/CORPORATION PLACEMENT GRYPHON INTERNATIONAL	Investment Fund Manager Portfolio Manager	June 26, 2024
Name Change	From: WHITEHORSE LIQUIDITY PARTNERS INC. To: DAWSON PARTNERS INC.	Exempt Market Dealer and Portfolio Manager	July 2, 2024

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