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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A. Capital Markets Tribunal

A.1
Notices of Hearing

A.1.1 Xiao Hua (Edward) Gong – s. 127(1)

FILE NO.: 2022-14

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

NOTICE OF HEARING
Subsection 127(1) of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: October 30, 2024, at 3:00 pm

LOCATION: By videoconference

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Capital Markets Tribunal to approve the Settlement Agreement dated October 24, 2024, between the Commission and Xiao Hua (Edward) Gong in respect of the Statement of Allegations filed by the Commission dated June 13, 2022.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Tribunal in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Tribunal par écrit dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 28th day of October, 2024

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

Please visit capitalmarketstribunal.ca or contact the Registrar at registrar@capitalmarketstribunal.ca.

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A.2
Other Notices

A.2.1 Leszek Dziadecki et al.

FOR IMMEDIATE RELEASE
October 24, 2024

LESZEK DZIADECKI AND
CANADIAN INVESTMENT REGULATORY ORGANIZATION AND
ONTARIO SECURITIES COMMISSION,
File No. 2024-4

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

A copy of the Reasons and Decision dated October 23, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 Kallo Inc. et al.

FOR IMMEDIATE RELEASE
October 24, 2024

KALLO INC.,
JOHN CECIL AND
SAMUEL PYO,
File No. 2023-12

TORONTO – The previously scheduled days of October 29 and 30, 2024 will not be used for the merits hearing in the above-named matter. The merits hearing will commence on October 31, 2024 and continue on November 28 and 29, December 2, 3, 12, 13, 16, 17 and 18, 2024, January 14, 15, 16, 21, 22, 23, 28, 29 and 30, February 4, 5, 6 and 11, 2025 at 10:00 a.m. on each day.

The hearing will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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A.2.3 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
October 28, 2024

XIAO HUA (EDWARD) GONG,
File No. 2022-14

TORONTO – The Tribunal issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into by the Commission and Xiao Hua (Edward) Gong in the above-named matter.

The hearing will be held on October 30, 2024, at 3:00 p.m.

A copy of the Notice of Hearing dated October 28, 2024 is available at capitalmarketstribunal.ca.

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.2.4 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
October 29, 2024

BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE,
File No. 2022-9

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

A copy of the Reasons and Decision dated October 28, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.4
Reasons and Decisions

A.4.1 Leszek Dziadecki et al. – ss. 8, 21.7

Dziadecki v Canadian Investment Regulatory Organization, 2024 ONCMT 22
Date: 2024-10-23
File No. 2024-4

LESZEK DZIADECKI

AND

CANADIAN INVESTMENT REGULATORY ORGANIZATION

AND

ONTARIO SECURITIES COMMISSION

REASONS AND DECISION
(Sections 8 and 21.7 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Mary Condon (chair of the panel) William J. Furlong Russell G. Juriansz	
Hearing:	July 29, 2024	
Appearances:	Leszek Dziadecki	On his own behalf
	Alan Melamud	For the Canadian Investment Regulatory Organization
	Scott Azzopardi	For the Ontario Securities Commission

REASONS AND DECISION

1. OVERVIEW

[1] Leszek Dziadecki applied to the Tribunal for a review of two decisions of the Canadian Investment Regulatory Organization (**CIRO**, formerly the Mutual Fund Dealers Association of Canada (**MFDA**)) dated May 16, 2023, and January 30, 2024 (with reasons issued in September 2023[1] and March 2024,[2] respectively), pursuant to ss. 8(3) and 21.7 of the *Securities Act* (the ***Act***).[3]

[2] Dziadecki was found to have breached MFDA rules and was permanently prohibited from conducting securities-related business while employed with any mutual fund dealer, fined $300,000, and ordered to pay costs in the amount of $30,000.

[3] Dziadecki asks the Tribunal to set aside CIRO's findings. Staff of CIRO and the Ontario Securities Commission oppose Dziadecki's application.

[4] For the reasons below, we decline to set aside any of the findings of CIRO. Dziadecki's application is dismissed.

2. BACKGROUND

[5] Between May 7, 2004, and October 1, 2018, Dziadecki was registered in Ontario as a dealing representative with Global Maxfin Investments Inc. (**Member**), a Dealer Member of CIRO. He was also designated as a branch manager of the Member. During the material time, he was also the owner and president of Advantage Group of Finance Inc. (**Advantage**) where he sold insurance products and provided financial planning, among other services. Advantage was approved as

1 *Re Dziadecki,* 2023 CIRO 15 (**Merits Decision**)
2 *Re Dziadecki*, 2024 CIRO 35 (**Penalty Decision**)
3 RSO 1990, c S.5

an outside business activity (**OBA**) by the Member. He also regularly spoke about investing and insurance on a local Polish-language radio program.

[6] In August 2022, a disciplinary proceeding was commenced by CIRO staff against Dziadecki. In the Merits Decision resulting from that proceeding, the CIRO Panel found that:

a. between 2015 and 2016, Dziadecki engaged in securities-related business that was not carried on for the account of the Member or conducted through its facilities by recommending, selling, or facilitating the sale of syndicated mortgage investments (**SMIs**) to clients and other individuals, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1); and

b. between 2015 and 2016, Dziadecki engaged in unapproved outside business activities in relation to SMIs, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c), 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1).

[7] In the Penalty Decision, the CIRO Panel imposed the following sanctions on Dziadecki:

a. a permanent prohibition from conducting securities-related business while employed or associated with any Dealer Member of CIRO registered as a mutual fund dealer;

b. a fine in the amount of $300,000; and

c. costs in the amount of $30,000.

[8] Dziadecki filed his review application with the Tribunal on February 29, 2024, before the reasons for the Penalty Decision were issued by CIRO. The application sought a review of the CIRO Merits Decision only. Dziadecki subsequently filed an amended application on April 15, 2024, and a further amended application on June 20, 2024, seeking a review of both the Merits Decision and Penalty Decision.

3. ISSUES

[9] The issues we need to decide are:

a. What is the standard of review when the Tribunal reviews the decision of a self-regulatory organization?

b. Has Dziadecki established any grounds on which the Tribunal ought to intervene in the Merits Decision?

c. Has Dziadecki established any grounds on which the Tribunal ought to intervene in the Penalty Decision?

d. If there are such grounds to intervene, is it appropriate to set aside one or both of the CIRO decisions?

[10] As outlined below, since we answer no to the questions in (b) and (c), it is unnecessary for us to consider the question in (d).

4. ANALYSIS

4.1 Standard of Review in a Review Application

[11] A person directly affected by a decision of CIRO may apply to the Tribunal for review of the decision under s. 21.7 of the *Act*. On hearing the application, the Tribunal may confirm the decision under review or make such other order as it considers proper.[4]

[12] The Tribunal's review of decisions of recognized SROs, such as CIRO, is guided by the purposes of the *Act* as set out in s. 1.1. Particularly relevant are the protection of investors from unfair or improper practices and the fostering of confidence in the capital markets.[5]

[13] In practice, the Tribunal takes a restrained approach in such reviews due to the specialized expertise of SROs, including CIRO hearing panels. The Tribunal will generally not substitute its own view for that of an SRO simply on the basis that the Tribunal might have come to a different conclusion.

[14] The Tribunal will only interfere with a decision of an SRO if one of the following grounds is established by the applicant:

a. the SRO proceeded on an incorrect principle;

4 *Act*, s 8
5 *Sutton (Re),* 2018 ONSEC 42 at para 10

b. the SRO erred in law;

c. the SRO overlooked material evidence;

d. new and compelling evidence is presented to the Tribunal that was not presented to the SRO; or

e. the SRO's perception of the public interest conflicts with that of the Tribunal.[6]

[15] The Applicant in this case, who was self-represented, did not specifically address each of these grounds for review in either his written or oral submissions. As we will describe in more detail below, his submissions with respect to CIRO's Merits Decision focused largely on a claim that the SRO had made an error in coming to the decision that he had engaged in two forms of misconduct. The Applicant also raised some issues related to the evidence before the CIRO Panel. With respect to the Penalty Decision, he focused on the onerous effects of the financial sanctions imposed by CIRO, and less so on the permanent business prohibition.

[16] We will first address the Applicant's request that we set aside the Merits Decision, followed by a consideration of the Penalty Decision.

4.2 Merits Decision

4.2.1 Did the CIRO Panel err by finding that Dziadecki sold BioNorth SMI?

[17] We conclude that no error was made by the CIRO Panel when it found that Dziadecki engaged in securities-related business by selling the BioNorth SMI, contrary to the Member's policies and MFDA rules.

[18] In his written submissions to the Tribunal, and in the hearing itself, Dziadecki advances several arguments to dispute the finding of the CIRO Panel that he traded in BioNorth SMIs. He acknowledges that he provided a positive opinion about the BioNorth SMI, both in his radio program and to several of his clients, but he claims that this was permitted because of his designation as a Certified Financial Planner. He insists that he did not actually sell these securities, but instead referred his clients to mortgage brokers to complete the transactions for the SMI. In particular, he contends that he received no compensation for his activities related to BioNorth SMIs. He submits that the CIRO Panel overlooked or did not properly consider these points.

[19] CIRO staff submits (and the Commission agrees) that the CIRO Panel correctly interpreted the allegation as whether Dziadecki engaged in "trading or advising" in securities rather than whether the Applicant "sold" the securities. CIRO staff cites the Tribunal's statement in *Sabourin (Re)*[7] that there is no requirement that a sale of a security even be completed in order to find that trading occurred. Further, and in response to Dziadecki's contention that he received no compensation for his activities, CIRO staff cites the Tribunal's decision in *Valentine (Re)*[8] that receipt of consideration or some other benefit is not necessary to find acts in furtherance of a trade. CIRO staff also notes that MFDA By-law No. 1 states that "securities related business" captures trading and advising in a security "whether or not carried on for gain".[9]

[20] CIRO staff submits that the CIRO Panel's conclusion that the activities engaged in by Dziadecki constituted trading in and advising about securities was correct, based on the evidence before it, and that there is no basis for overturning it.

[21] We disagree with Dziadecki that the CIRO Panel overlooked his claim that he had not actually sold the SMI. The CIRO Panel considered the arguments about the extent of Dziadecki's involvement in the transactions carefully. It found them to be inconsistent with the testimony of several investors from whom the CIRO Panel heard. Dziadecki provided us with no basis to disturb the findings of the CIRO Panel about the evidence of those investors.

[22] The CIRO Panel ultimately concluded that Dziadecki misunderstood what constituted engaging in "securities-related business". The CIRO Panel explained that compensation is not required, and that "securities-related business" encompassed Dziadecki's activities aimed at encouraging his clients to invest in BioNorth SMIs.

[23] The definition of trading in the *Act* is broader than simply a determination that a security was sold. The definition of trading includes "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of"[10] any sale of a security. The evidence of the investors supported the CIRO Panel's finding that Dziadecki's activities related to BioNorth SMIs fell within this expansive definition of trading. In any event, while Dziadecki may not have received immediate compensation for his activities, at the CIRO hearing he admitted he expected those activities would earn him a profit in the longer term.

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6 *Canada Malting Co (Re),* (1986), 9 OSCB 3565 at para 24; *Odorico (Re),* 2023 ONCMT 34 at para 60
7 2009 ONSEC 11 at para 62
8 2024 ONCMT 11 at para 113
9 MFDA By-law No. 1, s 1
10 *Act*, s 1(1)(e)

[24] The CIRO Panel considered each element of the first allegation made by CIRO staff and concluded that Dziadecki had engaged in securities-related business that was not conducted through the facilities of the Member, contrary to the Member's policies and MFDA Rules. We find that the CIRO Panel made no error in coming to this finding.

4.2.2 Did the CIRO Panel err in finding that Dziadecki engaged in an unapproved outside business activity?

[25] The CIRO Panel did not err in its finding that Dziadecki engaged in an unapproved OBA, contrary to the Member's policies and MFDA rules.

[26] Dziadecki submits that he set up his company, Advantage, prior to his association with the Member and that his company was approved by the Member as an OBA. He says that the activities he engaged in through his company, including financial planning and mortgage-related activity, were disclosed both to the Member and to his clients. He also says that he was not paid for the activities related to BioNorth SMIs, so this did not constitute an OBA.

[27] CIRO staff submits that Dziadecki's conduct met the requirements of an OBA and that numerous MFDA Hearing Panels have found that conduct to recommend, sell, or facilitate the sale of an investment constitutes an OBA under the MFDA Rules.

[28] The CIRO Panel concluded that Dziadecki engaged in an OBA when he traded SMIs, and that whether he was paid for this trading as it was taking place was not determinative of whether it was an OBA. It found that he was receiving a future expected benefit by trading in this way with his clients.

[29] The CIRO Panel also found that Dziadecki had not disclosed to the Member that he was trading SMIs. It found that his disclosure indicated that others in his business were facilitating mortgage transactions, which is different from disclosing the trading of SMIs, which are securities.

[30] The CIRO Panel found that the Member had not authorized its Approved Persons to trade SMIs outside of the facilities of the Member. When Dziadecki did just that, he breached both the Member's policies and MFDA rules about OBAs. The CIRO Panel's decision appropriately identified the nature of the OBA in question and appropriately distinguished between mortgage transactions and SMIs. We find no basis to overturn the CIRO Panel's finding regarding the lack of disclosure of SMI activity to the Member and thereby its finding that unapproved OBAs had taken place.

4.2.3 Did the CIRO Panel err in its consideration of witness evidence?

[31] Dziadecki makes several submissions regarding the testimony of one of the investor witnesses at the CIRO hearing (**AF**). In Dziadecki's written submissions, he alleges that one client "exaggerated and in fact lied" about issues such as her level of experience with investing in SMIs and with whom and when she had invested.

[32] In particular, Dziadecki refers to the date when documents related to the BioNorth SMI were signed by AF. He claims that if AF's testimony was that she signed the document on March 15 in his presence, it could not be true as at that time he was on vacation outside Canada. Dziadecki is not clear about the relevance of this point. We infer that he is suggesting that the CIRO Panel overlooked material evidence when it reached its misconduct conclusion.

[33] The Commission submits that credibility findings of the trier of fact should be accorded significant deference.

[34] We not accept Dziadecki's submissions that the CIRO Panel overlooked material evidence about AF's investment experience or whether he was present when she signed the documents related to BioNorth SMIs. The CIRO Panel's findings of misconduct were based in part on the evidence of several other investors and in part on the Applicant's own submissions about his activities related to BioNorth SMIs. The Merits Decision references the testimony of AF that Dziadecki had described the BioNorth SMI opportunity as a "gold egg". Even if it were the case that this particular investor had signed the forms agreeing to invest in the BioNorth SMI on a day when Dziadecki was not present (and he filed no evidence that he was in fact overseas on that day), we nevertheless conclude that the CIRO Panel's findings of misconduct were amply supported by other material evidence. We see no error.

4.3 Penalty Decision

4.3.1 Did the CIRO Panel order the appropriate penalties and costs?

[35] Dziadecki submits that the Penalty Decision should be set aside. He says that the financial penalties and costs awarded against him are excessive. He submits he has no issue with being banned completely from registration. However, he maintains that the financial penalties were not in proportion to his activities, which involved speaking about investments, including SMIs, to investors while having those transactions "processed" by others in his office.

[36] CIRO staff submits that the CIRO Panel appropriately considered the nature of the misconduct, the harm caused by Dziadecki's misconduct, and that he had been previously sanctioned by the Tribunal for the same type of misconduct.

CIRO staff also provides precedents from other CIRO decisions that have satisfied us that the sanctions imposed here, including a permanent prohibition and a fine of $300,000, are appropriate.

[37] In the Penalty Decision, the CIRO Panel set out the primary goals of securities regulation (protecting investors and fostering confidence in the capital markets and securities industry) and the role that disciplinary sanctions play in restraining future misconduct. The CIRO Panel considered the seriousness of Dziadecki's misconduct, his past discipline by both the Tribunal and the MFDA, his experience in the capital markets, his failure to recognize the seriousness of the misconduct, the harm suffered by investors, the benefits gained by Dziadecki, and the need for specific and general deterrence.

[38] Finally, the CIRO Panel considered previous comparable cases and concluded that "a fine of at least $300,000 is consistent with the comparator cases, considering the nature and the circumstances of [Dziadecki's] misconduct."[11]

[39] We find that the CIRO Panel considered appropriate factors in its Penalty Decision and appropriately applied them to the findings in the Merits Decision.

[40] The CIRO Panel carefully considered the seriousness of both the financial and emotional harm suffered by investors, and that conducting unapproved OBA undermines the credibility of, and confidence in, the detailed compliance regime that is imposed on industry members. We agree with the CIRO Panel that prior misconduct and specific deterrence are also relevant considerations. We find no basis to disturb the CIRO Panel's decision on the permanent ban, the financial penalty of $300,000 or the costs award of $30,000. A bill of costs was provided which showed that CIRO staff were seeking only a portion of the costs incurred to litigate this matter which we consider to be reasonable.

5. CONCLUSION

[41] For these reasons, we conclude that neither the Merits Decision nor the Penalty Decision of the CIRO Panel should be set aside. We confirm the CIRO decisions and dismiss Dziadecki's application.

Dated at Toronto this 23rd day of October, 2024

"Mary Condon"

"William J. Furlong"

"Russell G. Juriansz"

[11] Penalty Decision at para 32

A.4.2 Bridging Finance Inc. et al. – s. 127(1)

Citation: *Bridging Finance Inc (Re)*, 2024 ONCMT 23
Date: 2024-10-28
File No. 2022-9

IN THE MATTER OF
BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE

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

Adjudicators:	Russell Juriansz (chair of the panel) Timothy Moseley Sandra Blake	
Hearing:	In-person and videoconference: June 26, 27, 28 and 29; July 19, 21, 24, 25, 26, 27 and 31; August 16; September 12 and 13; October 3, 4 and 24; and December 8, 14 and 15, 2023; February 1, 5, and 13; April 23; May 1, 24 and 28; and June 3, 2024	
Appearances:	Mark Bailey Adam Gotfried Nicole Fung	For the Ontario Securities Commission
	Lawrence Thacker Jonathan Chen Mari Galloway	For Natasha Sharpe
	David A. Hausman Jonathan Wansbrough	For Andrew Mushore
	Erin Pleet	For the receiver of Bridging Finance Inc.
	No one appearing for David Sharpe	

REASONS AND DECISION

1. OVERVIEW

[1] Bridging Finance Inc. set up and managed various funds as investment vehicles. Investors deposited money in those funds. In turn, the funds provided alternative short-term financing to private borrowers.

[2] In 2021, based on concerns about how investor money was being used, the Ontario Securities Commission successfully applied for a court-appointed receiver over Bridging.

[3] In this enforcement proceeding, the Commission alleges misconduct by Bridging and by the three individual respondents:

a. David Sharpe, Bridging's chief executive officer;

b. Natasha Sharpe, Bridging's chief investment officer; and

c. Andrew Mushore, Bridging's chief compliance officer.

David and Natasha are spouses. We refer to David and Natasha together as "the Sharpes", and often by their first names for clarity.

[4] The Commission alleges three separate frauds:

a. David arranged the transfer of millions of dollars of investor money to benefit himself and Natasha, through loans made to entities associated with Sean McCoshen (the **McCoshen loans**);

b. the Sharpes misappropriated approximately $40 million from one of the funds to acquire a management interest (described in more detail below) from Ninepoint Partners LP (the **Ninepoint loans**), which acquisition benefited Bridging and Natasha; and

c. the Sharpes orchestrated loans to entities associated with Gary Ng (the **Ng loans**) to facilitate the purchase of 50% of Bridging's shares from existing shareholders, including Natasha.

[5] The Commission alleges that Mushore participated in only the second of these frauds, but that he had some involvement in covering up the third.

[6] The Commission also alleges violations of provisions of Ontario securities law relating to conflicts of interest, with respect to all three frauds.

[7] The Commission makes the following additional allegations of obstruction of the Commission's investigation:

a. the Sharpes and Mushore made false statements during examinations by Commission staff;

b. the Sharpes and Mushore created false paper trails or directed others to do the same;

c. David tried to intimidate witnesses; and

d. Natasha improperly allowed David to listen to the Commission's examination of her.

[8] At the hearing of the merits of the Commission's allegations, counsel for the receiver participated on behalf of Bridging. Natasha and Mushore also participated. David chose not to participate.

[9] As we explain below, we find that:

a. with respect to the McCoshen loans, David perpetrated a fraud, in which Natasha participated;

b. with respect to the Ninepoint loans, David and Natasha perpetrated a fraud, in which Mushore participated, and Bridging failed to properly respond to a conflict of interest, for which failure David and Natasha are equally liable;

c. with respect to the Ng loans, Natasha perpetrated a fraud, in which David participated;

d. David and Natasha gave misleading answers in their examinations during the investigation;

e. Bridging provided misleading information to the Commission, for which David and Natasha are equally liable, to differing extents;

f. Mushore participated in some of Bridging's provision of misleading information to the Commission;

g. David attempted to intimidate former Bridging employees who were co-operating with the receiver; and

h. Natasha improperly permitted David to listen to her examination by the Commission's investigators.

2. PRELIMINARY MATTERS

2.1 The use of compelled evidence

[10] Before we analyze the Commission's allegations, we address two procedural matters that arose during the merits hearing. The first was about the use of certain transcripts.

[11] During its investigation, the Commission used summonses issued under s. 13 of the *Securities Act*[1] (***Act***) to compel various witnesses to attend and give evidence about the issues the Commission was examining. At the merits hearing, the Commission sought to enter the transcripts of some of those examinations into evidence. Natasha objected. We did not give effect to that objection, and we allowed the introduction of those transcripts, for the following reasons.

[12] Natasha objected because of the Tribunal's earlier finding that the Commission had improperly disclosed the transcripts to the public in its court application for the appointment of the receiver.[2] The Commission made that application in the spring of 2022, before this proceeding was commenced. The application record was a public document. It contained excerpts and summaries of transcripts, and, for one of the three days on which David was examined, the entire rough transcript.

1 RSO 1990, c S.5
2 *Sharpe (Re)*, 2022 ONSEC 3 (***Sharpe***) at para 165

[13] The Court's order appointing the receiver required that the receiver create a website on which the application materials could be found. The receiver did so. The Commission issued a news release containing a link to that website.[3]

[14] David applied to this Tribunal to revoke the s. 11 investigation order that had authorized the issuance of summonses in the first place. He argued that the Commission was not entitled to disclose the transcripts without an order under s. 17 of the *Act*, which allows the Tribunal to authorize disclosure of compelled testimony. The Commission had not sought a s. 17 order.

[15] The Tribunal agreed that the Commission was required to obtain a s. 17 authorization order before disclosing the compelled testimony in connection with the court proceeding. However, the Tribunal held that David had not met his burden of showing that revocation of the s. 11 order was an appropriate remedy under the circumstances.[4]

[16] About a month before this merits hearing began, David and Natasha moved to stay this proceeding. They alleged abuse of process arising from the disclosure of the transcripts. We dismissed their motions,[5] finding that the public availability of the compelled evidence would not prejudice the Sharpes' right to a fair hearing. We held that any concerns about witness tainting could be addressed through cross-examination. Further, the Sharpes did not establish that any concerns about the Commission's actions were serious enough to offend society's sense of justice if this proceeding were to continue.

[17] In this merits hearing, Natasha renewed her objection to the admission of her transcript. We did not give effect to her objection, substantially for the reasons set out in our decision on the stay motions.

2.2 Motion to call additional witnesses

[18] The second procedural matter arises from Natasha's request on December 14, 2023, near the conclusion of the Commission's case, that the Tribunal issue summonses for four witnesses from the Commission. We denied the request. These are the reasons for that decision.

[19] Natasha sought summonses for two Senior Litigation Counsel (one of whom represented the Commission in this hearing), the Director of Enforcement, and the CEO of the Commission. Counsel explained that Natasha sought these summonses to support the argument that there had been an abuse of process warranting a stay of proceedings. He acknowledged that on two previous occasions the Tribunal had addressed the Sharpes' efforts to obtain support for their stay motions.

[20] First, the Sharpes had sought the disclosure of documents that may possibly exist and which they hoped would provide support for their then pending motions for a stay of proceedings. They claimed that a stay was warranted because the Commission had failed to obtain a s. 17 order permitting disclosure of certain compelled evidence before filing it in its application to the Superior Court of Ontario for the appointment of a receiver over the Bridging entities. We dismissed that request, concluding that the Sharpes had not demonstrated a tenable case of abuse sufficient to justify their request for disclosure.

[21] Second, after we had dismissed their request for documentary disclosure, the Sharpes requested summonses to compel the testimony of five Commission staff members, whom they wished to examine regarding the internal process behind the Commission's decision to pursue the receivership application without a s. 17 order. In our decision dated May 16, 2023, we refused that request, holding that it constituted an impermissible attempt to relitigate issues which had already been decided on their earlier motion for documentary disclosure. There was nothing new. They had still failed to establish a tenable case for their motions for a stay.

[22] In making the current request, Natasha's counsel acknowledged that the evidence he would seek from the proposed witnesses would relate only to the issue of whether the proceeding should be stayed. He confirmed that no new evidence had arisen during the merits hearing and that he was relying on the same evidence as the Sharpes had relied upon on the previous occasions. In fact, in advancing argument he simply referred to the written submissions he had filed on the earlier occasions.

[23] We refused to issue the summonses for two reasons. First, the evidence he sought to elicit from these witnesses was not relevant to the merits of this proceeding. Second, the request was yet another impermissible attempt to relitigate matters that we had already decided. There was no outstanding motion for a stay or motion for reconsideration before us.

[24] For these reasons, we denied Natasha's request for summonses.

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3 *Sharpe* at paras 23-24
4 *Sharpe* at para 162
5 *Bridging Finance Inc (Re)*, 2023 ONCMT 24

3. ANALYSIS

3.1 Introduction

[25] We turn now to our analysis of the substantive allegations, which center around three groups of loan transactions. For convenience in these reasons, we often refer to the loans as having come from Bridging, when in fact the loans came from two Bridging funds:

a. the Bridging Mid-Market Debt Fund (the **Mid-Market Fund**); and

b. the Bridging Income Fund (the **Income Fund**).

3.2 The McCoshen loans

3.2.1 Introduction

[26] The first group of transactions involves entities associated with Sean McCoshen, a Winnipeg businessperson. David met McCoshen in 2015 through their mutual involvement in First Nations financing. Bridging provided loans of more than $150 million to Alaska-Alberta Railway Development Corporation (**A2A**), an Alberta company that McCoshen owned and controlled. McCoshen also introduced Bridging to Peguis First Nation (**Peguis**), a Manitoba First Nations community to which Bridging provided loans of more than $115 million.

[27] The Commission alleges that Bridging, David and Natasha contravened s. 126.1(1)(b) of the *Act* in relation to these loans, because of transfers of approximately $19.5 million from McCoshen to David between 2016 and 2019, and a transfer of $250,000 from McCoshen to Natasha in 2017. The Commission describes these payments as fraudulent kickbacks that the Sharpes received for their personal benefit. The Commission submits that of the $19.5 million that went to David, $18.2 million can be traced to investor funds.

[28] The Commission also alleges that the transactions violated a provision in Ontario securities law that governs conflicts of interest (s. 13.4 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**)). That provision, as it existed at the relevant time, required registered firms to take reasonable steps to identify and respond to existing and potential material conflicts of interest.

[29] We deal first with the fraud allegations and conclude David and Natasha contravened s. 126.1(1)(b) but Bridging did not. We then address the conflict of interest allegations and conclude that Bridging did not contravene s. 13.4 of NI 31-103.

3.2.2 Clause 126.1(1)(b) of the *Act* – legal framework

[30] Clause 126.1(1)(b) of the *Act* deals with securities-related fraud. It brings within its reach two categories of actors:

a. those who perpetrate a securities-related fraud; and

b. others who participate, directly or indirectly, in securities-related conduct that they know or reasonably ought to know perpetrates a fraud.

[31] The two categories differ, including with respect to the subjective element, or *mens rea*, that the Commission must prove. We explain further below.

[32] The section provides, in relevant part:

> 126.1(1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities … that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[33] The first step is to determine whether one or more persons or companies have perpetrated a fraud. For that question, we apply the framework that the Supreme Court of Canada set out in *R v Théroux*.[6] This Tribunal has repeatedly adopted that framework,[7] which includes the following elements:

a. the *actus reus*, or objective element, which consists of:

[6] 1993 CanLII 134 (SCC)
[7] See, for example, *First Global Data Ltd (Re)*, 2022 ONCMT 25 (***First Global***) at para 346*; Quadrexx (Re)*, 2017 ONSEC 3 at para 19

i. an act of deceit, falsehood, or some other fraudulent means; and

ii. deprivation caused by that act, which may come in the form of an actual loss or the placing of the victim's pecuniary interests at risk; and

b. the *mens rea*, or subjective element, which consists of:

i. subjective knowledge of the act referred to above; and

ii. subjective knowledge that the act could have as a consequence the deprivation of another.

[34] Those who perpetrate the fraud may or may not be named as respondents. The first step simply asks whether a person or company has perpetrated a fraud according to the *Théroux* framework.

[35] The second step is to consider whether those named as respondents have, as s. 126.1(1)(b) requires, directly or indirectly, participated in any act or conduct, related to securities, that they knew or reasonably ought to have known perpetrated the fraud.

[36] The second step is straightforward for respondents who perpetrated the fraud. It need only be determined whether the acts or conduct by which these respondents perpetrated the fraud related to securities. The section's "knows or reasonably ought to know" requirement is satisfied because it is a lower standard than the perpetrators' *mens rea* already established applying the *Théroux* framework at step one.

[37] The second step, for respondents who did not perpetrate the fraud themselves, requires consideration of both their objective acts and their subjective knowledge. The objective element is that they must have, directly or indirectly, engaged or participated in acts or conduct that related to securities. The subjective element is that they knew, or ought to have known, their participation in the perpetrators' conduct would result in the fraud.

3.2.3 Step one – has a person or company perpetrated a fraud?

3.2.3.a Introduction

[38] We begin our analysis by asking whether a person or company has perpetrated a fraud with respect to the McCoshen loans. We start with the objective element as it relates to David, the alleged perpetrator of the fraud.

3.2.3.b Fraud – objective element

[39] Bridging made multiple loans to A2A and Peguis. The Commission alleges that some of the loan proceeds flowed to David and Natasha personally. The Commission alleges that David caused this misuse of investor money, and thereby pursued "other fraudulent means". The question is whether a reasonable person would consider his actions a dishonest act. Unauthorized diversions of money generally constitute "other fraudulent means".[8]

[40] For these loans, Bridging followed its usual process, with the loans first having to be approved unanimously by Natasha and by the only other member of Bridging's Investment Committee, Dennis McCluskey. Upon approval by the Investment Committee, the potential loan was passed to the Credit Committee, which included David, Natasha, Mushore, three other individuals, and McCluskey, who was the only independent (*i.e.*, non-Bridging) member of the Credit Committee.

[41] To make its decision, the Credit Committee reviewed a memorandum typically prepared by the relevant managing director. These memoranda included details about the borrower and its financial background, the reason(s) for the loan, risks, and potential exit strategies for the Bridging fund(s). The Credit Committee approved loans on a majority basis, usually by email without an actual meeting.

[42] For the McCoshen loans, the proceeds were transferred first to Bridging's counsel before going to one of two numbered companies that McCoshen owned and controlled:

a. one transfer of $6.5 million from Bridging's counsel to A2A, following which $6.5 million was deposited to 7047747 Manitoba Ltd (**704 Manitoba**);

b. six transfers totaling $78.1 million to 704 Manitoba; and

c. one transfer of $1.9 million to 5321328 Manitoba Ltd.

[8] *First Global* at paras 360-361

[43] On fourteen occasions beginning on July 8, 2016, and ending on June 28, 2019, 704 Manitoba then transferred funds from its account to David's personal account. These transfers totalled $19,553,77.26.

[44] Of those fourteen transfers, 704 Manitoba made nine on the same day as, or within a day of, 704 Manitoba receiving the money from Bridging's counsel.

[45] One alleged kickback involved a Bridging loan, not to A2A or Peguis, but to a company called Growforce Holdings Inc., with which McCoshen had no apparent connection. However, as part of a $10 million loan agreement between Bridging and Growforce, McCoshen personally guaranteed the loan. Then instead of advancing the loan proceeds to Growforce, Bridging transferred them to McCoshen's company 704 Manitoba. The next day, 704 Manitoba paid David $5 million.

[46] We conclude that these transfers to David were investor money that was paid out of the Bridging funds. We reach that conclusion because:

a. 704 Manitoba had to use the loan proceeds from Bridging to pay David at least $18.2 million of the total amount of $19.6 million, as it did not have sufficient funds in its account before receiving the advances; and

b. 704 Manitoba made the transfers to David on the same day as, or the day after, the advances from Bridging.

[47] 704 Manitoba also made a payment to Natasha in September 2017, in the amount of $250,000.

[48] Bank records suggest that of the payments to David and Natasha:

a. approximately $9.6 million was transferred to accounts held by David ($4.6 million) or one or more trusts ($5 million) for which David and Natasha were settlors and contributors, and for which both David and Natasha received account statements;

b. approximately $7-8 million of that $9.6 million was transferred from the trust to an offshore account;

c. approximately $2 million was transferred to Natasha and David's joint bank account;

d. approximately $1.8 million was used for construction or renovation expenses; and

e. other amounts were used to lease cars, to purchase artwork, and for cash withdrawals.

[49] This use of investor money was wholly inconsistent with the objectives of the Bridging funds, as disclosed to investors. The offering memoranda stated that the two funds would pursue an investment strategy of actively managing a portfolio of fully collateralized asset-based loans, and factoring investments. Nothing in the disclosure would suggest to a reasonable investor that any part of their investment would be paid to Bridging's principals for their personal benefit. David carried out this diversion on his own, surreptitiously. His conduct therefore amounted to "other fraudulent means".

[50] The second part of the objective element asks whether the dishonest act caused a deprivation, which may come in the form of creating a risk of prejudice to the victim's economic interests. In this case, the unauthorized diversion of investor money did create a risk of prejudice to the investors' economic interests, because their money was used in a way to which they had not agreed.[9]

[51] The Commission has proven both parts of the objective element as against David, who engineered the kickback scheme and caused the deprivation. We turn to consider the subjective element.

3.2.3.c Fraud – subjective element

[52] We conclude that the Commission has satisfied the two parts of the subjective element of fraud, with respect to David.

[53] The first part asks whether the respondent knew of the dishonest act, *i.e.*, not necessarily that it was dishonest, but simply that the act occurred. We infer that he knew of the payments, because:

a. he had the primary relationship with McCoshen;

b. he received a total of almost $20 million by way of many payments over three years, some of which were in significant amounts ($1 million, $2 million, $5 million, and $8.8 million);

c. as we discuss below at paragraph [269], he instructed others to delete and alter internal records relating to these loans; and

[9] *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 at paras 307-308; *First Global* at paras 360-361

d. the loans were to Bridging's largest borrower, and would therefore have deserved significant attention by Bridging's chief executive officer.

[54] The Commission has proven the first part of the subjective element as against David.

[55] The second part of the subjective element asks whether the respondent knew that the act could result in the deprivation of investors. We do not need direct evidence of such knowledge. We can infer a subjective awareness of the consequences from the dishonest act itself.[10] The only reasonable inference here is that David knew that Bridging was not entitled to pay investor funds to him personally. The Commission has therefore also proven the second part of the subjective element as against David.

3.2.4 Step two – remaining elements of s. 126.1(1)(b)

3.2.4.a Introduction

[56] Having found that David perpetrated a fraud with respect to the McCoshen loans, we turn to the second step in our analysis of the Commission's allegations that David, Bridging and Natasha contravened s. 126.1(1)(b).

[57] That second step involves an objective element and a subjective element. The objective element requires the Commission to prove that the respondent "directly or indirectly, engage[d] or participate[d] in any act, practice or course of conduct relating to securities". The subjective element requires the Commission to prove that when the respondent did so, the respondent knew or ought to have known that their conduct perpetrated a fraud on a person or company.

3.2.4.b David

[58] The Commission has proven the objective element as against David. He directly engaged in the conduct that formed the fraud. That conduct related to securities, in that it involved investor money obtained by the Bridging funds through the sale of partnership units.

[59] As for the subjective element, it follows from our finding that David perpetrated the fraud that he knew or ought to have known that his conduct was fraudulent.

[60] The Commission has satisfied all the requisite elements and proven that David contravened s. 126.1(1)(b) with respect to the McCoshen loans.

3.2.4.c Bridging

[61] As for the Commission's allegation against Bridging, a corporation cannot by itself have a mental state. We may find Bridging to have contravened s. 126.1(1) only if we attribute to Bridging the conduct of an individual. The Commission submits that we should attribute David's conduct to Bridging since he was a directing mind of the company.

[62] We agree that David was a directing mind of Bridging with respect to the McCoshen loans. David was Bridging's chief executive officer and registered Ultimate Designated Person. By all accounts, David controlled Bridging's activities. David was McCoshen's primary contact and was the driver of the A2A and Peguis loans.

[63] Despite the fact that David was a directing mind of Bridging, it does not necessarily follow that we should attribute his acts to Bridging. The Supreme Court of Canada has held that this "identification doctrine" operates only where it is proven that the directing mind's conduct:

a. was within the directing mind's assigned field of operation;

b. was not totally in fraud of the corporation; and

c. was by design or result partly for the corporation's benefit.[11]

[64] If that test is not satisfied, *e.g.*, because the conduct was "totally in fraud of the corporation", the individual "ceases to be a directing mind of the corporation" and the conduct cannot be attributed to the corporation.[12]

[65] In presenting its case against Bridging, the Commission neither referred to the Supreme Court of Canada's decisions on this topic, nor addressed at all the second and third elements of the above test. There are at least serious questions about whether David's conduct defrauded Bridging, and whether his conduct was partly for Bridging's benefit.

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10 *Théroux* at para 20; *First Global* at para 420
11 *Canadian Dredge & Dock Co v The Queen*, 1985 CanLII 32 (SCC) (***Canadian Dredge***) at para 66
12 *Canadian Dredge* at para 66

[66] Further, even where the test is satisfied, a court or tribunal retains a discretion to refrain from attributing the conduct to the corporation where it would not be in the public interest to do so.[13] Bridging's being in receivership raises the additional question of what interest would be served by attributing David's conduct to it. There might be such an interest, but the Commission did not address this question.

[67] We determined that these gaps in the Commission's case against Bridging were not ones that would be fair for us to raise with the Commission on our own, because doing so in this instance would be crossing the line from seeking submissions in order to gain a better understanding of a point that was argued, to descending into the arena to help make a party's case.

3.2.4.d Natasha

[68] With respect to the Commission's allegation that Natasha contravened s. 126.1(1)(b) in respect of the McCoshen loans, we begin with the objective element.

[69] There is no evidence that Natasha participated in arranging the kickbacks. However, she approved loans to A2A and Peguis from which the kickbacks were derived, both before and after she received the $250,000 payment from 704 Manitoba. By approving those loans, she directly engaged in a course of conduct that related to securities, since the loans were of investor money that the Bridging funds obtained through the sale of partnership units. The Commission has proven the objective element against Natasha.

[70] As for the subjective element, the Commission alleges that she knew or ought to have known of the kickbacks, and knew or ought to have known that those kickbacks perpetrated a fraud.

[71] To support this allegation, the Commission relies on the following:

a. Natasha met McCoshen numerous times, and she was described as having a knack for communicating with him, an advantage given his reportedly difficult demeanour;

b. David and Natasha also had a personal relationship with McCoshen, including that they vacationed together in Europe with their children;

c. she received into her bank account the deposit from 704 Manitoba of $250,000, an amount that ought to have attracted her attention;

d. at least $5 million was transferred to accounts held by trusts of which she was a settlor, and for which she was named on account statements; and

e. $2 million was transferred to a bank account she held jointly with David.

[72] In addition, the Commission submits that she benefited not only from the $250,000 that went directly to her, but also from that portion of the kickbacks that was used to:

a. construct or renovate property ($1.78 million);

b. purchase artwork ($140,000); and

c. lease cars ($228,000).

[73] The Commission acknowledges that there is no evidence that conclusively establishes which property the $1.78 million benefited, or what artwork was purchased or where that artwork ended up. Similarly, there is no evidence that conclusively proves that Natasha used or otherwise benefited from any of the leased cars. The Commission submits that we should nevertheless infer that she did benefit from these amounts, and that this should lead us to an inference that she knew of the kickbacks.

[74] In our view, the proposed link is too tenuous between a potential benefit and a conclusion that Natasha knew or ought to have known that a fraud was being perpetrated. The circumstances changed significantly, though, when Natasha received the $250,000 deposited to her personal account.

[75] We accept the Commission's submission that from the time of that payment (October 2017), we should infer that she knew or ought to have known of the kickback scheme. In support of that submission, the Commission tendered the statement from Natasha's personal account for the one-year period January 13, 2017, to January 12, 2018. Of the approximately 310 transactions in the account that year, only six were deposits:

[13] *Christine DeJong Medicine Professional Corp v DBDC Spadina Ltd*, 2019 SCC 30 at para 2

a. the $250,000 wire payment from 704 Manitoba, shown as such on the statement;

b. a $250,000 transfer in from David's account;

c. two unidentified deposits of $43,000; and

d. two unidentified deposits of less than $20,000.

[76] The payment from 704 Manitoba was a clear outlier. We cannot accept Natasha's submission to the contrary, especially without supporting evidence. Further, we infer that Natasha either knew at the time who 704 Manitoba was (since the company was named on the loan documents for A2A), or would have inquired upon seeing this uncharacteristic and significant deposit.

[77] It is possible that David arranged the kickbacks, including the $250,000 payment directly to Natasha, without her knowledge. However, even if that were true, it is more likely than not that at least by October 2017, soon after that payment, she would have been aware that a company associated with a Bridging borrower had taken the problematic step of covertly paying her a significant sum. If she did not already know about the kickback scheme before the $250,000 payment, then at a minimum, as a senior Bridging officer, she ought to have conducted a serious inquiry about it. We infer, and find it to be more likely than not, that at least by October 2017 she was aware of, or ought to have been aware of, the fraudulent kickback scheme that David was perpetrating. The Commission has proven the subjective or mental element of s. 126(1)(b) as against Natasha.

[78] We therefore find that Natasha contravened s. 126.1(1)(b) of the *Act* with respect to the McCoshen loans.

3.2.5 Conflicts of interest

3.2.5.a Introduction

[79] The Commission alleges that the respondents also contravened s. 13.4 of NI 31-103, because they took no steps to manage the conflicts that arose in the approval of loans from Bridging funds, where kickbacks were paid to the Sharpes personally.

[80] In relevant part, and as it existed at the relevant time, s. 13.4 required a registered firm to:

a. take reasonable steps to identify existing and likely conflicts of interest either between the firm and the client or between any individual acting on behalf of the firm and a client;

b. "respond to" such a conflict of interest; and

c. if a reasonable investor would expect to be informed of such a conflict of interest, disclose the conflict in a timely manner.

[81] Section 13.4, on its face, applies only to registered firms and not to registered individuals. The Commission submitted to us that we should apply it to the individual respondents as well. We begin with that issue.

3.2.5.b Does s. 13.4 of NI 31-103 apply to individuals?

[82] Despite the fact that the language in s. 13.4 speaks only of registered firms, the Commission submits that s. 32(1)(g) of the *Act* broadens s. 13.4's reach. The Commission says s. 32(1)(g) makes s. 13.4 applicable to registered individuals as well. We disagree.

[83] Clause 32(1)(g) says that every "person and company registered under this Act shall comply at all times with Ontario securities law, including such regulations that apply to them as may be made relating to… (g) conflicts of interest [emphasis added]".

[84] It is undisputed that NI 31-103 is a "regulation" as that term is defined in the *Act*.[14] However, we are not persuaded that s. 32(1) of the *Act* imposes any new obligation. Even without s. 32(1), registrants are required to comply with all applicable provisions of Ontario securities law. Non-registrants are too. For example, a registered firm must comply with NI 31-103 whether s. 32(1) exists or not.

[85] Therefore, we cannot accept the Commission's submission. Specifically, we do not read the opening words of s. 32(1) as broadening the reach of the regulations listed in that subsection. Indeed, the words "such regulations that apply to

[14] *Act*, s 1(1), "regulations"

them [emphasis added]" exclude such an interpretation. At best, the existence of s. 32(1) signals an intention by the legislature to highlight the importance of compliance by registrants.[15]

3.2.5.c Did Bridging contravene s. 13.4 of NI 31-103 because of the kickbacks?

[86] Having determined that s. 13.4 applies only to Bridging and not to the individual respondents, we now consider whether Bridging contravened that provision.

[87] In this context, a conflict of interest arises where the interests of the registered firm (or of an individual acting on the firm's behalf) diverge from those of the firm's client. The registered firm in this instance is Bridging.

[88] It is less obvious who the client is. Unfortunately, the Commission's written submissions were unhelpful on this point. The Commission relied on David's statement, in his compelled examination, that "our clients are our investors". However, what David said does not make the investors "clients" in the legal sense for the purpose of assessing a conflict of interest.

[89] We canvassed this issue with counsel during oral closing submissions. We agree with Mushore's submission that Bridging's client is the general partner of each fund. This submission, which the Commission did not challenge in reply, is consistent with the offering memoranda. The memoranda state that the general partner retained Bridging to be the manager of the fund.

[90] We must therefore determine whether there was a conflict of interest between Bridging and the general partner, and if so, whether Bridging adequately responded to that conflict.

[91] The general partner's obligation to manage the fund (through the fund's manager) is outlined in the offering memorandum, which provides that the manager has agreed to exercise its powers "honestly and in good faith and in the best interests of" the fund. Mushore correctly points out that at the relevant time (unlike the present), Ontario securities law did not require registered firms to resolve conflicts in the client's "best interest". However, that fact does not displace the promise, disclosed in the offering memorandum, that the manager would act in the best interests of the fund.

[92] An essential element of this allegation against Bridging, though, is that Bridging take reasonable steps to identify existing and likely conflicts of interest. There was no evidence that any Bridging employee other than David and Natasha was aware of the kickback scheme. Further, the Commission made no allegation that Bridging failed to take reasonable steps to identify the kickback scheme.

[93] As a result, we may find Bridging to have contravened the obligation in s. 13.4 to respond to the conflict arising from the kickbacks only if we attribute David's knowledge of the conflict to Bridging. For the same reasons as set out above regarding the fraud allegation, we decline to do so. Accordingly, we dismiss the allegation that Bridging contravened s. 13.4.

3.2.5.d Did Bridging contravene s. 13.4 of NI 31-103 because of David's payments to Mushore?

[94] The Commission raises a separate alleged conflict, arising from three payments to Mushore in 2019 and 2020 from David's personal account (into which the kickbacks flowed). In unchallenged testimony, Mushore explained the three payments:

a. a $100,000 gift to fund renovations to Mushore's home;

b. a $50,000 contribution to Mushore's daughters' future education (Mushore and his wife had recently asked the Sharpes to be the daughters' godparents); and

c. $30,000, in lieu of a bonus that David felt Bridging should have awarded Mushore, but which Natasha had blocked.

[95] David made these payments personally to Mushore and did not directly involve Bridging. While it is ill-advised for a registered firm's chief compliance officer to accept payments of this nature from the firm's CEO, we cannot find that these payments contravened s. 13.4 of NI 31-103, because the section does not apply to individual registrants.

[96] If the circumstances were different, it might be open to the Tribunal to find that payments from individual to individual in their personal capacities do implicate the firm. However, in this case that there was a pre-existing personal relationship between the Sharpes and Mushore. Mushore regarded David as his mentor, and Mushore and his wife chose the Sharpes as their daughters' godparents. With this blurring of professional and personal relationships, we are not prepared to find that the payments constituted a conflict of interest, let alone the kind addressed by s. 13.4, *i.e.*, a conflict between the firm and a client.

[15] *Sterling Grace & Co Ltd (Re)*, 2014 ONSEC 24 at para 263

3.2.6 Conclusions relating to the McCoshen loans

[97] We therefore conclude that with respect to the McCoshen loans:

a. David perpetrated a fraud;

b. David and Natasha directly engaged in conduct related to securities, that they knew or ought to have known perpetrated that fraud; and

c. David and Natasha thereby contravened s. 126.1(1)(b) of the *Act*.

[98] We dismiss the allegations that Bridging contravened s. 126.1(1)(b) of the *Act* and s. 13.4 of NI 31-103.

3.3 The Ninepoint loans

3.3.1 Introduction

[99] The second set of transactions relates to Bridging's desire, in 2018, to acquire from Ninepoint Partners LP what we refer to as the **Management Interest**, which consisted of:

a. Ninepoint's 50% interest in the Income Fund's general partner, of which Bridging owned the other 50% and through which Bridging and Ninepoint co-managed the fund; and

b. certain management rights related to that fund.

[100] Bridging agreed to buy the Management Interest for $45 million, $35 million of which was due on closing. Bridging did not have that sum available and had not been able to arrange external financing, so it needed to make other arrangements to borrow. Because Bridging could not borrow from its funds, David approached Rishi Gautam, an individual whose companies were significant borrowers from Bridging. The Commission alleges that:

a. under David and Natasha's direction, Bridging planned a series of transactions that would result in a $40 million loan to Bridging from the Mid-Market Fund, disguised as a loan to Gautam's companies;

b. Mushore assisted in preparing these planned transactions;

c. ultimately, the Mid-Market Fund advanced $35 million directly to Ninepoint to complete Bridging's purchase of the Management Interest; and

d. Bridging, David, Natasha and Mushore all thereby contravened s. 126.1(1)(b) of the *Act*.

[101] The Commission also alleges that these transactions contravened s. 13.4 of NI 31-103, relating to conflicts of interest.

[102] We deal first with the fraud allegations and conclude that David, Natasha and Mushore contravened s. 126.1(1)(b) of the *Act*. We then address the conflict of interest allegations and conclude that only Bridging contravened s. 13.4 of NI 31-103.

3.3.2 Step one – has a person or company perpetrated a fraud?

3.3.2.a Fraud – objective element

3.3.2.a.i Introduction

[103] We begin our analysis by assessing whether the objective element of a fraud is present as it relates to David and Natasha, the alleged perpetrators of the fraud.

[104] The Commission submits that it has proven the first part of the objective element, *i.e.*, an act of deceit, falsehood or other fraudulent means, in the form of either:

a. the diversion of funds to a purpose not permitted by the Mid-Market Fund's offering memorandum; or

b. a conflict of interest that was not addressed in accordance with applicable requirements.

3.3.2.a.ii Steps leading up to the submissions to the Credit Committee

[105] Gautam had been introduced to Bridging in late 2017, at which time Gautam was CEO of MJAR Holdings, LLC. That company later changed its name to Mjardin Group Inc., and then merged with Growforce Holdings Inc.

[106] By October 2018, when the Ninepoint transaction was concluded, Bridging had loaned approximately $144 million to Gautam's cannabis-related business. The loans were for the purchase of various assets and for cannabis facilities.

[107] In the summer of 2018, David approached Gautam for help in arranging financing for Bridging to buy the Management Interest from Ninepoint. In testimony that was not successfully challenged, Gautam stated that:

a. he had several discussions on the topic with David;

b. Natasha was involved in at least one of those discussions;

c. he eventually agreed with David and Natasha that the Mid-Market Fund would provide a loan to River Cities Investment I, LLC, a company that Gautam owned, and to 3319891 Nova Scotia (**331 Nova Scotia**), another company that Gautam owned;

d. the loan would be secured by approximately $50 million worth of Mjardin shares held by 331 Nova Scotia;

e. 331 Nova Scotia would use the loan proceeds to fund a loan to Bridging;

f. at David's request, and so that River Cities would show "a tangible commitment to the transaction", River Cities sent a letter to Ninepoint reflecting River Cities' commitment to provide financing to Bridging of up to $45 million to complete the acquisition;

g. David did not intend to provide an economic interest to River Cities or 331 Nova Scotia; and

h. Natasha wrote the transaction structure on a piece of paper that the three of them discussed during a meeting in Bridging's office, and that was discarded after the meeting.

[108] Following these discussions, David had several conversations with Mushore about the plan. Mushore testified that Natasha was present for some of these. Natasha disputed his testimony about one specific occasion. According to Mushore, in mid-August, the Sharpes were on their way to drop off their son at school and offered Mushore a ride to the office. During that drive, Natasha told Mushore the terms of the planned arrangement, and the Sharpes instructed Mushore to prepare a submission to the Credit Committee for their review.

[109] Natasha asks us to reject Mushore's evidence about all of his conversations with Natasha on this topic because his testimony about this occasion is unbelievable. Natasha submits it is unbelievable because the Sharpes' son would not have been on his way to school in August. We cannot accept the premise that there was no reason for the Sharpes' son to be going to the school, even if it was not in regular session. Even if Mushore is mistaken about where the Sharpes were headed at the time, that mistake is irrelevant to the substance of his testimony. Mushore's testimony about the Ninepoint loans was entirely consistent with the documentary record, and we accept it. While the documentary record does not indicate whether Natasha was part of these discussions, Mushore was clear, credible and definitive about his recollection, which is the only evidence in the record. We find that Natasha was present during the discussions about the plan, as Mushore testified.

3.3.2.a.iii Submissions to the Credit Committee

[110] On August 21, Mushore sent the Sharpes a draft Credit Committee submission, as they had instructed him to do. The draft:

a. identifies River Cities as the sole borrower;

b. contemplates a loan of $35 million;

c. identifies as security for the loan a personal guarantee from Gautam and $3 million worth of Mjardin shares that Gautam held; and

d. does not mention that the funds would be routed back to Bridging to fund the purchase of the Management Interest.

[111] David gave Mushore some comments about the draft. On August 27, Mushore sent a revised draft. Natasha and David both gave comments for Mushore to incorporate. Mushore finalized the submission and emailed it to the Credit Committee on August 31. By that time, the submission had changed the loan amount from $35 million to $36.75 million and had identified the intended use of proceeds as being "to fund working capital needs and support general corporate purposes of River Cities." There continued to be no mention of proceeds being used in any other way, including to fund Bridging's purchase of the Management Interest.

3.3.2.a.iv Approvals by the Credit Committee

[112] Mushore's email to the members of the Credit Committee requested approval or denial by email. At least five of the seven committee members sent approval emails on August 31, including David, Natasha and Mushore.

[113] There is some suggestion that the committee held an actual meeting on August 31, to approve the loan:

a. Graham Marr (a Bridging managing director) and Kevin Moreau (Bridging's general counsel at the time) testified that Moreau, Mushore and David were in Bridging's office that day for the meeting;

b. Mushore testified that a meeting to discuss the transaction occurred on or around August 31, with some participants present in person and some participating by phone;

c. a document exists, dated August 31 at 1:30pm titled "CREDIT COMMITTEE MEETING MINUTES", in which the loan to River Cities is discussed, although with a reference to a loan amount of $39.75 million (not the $36.75 million referred to in the initial submission), the proceeds of which would be for working capital and the borrower's general corporate uses, and to fund the purchase of up to $3 million in MJardin shares; and

d. the minutes suggest that the meeting ended 20 minutes later, at "approximately 1:50pm".

[114] In their testimony, committee members Brian Champ (Bridging's head of portfolio management) and McCluskey firmly rejected the suggestion that the committee actually met on that day. Champ had a record of his being out of the city and involved in a family-related activity. He knows that he neither participated in person or by phone.

[115] The minutes state that $3 million would be used to purchase MJardin shares. This explains the discrepancy between the $36.75 million in the submission and the $39.75 million in the minutes. While the submission of August 31 contained no such item, a revised submission created after August 31 did. On September 7, Mushore circulated the revised submission to committee members. It referred to the $39.75 million total amount and the $3 million for MJardin shares. The revised submission, like the earlier versions, made no mention of the proceeds being used to lend to Bridging to buy the Management Interest.

[116] In Mushore's covering email to committee members, he asked for approval or rejection of the "slight increase" by email. David, Natasha, Marr, Champ and McCluskey all sent approval emails on September 7.

[117] After the committee had already approved the loan, first at $36.75 million and then at $39.75 million, David raised additional considerations with committee members. McCluskey testified that:

a. on September 8, David and Natasha called him and David told him for the first time that River Cities was potentially investing in Bridging;

b. David said for that reason they wanted minutes for a Credit Committee meeting about the loan, a step that was not consistent with Bridging's usual practice;

c. McCluskey told David he had concerns about conflicts, about whether the loan was a proper use of investor funds, and about the appearance of self-dealing by Bridging;

d. David said that Bridging had a legal opinion that addressed his concerns; and

e. later that day, McCluskey was on a further phone call that included David, Mushore, Moreau, and possibly Natasha.

[118] There is disagreement about whether Natasha was on the calls with McCluskey and others. On the first call, David told McCluskey that Natasha was with him. However, McCluskey testified that he greeted Natasha but she did not respond. In fact, she never spoke. Despite David's assertion, in the absence of any evidence that Natasha participated in the calls, we infer that Natasha was not on the calls with McCluskey.

[119] McCluskey later received draft minutes from Mushore purporting to reflect the discussion. Champ testified that the first time he saw the minutes was after the receiver was appointed. Despite the inclusion of his name on the minutes, he had no recollection of any meeting to discuss the loan.

[120] It is more likely than not that the minutes were prepared sometime after the September 8 phone call that McCluskey mentioned, and that the discussion they purport to reflect, and that the meeting start and end times, are a fiction. David told McCluskey that the minutes needed to be dated at month-end for accounting purposes. Emails among Moreau, McCluskey, David, and Mushore establish that the minutes were still being finalized on September 10.

[121] The minutes state that "River Cities is contemplating a transaction with [Bridging] that would result in a significant portion of the proceeds… being utilized to acquire 50% of [the general partner of the Income Fund]." The minutes say that this fact was "previously disclosed to the committee", although the evidence is overwhelming that no such disclosure had previously been made to the committee.

[122] Further, the above-quoted excerpt is silent about who would acquire the 50% interest in the general partner. One could reasonably read the words as implying that River Cities itself would be the purchaser. What is clear, though, is that the already agreed-upon plan that Bridging would acquire the interest is not expressly reflected.

3.3.2.a.v References to a legal opinion supporting the transaction

[123] The minutes also appear to be silent about whether Bridging had legal advice to support the transaction. We say "appear to be", because a brief portion of the minutes has been redacted and marked "Privileged". We do not know whether the redacted portion relates to this question. We have only the following evidence about a possible legal opinion:

a. Mushore testified that David assured him that a major national law firm (which David named, and which had previously done work for Bridging) had provided such an opinion. Mushore never saw any opinion, if one existed. He now believes David misled him and that the opinion never existed; and

b. McCluskey testified that when he raised his concerns on September 8, David told him the same as he told Mushore; like Mushore, McCluskey never saw an opinion.

[124] Natasha urged us to infer that such an opinion existed, including because the named law firm had previously provided legal services to Bridging. We cannot draw that inference. It is possible David had discussions with lawyers about the design of the transaction, but we cannot conclude there was an opinion. We have nothing other than David's statements to Mushore and McCluskey that an opinion existed. That is insufficient.

[125] A respondent who asserts the defence of due diligence based on legal advice must establish that:

a. the lawyer had sufficient knowledge of the facts on which to base the advice;

b. the lawyer was qualified to give the advice;

c. the advice was credible given the circumstances under which it was given; and

d. the respondent made sufficient enquiries and relied on the advice.[16]

[126] The evidence here falls far short of the test for reliance on legal advice. Even if an opinion did exist, we have no basis to conclude that it supported the intended structure of the River Cities loan. We do not know what questions were asked of counsel (if any were asked at all), and we do not know anything about what answers or advice were given.

[127] In addition, as we explain below, the actual flow of funds ended up bypassing River Cities and 331 Nova Scotia. A legal opinion endorsing the originally planned structure and flow of funds would not have applied after this significant change.

[128] Natasha submits that the Commission could have asked the receiver to produce the legal opinion. She argues that the Tribunal should draw an adverse inference and conclude that the Commission's failure to request the opinion reflects the Commission's belief that the opinion would not support the Commission's allegations.

[129] We disagree. It is Natasha who wants to rely on the legal advice. It was for her to request production of the advice, and to seek the waiver of privilege if necessary. There is insufficient evidence that an opinion even exists for us to draw an adverse inference from the Commission's choice not to request it.

3.3.2.a.vi Flow of funds and repayment of the loan

[130] The transactions were reflected in:

a. a September 12, 2018, commitment letter from Bridging to River Cities and 331 Nova Scotia, undertaking to grant a loan of up to approximately $40.4 million to provide working capital, to permit the purchase of up to $3 million of MJAR Holdings Corp. shares, and to support other permitted general corporate purposes of River Cities and 331 Nova Scotia; and

b. an October 14, 2018, loan agreement between 331 Nova Scotia as lender and Bridging as borrower, for a loan of $35 million in connection with Bridging's agreement to buy the Management Interest from Ninepoint.

[16] *Solar Income Fund (Re),* 2022 ONSEC 2 at paras 241-243

[131] The proceeds were ultimately advanced from the Mid-Market Fund on September 11 and 12, 2018. The flow of funds was inconsistent with the original plan, which called for the proceeds to go to River Cities, and for 331 Nova Scotia to then lend to Bridging. Instead, Bridging transferred $39.75 million from the Mid-Market Fund to its counsel, who then transferred $38 million to counsel for River Cities, who:

a. held $35 million in trust until October 15, at which time it paid that amount to Ninepoint to close the acquisition of the Management Interest; and

b. paid the remaining $3 million to River Cities for Gautam to purchase additional shares.

[132] In addition to the $39.75 million, Bridging paid itself a $400,000 "work fee" from the Mid-Market Fund, for the transaction.

[133] Bridging repaid the Mid-Market Fund's loan to River Cities and 331 Nova Scotia just over one year later, in November 2019, with proceeds from a new loan from a BlackRock Inc. affiliate. The BlackRock affiliate required a payout statement to confirm Bridging's repayment to 331 Nova Scotia. The BlackRock affiliate evidently believed that 331 Nova Scotia, not the Mid-Market Fund, had been the lender for the acquisition of the Management Interest. A payout statement was prepared as requested, purporting to reflect a payment from Bridging to 331 Nova Scotia of almost $30 million in outstanding principal, plus approximately $3.4 million of accrued interest.

[134] Gautum testified 331 Nova Scotia never received any repayments from Bridging. He was not aware Bridging had purported to have repaid any money to 331 Nova Scotia. While the payout statement appears to bear his signature, he testified that he did not sign it. He said he first saw the payout statement during the Commission's investigation. Moreau testified that David instructed him to use Gautam's signature page on file from the December 1, 2018, loan amendment to complete the payout statement. We conclude Gautum's signature on the payout statement is an unauthorized copy of his signature on the loan amendment.

[135] These artifices maintained the appearance, on paper, that 331 Nova Scotia was the lender for the acquisition of the Management Interest. However, the economic reality is that the Mid-Market Fund financed the acquisition.

3.3.2.a.vii Analysis of the objective element

[136] It is undisputed that from the outset, the purpose of the loan from the Mid-Market Fund was to finance Bridging's acquisition of the Management Interest. We find that the commercial reality and substance of the loan were consistent with this purpose, and with this direct connection between the Mid-Market Fund and Bridging.

[137] Natasha submits that the actual flow of funds was what Gautam expected and authorized, and was consistent with all the loan agreements and related documents.

[138] In analyzing the objective elements to determine whether a fraud was perpetrated, we must focus not on the form of the transactions as reflected in the documentation, but on the commercial reality. It would be perverse to allow parties to defeat important constraints on conduct in the capital markets simply by creating a paper trail that has misleading elements and that does not accurately reflect the underlying reality.

[139] In this case, Bridging's insertion of River Cities and 331 Nova Scotia into the scheme was an artifice that not even Bridging seemed to be fully committed to maintaining through the series of events. This is most strikingly evidenced by the fact that no part of the $35 million used to acquire the Management Interest passed to or from River Cities or 331 Nova Scotia, other than being temporarily parked in their counsel's trust account. While it is true that, in general, a borrower may direct the payment of loan proceeds to a third party, such a step ordinarily reflects a commercial purpose, such as a transfer of assets. In this case, there was none.

[140] If there was a sound legal basis for the structure that Bridging used, it was open to the respondents to introduce that. They did not do so. Instead, we were presented with many pieces of evidence which, when taken together, paint a clear picture of deceitful and dishonest conduct, including:

a. the use of commercial leverage over Gautam to secure his participation;

b. David's express intention not to provide Gautam's companies with any economic interest despite the September 13, 2018, commitment letter indicating the economic interests of River Cities and 331 Nova Scotia that the loan would serve;

c. the absence, in the Credit Committee submissions, of any mention of Bridging's intended acquisition of the Management Interest;

d. the various substantive and misleading elements in the minutes;

e. the failure, in discussions with Credit Committee members, to disclose the true purpose of the loan, with the disclosure being limited to a suggestion that River Cities might wish to acquire an interest in the general partner;

f. David's failure to show anyone the legal opinion he claimed he had obtained that supported the transaction;

g. the papering of the loan to suggest that River Cities and 331 Nova Scotia were principal parties to the transactions; and

h. the payout statement, which misrepresented the source of the funds and falsely purported to bear Gautam's signature.

[141] This use of investor money was contrary to the fund's objectives, as disclosed to investors. The offering memorandum stated that the fund would pursue an investment strategy of actively managing a portfolio of fully collateralized asset-based loans, and factoring investments. Nothing in the disclosure would suggest to a reasonable investor that their investment would be used for Bridging's own purposes. A reasonable observer would view this diversion, and the subterfuge surrounding it, as being deceitful and dishonest. Together, they amount to "other fraudulent means".

[142] Even if the diversion were not dishonest, the transaction presented a clear conflict of interest. The Mid-Market Fund's offering memorandum imposes a fiduciary standard for the management of conflicts by providing that "potential conflicts will not be resolved through arm's length dealing and instead through the exercise of judgment consistent with fiduciary responsibilities to the [Fund] and its Unitholders generally."

[143] Mushore submits that we have insufficient evidence about the details of the loans to assess whether Bridging complied with its fiduciary obligations. We disagree. The fiduciary standard required a full disclosure of the conflict, and assurance that all steps were in the best interests of the fund's unitholders, including measures to ensure that Bridging did not benefit directly.

[144] Bridging's management of the clear conflict of interest fell far short of that standard. The best Bridging could say is that it sought McCluskey's approval. However, he was initially deceived about the use of funds and subsequently was convinced to agree to the minutes documenting the transaction by being deceived about a legal opinion.

[145] We are not persuaded by Mushore's submissions that:

a. had the Bridging funds been reporting issuers, the Ninepoint transactions would have been approved by an Independent Review Committee as required by National Instrument 81-107 *Independent Review Committee for Investment Funds*; and

b. that approval would have been sufficient to manage the conflict of interest.

[146] Both submissions require impermissible speculation.

[147] Investor money was used in a manner inconsistent with the requirements of the offering memorandum. This unauthorized diversion created a risk of prejudice to the investors' economic interests, since their money was invested in a way to which they had not agreed. David and Natasha caused Bridging to take the actions it did.

[148] The Commission has proven the objective element of fraud as against them. We turn to consider the subjective element.

3.3.2.b Fraud – subjective element

[149] We conclude that the Commission has satisfied the two parts of the subjective element of fraud with respect to David and Natasha.

[150] David had the necessary subjective knowledge that the above actions were occurring. Most of the actions were his own, and of those that he did not carry out himself, he directed many. We also infer from the circumstances that he knew the actions would cause a deprivation, in that they would expose investors to a risk they had not bargained for. The Commission has therefore proven the subjective or mental element of fraud as against David.

[151] As for Natasha, we have already found that she participated in the development of the plan. She knew the purpose of the loan was to advance funds to Bridging to acquire the Management Interest.

[152] Natasha does not dispute that she was aware of the loan. Instead, she defends the series of transactions. She submits that the funds flowed exactly as described in the loan agreement. She asserts a defence of due diligence, in reliance on the purported legal opinion, but we disposed of that factual issue above. Natasha did not meet the test for such a defence.

[153] Natasha also attempts to distance herself from some aspects of the transactions, *e.g.*, by asserting that she was not involved in drafting the Credit Committee minutes. That may be so, but she:

a. participated in designing the series of transactions and wrote the structure down during a discussion with Gautum;

b. commented on the Credit Committee submission that did not fully disclose the intended use of the proceeds;

c. gave her email approval despite knowing the true purpose of the loan;

d. was aware of a potential conflict and was therefore part of the process in requiring the transaction to be approved by the Credit Committee's only independent member; and

e. saw the minutes that did not fully disclose the intended use of the proceeds, and that included the substantively misleading aspects we set out earlier.

[154] We therefore conclude that Natasha knew of the dishonest act, and knew that it would cause a deprivation. The Commission has therefore proven the subjective or mental element of fraud as against Natasha, and therefore that she perpetrated the fraud along with David.

3.3.3 Step two – remaining elements of s. 126.1(1)(b)

3.3.3.a Introduction

[155] Having found that David and Natasha perpetrated a fraud with respect to the Ninepoint loans, we turn to the second step in the analysis of the Commission's allegations that they, Bridging and Mushore contravened s. 126.1(1)(b).

3.3.3.b David and Natasha

[156] The Commission has proven the objective element of s. 126.1(1)(b) against David and Natasha. They directly engaged in the conduct that formed the fraud. That conduct related to securities, in that it involved investor money that the Mid-Market Fund obtained through the sale of partnership units.

[157] As for the subjective element, it follows from our finding that David and Natasha perpetrated the fraud that they knew or ought to have known that their conduct was fraudulent.

[158] The Commission has satisfied all the requisite elements and proven that David and Natasha contravened s. 126.1(1)(b) with respect to the Ninepoint loans.

3.3.3.c Bridging

[159] As for Bridging, the Commission says that David and Natasha were directing minds of Bridging and caused Bridging to carry out these acts. We find that David and Natasha were directing minds of Bridging with respect to the Ninepoint loans, but as with the McCoshen loans, the Commission did not address all the elements of the test or the public interest aspect in making a finding that Bridging contravened s. 126.1(1)(b). While the Ninepoint loans might well have benefited Bridging, the Commission did not address how that was the case. We therefore decline to attribute David's or Natasha's conduct to Bridging and we dismiss the allegation that Bridging contravened s. 126.1(1)(b).

3.3.3.d Mushore

[160] With respect to the Commission's allegation that Mushore contravened s. 126.1(1)(b) in respect of the Ninepoint loans, we begin with the objective element.

[161] We set out above Mushore's involvement in the Ninepoint transactions. That involvement included preparing the Credit Committee submissions and minutes, his role as a member of the Credit Committee, and his signature on the September 13, 2018 commitment letter on behalf of Bridging. By taking these steps, he participated indirectly in David and Natasha's fraud. His conduct related to securities, since the loans were of investor money that the Mid-Market Fund obtained through the sale of partnership units. The Commission has proven the objective element against Mushore.

[162] As for the subjective element, Mushore was fully aware of the planned structure of the transactions, and of the true purpose of the loans. Mushore testified that David put the letter in front of him to sign, and that he did not read it, apart from "the first couple of paragraphs". That explanation is unsatisfactory, particularly given that Mushore was the sole signatory on behalf of Bridging. It would be unusual for a chief compliance officer to be the sole signatory on such a document, and Mushore did not explain why David did not sign the letter himself.

[163] Mushore countered by submitting that the transactions had no inherently fraudulent characteristics of which he was or ought to have been aware.

[164] We cannot accept Mushore's submission that there was nothing inherently fraudulent about the Ninepoint transactions, of which he ought to have been aware. We listed above, in paragraph [140], a series of characteristics that ought to have been red flags for any senior employee, particularly one employed in an independent oversight role, as Mushore was. He knew that the documentation did not honestly reflect the structure of the transaction, including the clear conflict. He knew or ought to have known that the conflict was not being managed appropriately, and knew or ought to have known that the transaction was fraudulent, in that it effected an unauthorized use of investor funds. The Commission has proven the subjective element of s. 126.1(1)(b) against Mushore.

[165] We therefore find that Mushore contravened s.126.1(1) of the *Act* with respect to the Ninepoint loans.

3.3.4 Conflicts of interest

[166] The Commission alleges that the loan from the Mid-Market Fund to Bridging represented an egregious conflict of interest. Bridging caused the fund to make a significant loan, in which Bridging had a direct interest. Bridging knew of the conflict, and the only step it took to respond to that conflict was to seek approval from the Credit Committee. However, the only independent member of that committee was McCluskey, and none of the committee members knew that the intended River Cities loan was to be used in the way that it was.

[167] In causing the fund to make a significant loan to Bridging without taking any meaningful steps to respond to the conflict of interest, Bridging acted contrary to the interests and obligations of the general partner. Bridging thereby contravened s. 13.4 of NI 31-103.

[168] As we explained in our analysis of the McCoshen loans, we find that s. 13.4 of NI 31-103 applies only to registered firms. We therefore dismiss the allegations that David, Natasha and Mushore breached that provision.

3.3.5 Individual respondents' potential liability for authorizing, permitting or acquiescing in Bridging's non-compliance

[169] We turn now to the allegation that David, Natasha and Mushore authorized, permitted or acquiesced in Bridging's non-compliance with Ontario securities law, and should therefore be deemed to also not have complied with Ontario securities law, under s. 129.2 of the *Act*. Because we did not find that Bridging contravened s. 126.1(1)(b) of the *Act*, we are concerned only with Bridging's non-compliance with s. 13.4 of NI 31-103.

[170] David was the driving force behind the Ninepoint loans, and he caused (and therefore authorized) Bridging's misconduct. David is therefore deemed by s. 129.2 to also not have complied with Ontario securities law to the same extent as Bridging.

[171] As for Natasha's involvement, we accept Mushore's and Gautum's evidence, which was neither contradicted nor successfully challenged on cross-examination. Natasha played a central role in the design of the scheme. She authorized Bridging's non-compliance and is therefore deemed by s. 129.2 to also not have complied with Ontario securities law to the same extent as Bridging.

[172] As for Mushore, we cannot accept the Commission's submission that he ought to be liable under s. 129.2. We reach that conclusion because Mushore was indisputably not a director of Bridging, and we reject the proposition put forward by the Commission that he was an officer of Bridging, as defined in the *Act*.[17]

[173] That definition has three parts, and an individual can be found to be an officer if they satisfy any one of the parts.

[174] The first of the three parts lists a series of titles, which we quote in full:

> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager

[175] There was no evidence that Mushore held any of these titles at the relevant time.

[176] The second of the three parts (paragraph (b)) brings in individuals who are designated as an officer under the firm's by-law or similar authority. It is undisputed that Mushore was not so designated.

[177] The third part of the definition includes "every individual who performs functions similar to those normally performed by an individual referred to" in either of the first two parts. Did Mushore perform functions similar to anyone in (a) or (b)?

[17] *Act*, s 1(1), "officer"

[178] Generally speaking, a chief compliance officer does not perform functions similar to those performed by the officers listed in (a). In fact, the role carries an important distinction from those functions, in that it calls for independent oversight of the business that those functions carry on.

[179] With respect to Mushore in particular, we cannot conclude that he performed functions similar to those normally performed by an individual designated as an officer of the firm. We heard no evidence that he did so.

[180] Accordingly, we find that Mushore was not an officer of Bridging. He cannot be deemed liable under s. 129.2 of the *Act* for Bridging's non-compliance with Ontario securities law.

3.3.6 Conclusions relating to the Ninepoint loans

[181] We therefore conclude that:

a. David and Natasha perpetrated a fraud with respect to the Ninepoint loans;

b. David and Natasha's conduct related to securities, and they knew or ought to have known that their conduct perpetrated a fraud;

c. David and Natasha thereby contravened s. 126.1(1)(b) of the *Act*;

d. Mushore indirectly participated in David and Natasha's fraud;

e. Mushore's conduct related to securities, and he knew or ought to have known that it perpetrated a fraud;

f. Mushore thereby contravened s. 126.1(1)(b) of the Act;

g. it was not established that Bridging contravened s. 126.1(1)(b) of the *Act*;

h. Bridging contravened s. 13.4 of NI 31-103; and

i. David and Natasha authorized Bridging's non-compliance with s. 13.4 of NI 31-103 and are therefore deemed, under s. 129.2 of the *Act*, to also have not complied.

3.4 The Ng loans

3.4.1 Introduction

[182] The third and final set of loans relates to the purchase of Bridging shares by Gary Ng, a Winnipeg businessperson. In May 2019, Ng agreed to purchase 50% of Bridging. In June 2019, Bridging lent an Ng-owned company $32 million. Ng used $30 million of that to close the purchase. As part of the transaction, Natasha sold her Bridging shares to Ng for $16.6 million.

[183] After that transaction closed, Bridging loaned Ng's companies a further $47 million. That amount included a $35 million loan that the Sharpes caused Bridging to make without Credit Committee approval and without the committee being informed. In November 2019, Ng paid $1 million to the Sharpes personally.

[184] The Commission alleges that:

a. the purpose of these loans was not disclosed;

b. investor funds were diverted to the purchase of Bridging shares;

c. the loans constituted a fraud;

d. the loans were made despite impermissible conflicts of interest; and

e. through their involvement in these loans, Bridging, David and Natasha contravened s. 126.1(1)(b) of the *Act*, and they and Mushore contravened s. 13.4 of NI 31-103.

[185] We first address the allegations regarding s. 126.1(1)(b) of the Act, and conclude that Natasha perpetrated a fraud in which David participated. We dismiss the allegation that Bridging contravened s. 13.4 of NI 31-103.

3.4.2 Step one – has a person or company perpetrated a fraud?

3.4.2.a Fraud – objective element

[186] We begin by assessing the objective element of fraud as it relates to Natasha.

[187] The Sharpes first met Ng when he was looking for financing to purchase an investment dealer. In March 2018, Chippingham Capital Corp., an Ng-owned company, borrowed $21 million from Bridging for that purpose.

[188] Beginning in November 2018, Ng had conversations with the Sharpes about his purchasing an interest in Bridging. While the discussions were ongoing (the transaction closed in July 2019) and documents were prepared, Bridging made three loans totaling $31 million to Ng's company 10029947 Manitoba Inc. (**1002 Manitoba**), ostensibly to provide regulatory capital to an investment dealer that Ng owned.

[189] In April 2019, Ng filed with the Ontario and Manitoba Securities Commissions written notice of his agreement to purchase the interest in Bridging. The notice, which attached a verification that David signed on behalf of Bridging:

a. stated that Ng's acquisition would not give rise to a conflict of interest;

b. stated that Ng's acquisition would not hinder Bridging's ability to comply with securities legislation;

c. omitted to state that Ng owned Chippingham and 1002 Manitoba, each of which owed approximately $21 million to Bridging funds.

[190] In June 2019, while negotiations continued, and immediately after the Sharpes returned from a lunch meeting with Ng, the Sharpes informed Lekan Temidire, a Bridging portfolio manager, that Bridging was to make a $32 million loan to Ng's company 10034889 Manitoba (**1003 Manitoba**). The Sharpes told Temidire that the loan would be secured by an investment account worth approximately $90 million in Ng's name at PI Financial, an investment dealer that Ng owned.

[191] Temidire asked some questions and recommended that an arm's-length third party conduct due diligence. After some discussion, the Sharpes said that they were comfortable with the account's legitimacy and no due diligence was required. Temidire's inquiries about what business 1003 Manitoba was in were met with varying answers, including that the company was a cannabis company, or that it was a commercial real estate company.

[192] The Sharpes asked Temidire to draft the Credit Committee submission, and they gave him the information to include. They instructed him not to mention Ng in the submission. Temidire was unaware that Ng and Bridging had signed an agreement for Ng to acquire 50% of Bridging.

[193] The submission described the purpose of the loan as "for the acquisition of strategic targets, working capital and general corporate purposes". During the Investment Committee review of the submission, McCluskey noticed that the owner of the borrower, 1003 Manitoba, was not mentioned. Temidire relayed to McCluskey the Sharpes' advice that the borrower was well known to Bridging. McCluskey approved the loan and the same submission was then forwarded to the Credit Committee for approval.

[194] The Credit Committee approved the loan by email, although three committee members withheld their approval.

[195] Champ and Mushore withheld theirs because of concerns about potential conflicts of interest arising from the fact, known among the senior management team, that Ng was potentially investing in Bridging. Champ went further, documenting his concerns in an email from his personal account to Mushore's personal account. Neither Champ nor Mushore did anything else to object to the loan.

[196] Marr withheld his approval because he knew that 1003 Manitoba was an Ng-owned company, he had been the main point of contact on previous Ng loans, and he was "miffed" that he had not been involved.

[197] Ng opened a bank account for 1003 Manitoba on June 21, 2019, on which day the loan was funded. The loan proceeds were deposited into that account, which had no other money in it.

[198] Before the acquisition was finalized, Ng incorporated 2693405 Ontario Inc. to be the acquiring entity. The acquisition agreement was changed accordingly. On July 5, 2019, three days before the closing date, the numbered company received $50 million into its account, $30 million of which came from 1003 Manitoba, and $20 million of which came from a third-party lender. There was no other money in the numbered company's account before these deposits.

[199] The transaction closed. On July 31, 2019, by which time Ng was Bridging's largest shareholder, he emailed the Sharpes and advised of his desire to "upsize" the $32 million by an additional $35 million as soon as possible, ostensibly as seed capital for a joint venture with a third party.

[200] Bridging funded the additional $35 million on August 8, 2019, without any review or approval by the Credit Committee. An internal Bridging email giving instructions for wiring the funds attached a modified version of the June promissory note that had formed the basis for the original $32 million loan. The modified version described the June loan as being for $32 million, "with an option to draw" an additional $35 million.

[201] According to Temidire, Natasha initiated the modification of the promissory note. She told Temidire that 1003 Manitoba would require an additional $35 million, and that Temidire should change the original promissory note to provide for an option for the further amount. Temidire testified that he raised the need for Credit Committee approval, to which Natasha replied that she would be able to get the necessary approvals.

[202] The original Credit Committee submission was also altered to show that the total commitment was $32 million "with an option of an additional $35 million". Further, under "risks", an additional sentence was added, saying "Account and holdings were verified by Natasha Sharpe with …"

[203] Temidire testified that Natasha asked him to alter the promissory note and he told her he would not do it. He added that in any event, he did not have the necessary permissions on the document. He said Natasha instructed Bruno Novo (Bridging's head of operations) to make the original promissory note editable. He said he then witnessed Natasha type the changes herself. When Novo was asked whether either Temidire or Natasha had asked for him to edit or alter a document, Novo did not rule out the possibility, but answered that he did not recall that ever happening.

[204] Natasha submitted that we should reject Temidire's testimony on this point and find she did not alter the document. Natasha pointed out Novo had testified that as far as he understood, there were no restrictions on editing loan documents on Bridging's shared drive. This was put to Temidire on cross-examination, but Temidire was adamant that while he was able to save documents to the shared drive, he was unable to alter documents at all, including PDF documents (such as the promissory note), for which he did not have the software needed to edit.

[205] Mushore was not present for the discussion that Temidire testified about having had with Natasha and Novo, but Mushore does remember Temidire telling him about that discussion after it happened. Mushore's testimony is hearsay to the extent it describes the discussion he was not part of, and we must therefore be cautious with it, but we note that it is consistent with Temidire's version of the event.

[206] We find that it is more likely than not that the event happened as Temidire described. We found him to be a credible witness and accept his testimony. We consider it unlikely that he told Mushore a concocted false story a long time ago, and then repeated it in his sworn testimony.

[207] Natasha also submits that the metadata associated with the documents suggests that the documents were altered on June 17, 2020. We do not accept that submission. The electronic versions of the documents tendered at the hearing do have that date in the metadata. However, we are satisfied there are other possible explanations for that, unrelated to the issues in this case, *e.g.*, it is the date on which the receiver produced the documents to the Commission, or the date on which the Commission assigned identification numbers to the documents. Moreover, there was no evidence that the June 17, 2020, date in the metadata established that the documents were not altered in 2019 as Temidire testified.

[208] Within months of Bridging advancing the further $35 million, Bridging went on to provide two further loans to Ng – a $2 million loan in October 2019 and a $10 million loan in February 2020. Additionally, each of David and Natasha received a payment of $500,000 from Ng in November 2019. We have no evidence that David or Natasha took any steps to address the conflict of interest presented by these payments.

[209] The 2019 financial statements of the Income Fund and the Mid-Market Fund, the two Bridging funds that advanced the loans, commented inaccurately on the relationship between Bridging and Ng. They stated that:

a. agreements for Ng's loans were entered into prior to Ng becoming a Bridging shareholder, an assertion that was partially true but partially false, given the loans that came after the closing of the acquisition;

b. Ng's loans were approved by the Investment and Credit Committees, which was false; and

c. no further loans were made to Ng after he became a Bridging shareholder, which was false.

[210] David and Natasha both signed the Income Fund's financial statements. The Mid-Market Fund's financial statements were approved by its general partner, of which Natasha was president and a director. Further, David and Mushore signed a letter on behalf of Bridging, to the Funds' auditor, representing that all information about transactions with related parties had been provided.

[211] The use of investor money to enable Ng to purchase a 50% interest in Bridging, including by paying Natasha a substantial sum for her shares, was contrary to the funds' objectives, as disclosed to investors. The dishonesty surrounding these loans is evidenced by the following:

a. the misleading April 2019 filing with the Ontario and Manitoba Securities Commissions, which David certified;

b. the choice not to conduct the customary due diligence;

c. the lack of transparency about the business the borrower was in;

d. the instruction not to mention Ng in the Credit Committee submission;

e. the choice not to disclose to the Credit Committee the purpose of the loan;

f. the choice not to disclose to Temidire that Ng and Bridging had signed an agreement for Ng to acquire 50% of Bridging;

g. the choice to fund an additional $35 million without obtaining the necessary internal approvals;

h. the false comments in the funds' financial statements;

i. the payments of $500,000 to each of David and Natasha; and

j. the surreptitious alteration of loan documents.

[212] We are satisfied that the diversion was dishonest. In addition, the conflict of interest was a central characteristic of the loans. There can be no suggestion that there was any proper response to this conflict, let alone in a manner consistent with fiduciary responsibilities to the funds (as called for by the offering memoranda).

[213] Investor funds were therefore used in an unauthorized way, causing a deprivation, because investors were subjected to a risk they had not bargained for. That deprivation was compounded by the subsequent discovery (as admitted by Ng in February 2020) that the investment account he had identified as collateral for the loans to 1003 Manitoba was fraudulent.

[214] Natasha submits that she took immediate steps, to her detriment, to repay the fund the $10 million February 2020 loan to Ng. The loan was reclassified as a dividend, and the debt owed to the unitholders was repaid in full. This payment does not, however, change the fact that the unauthorized diversion and accompanying deprivation happened in the first place.

[215] Natasha engaged in the dishonest acts and thereby caused a deprivation. The Commission has successfully proven the objective element of the fraud as against her. We turn to consider the subjective element.

3.4.2.b Fraud – subjective element

[216] We have found that Natasha orchestrated the Ng loans, participated in all the significant related steps, altered a document, and instructed Bridging staff to conceal important information and to refrain from having due diligence carried out.

[217] Natasha submits that she did not know that Ng would use the loan to purchase an interest in Bridging. There is no evidence before us to support that submission. The best evidence we have, which we accept, is that Natasha not only knew of the scheme but engineered it. She knew that the process she engineered to approve the loan was dishonest, and that following that process would divert investor funds to an unauthorized use.

[218] We also conclude that Natasha knew that the dishonest acts would cause a deprivation. The Commission has therefore proven the subjective or mental element of fraud as against Natasha, and therefore that she perpetrated the fraud.

3.4.3 Step two – remaining elements of s. 126.1(1)(b)

3.4.3.a Introduction

[219] Having found that Natasha perpetrated a fraud with respect to the Ng loans, we turn to the second step in the analysis of the Commission's allegations that she, Bridging and David contravened s. 126.1(1)(b).

3.4.3.b Natasha

[220] The Commission has proven the objective element of s. 126.1(1)(b) against Natasha. She directly engaged in the conduct that constituted the fraud. That conduct related to securities, in that it involved investor money that the Bridging funds obtained through the sale of partnership units.

[221] As for the subjective element, it follows from our finding that Natasha perpetrated the fraud that she knew or ought to have known that her conduct was fraudulent.

[222] The Commission has satisfied all the requisite elements and proven that Natasha contravened s. 126.1(1)(b) with respect to the Ng loans.

3.4.3.c Bridging

[223] As for Bridging, the Commission submits that Natasha was a directing mind and that we should attribute her conduct to Bridging. We agree that Natasha was a directing mind of Bridging with respect to the Ng loans. She was the firm's chief investment officer. She was one of two members of the Investment Committee, from which unanimous approval of the loans was required. She gave instructions to Bridging staff about effecting the transactions and she altered loan documents to portray a false sequence of events.

[224] However, when deciding whether we should attribute Natasha's acts to Bridging, we encounter the same difficulty as described above with the McCoshen and Ninepoint loans. In presenting its case, the Commission did not address the identification doctrine, and whether that doctrine should apply with respect to the Ng loans, particularly given the benefit to Natasha as a selling shareholder. We therefore decline to attribute Natasha's conduct to Bridging and we dismiss the allegation that Bridging contravened s. 126.1(1)(b).

3.4.3.d David

[225] As for David, we begin with the objective element of the allegation that he contravened s. 126.1(1)(b). David was involved in arranging at least the original $32 million loan to Ng. By doing so, he directly engaged in a course of conduct that related to securities, since the loan was of investor money that the Bridging funds obtained through the sale of partnership units. The Commission has proven the objective element against David.

[226] As for the subjective element, we infer that he was fully aware of the purpose for the loan, and we have no evidence to the contrary. He knew of the dishonesty that permeated the approval process, knew that this investor money was being used in an unauthorized way, and knew or ought to have known that this use was fraudulent. His knowledge satisfies the subjective element.

[227] We therefore find that David contravened s. 126.1(1)(b) of the *Act* with respect to the Ng loans.

3.4.4 Conflicts of interest

[228] Bridging and Natasha had material interests at stake in enabling Ng to purchase the 50% interest in Bridging. Those interests did not align with those of the general partner. Instead of taking steps to disclose or otherwise address that conflict, Natasha engineered the scheme by which the conflict was concealed.

[229] As we have explained above, s. 13.4 of NI 31-103 does not apply to the individual respondents. Only Bridging might be found to have contravened s. 13.4. The Commission makes no allegation that Bridging failed to take necessary steps to identify the conflict presented by the Ng loans. We can find Bridging to have contravened s. 13.4 only if we fix Bridging with knowledge of the conflict. To do so, we would have to attribute Natasha's knowledge to Bridging. For the same reasons as set out above regarding the fraud allegation, we decline to do so. Accordingly, we dismiss the allegation that Bridging contravened s. 13.4 of NI 31-103.

3.4.5 Conclusions relating to the Ng transactions

[230] We therefore conclude that:

a. Natasha perpetrated a fraud with respect to the Ng loans;

b. Natasha and David directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud; and

c. Natasha and David thereby contravened s. 126.1(1)(b) of the *Act*.

[231] We dismiss the allegations that Bridging contravened s. 126.1(1)(b) of the *Act* and s. 13.4 of NI 31-103.

3.5 Obstruction of the Commission's investigation

3.5.1 Introduction

[232] We turn now to the Commission's allegations that the respondents improperly attempted to obstruct its investigation in four ways:

a. the Sharpes and Mushore made false or misleading statements during their compelled examinations;

b. Bridging, the Sharpes and Mushore created, or directed others to create, false paper trails by altering, deleting or concealing records;

c. David attempted to intimidate witnesses; and

d. Natasha allowed David to listen in when the Commission was examining her.

[233] We address each of these in turn.

3.5.2 False or misleading statements during compelled examinations

[234] Clause 122(1)(a) of the *Act* states that it is an offence to make a misleading or untrue statement to an OSC investigator. The provision also applies to omitting a fact that is necessary to make a statement not misleading. The statement must be materially misleading or untrue at the time and under the circumstances in which it is made. It is a defence if the person accused of making a misleading or untrue statement did not know, and could not have known through reasonable diligence, that the statement was misleading or untrue.

[235] The Commission alleges that David, Natasha, and Mushore, during their compelled examinations in the investigation, made misleading or untrue statements, or omitted facts necessary to make their statements not misleading. If the Commission succeeds in proving its allegations, that may provide a basis for an order under s. 127(1) of the *Act*.[18]

[236] We have considered the contested statements in light of the time and circumstances in which they were made. We are satisfied that all the Commission's allegations relate to matters that are material.

3.5.2.b David

[237] We begin with David. The Commission alleges that he provided false or misleading answers on several matters during his examination, which took place over three separate days, in October 2020 and April 2021.

[238] The first impugned series of answers relates to the Ninepoint loans. Commission staff's questions of David on this topic asked whether Gautam had received any benefits beyond what was outlined in the "loan document." However, the transcript excerpts do not specify which document was being referenced, and in the hearing before us, the Commission did not link that reference to a specific document in the record. As a result, the Commission has not established this allegation.

[239] The second impugned series of answers relates to the source of funds used to purchase the Management Interest. David testified that he understood that Gautam had arranged the loan by raising money from "a bunch of investors in the United States". When the investigator later asked "At the end of the day, do you know exactly how Mr. Gautam funded the loan from [331 Nova Scotia] to [Bridging]?" David answered "Yes. Well, he told me it was these individuals that he had met with …". These answers were misleading because David knew Gautam did not raise funds for the loan, since the funds originated from the Mid-Market Fund and not from a Gautam-related company.

[240] Most telling is David's examination on April 29, 2021, after the Commission had learned that the funds originated from the Mid-Market Fund. Commission counsel told David that the Commission was "aware of a loan that had been extended from the [Bridging] funds to companies related to Mr. Gautam that you have not disclosed to us and that Bridging Finance has not disclosed to us. Do you know what I'm talking about?" David's answer of "No, I don't" was untrue, because, as we have found, David knew all about the fraud that he perpetrated.

[241] David also testified that the BlackRock loan was used to repay 331 Nova Scotia. In fact, the proceeds of the BlackRock loan were used to repay the Mid-Market Fund.

[242] To some extent, David's answers accurately reflected the paperwork, which showed that it was 331 Nova Scotia that originally loaned the money. However, we are satisfied David's answers were intentionally misleading.

[243] Third, the Commission alleges that David told the Commission he had no relationships with any Bridging borrowers, or their officers, directors, or shareholders, that could be seen as creating a potential conflict of interest. However, the most direct question asked was, "To your knowledge, are there other business or personal relationships that could be perceived as creating a potential conflict of interest?" This question, using the word "other," clearly builds on prior discussion. The question is found at the top of page 412 of David's October 27, 2020, transcript, but the Commission did not file page 411. The other excerpts filed by the Commission do not provide the necessary context. Without the preceding context, we cannot conclude that the Commission has met its burden to prove this allegation.

[244] Fourth, and with respect to the McCoshen loans, the Commission alleges that David misled the Commission by denying that he received 14 transfers, totaling $19.5 million, from McCoshen and 704 Manitoba. Staff asked David if any

[18] *Wilder v Ontario Securities Commission*, 2001 CanLII 24072 (ON CA) at paras 15-24

companies related to McCoshen ever transferred money to him directly. David responded, "To the best of my knowledge, no." We previously found that 704 Manitoba transferred $19.5 million into David's personal bank account as part of the fraud David perpetrated. David had ruled out the possibility that the funds came from McCoshen personally earlier in his testimony. David's denial that he received the kickbacks was false.

[245] Fifth, and with respect to the Ng loans, the Commission alleges that David misled its investigator by stating that the purpose of the June 2019 loan was for Ng to purchase real estate in Hong Kong, and that the second loan was an additional tranche, granted due to a "contractual obligation". David knew the June advance was used to fund Ng's acquisition of 50% of Bridging and neither tranche was intended for real estate in Hong Kong. We conclude that David's answers were an attempt to cover up the real purpose of the advances. We find his answers were untrue.

[246] Finally, the Commission alleges that David misled Commission staff by failing to tell them about:

a. a $2 million loan to Ng's company 1002 Manitoba in October 2019;

b. a $10 million loan to 1002 Manitoba in February 2020; and

c. the $500,000 he received from Ng in November 2019.

[247] The Commission failed to provide adequate context to enable us to assess the first two allegations. The investigator stated "I am going to put a summary, very high level, of the transactions we have discussed in connection with Mr. Ng, and then I am going to ask you some questions to confirm that there is nothing else we haven't discussed. Okay?" In subsequent questions the investigator referred to "the schedule at tab 3 of Exhibit 1" saying "…we can always pull that up." The Commission did not identify either of those documents to us. Without this context, the Commission has failed to meet its onus to establish these allegations.

[248] In regard to the $500,000 payment from Ng to David, David was asked whether "[Bridging] and/or any of its officers, directors, or shareholders" had other dealings with Ng. David answered "No, to the best of my knowledge." Later, David was asked if he was aware of any other payments from Ng to Bridging officers, directors, or shareholders. He answered "No, to the best of my knowledge, but no as it relates to me."

[249] David was an officer of Bridging. David's failure to admit Ng paid him $500,000 was deliberately untrue.

3.5.2.c Natasha

[250] The Commission alleges that Natasha misled it in four ways during her examination.

[251] First, Natasha stated that Bridging approved the $67 million loan to Ng's company 1003 Manitoba in June 2019 for him to purchase real estate in Hong Kong. We find that she knew that the purpose of the loan was to allow Ng to acquire Bridging, based on the following:

a. Natasha and David had had conversations with Ng about his purchasing an interest in Bridging before the loan was arranged;

b. the share purchase agreement was signed in May 2019;

c. in June 2019 the loan was arranged quickly after Natasha and David, returned from lunch with Ng;

d. Natasha and David instructed Temidire to prepare a term sheet for the loan, telling him "it had to go out and get approved in a couple of hours";

e. Temidire was not allowed to follow his usual practice in preparing proper documentation; instead, David and Natasha told him what to include in the term sheet, initially directing him to state that the purpose of the loan was for the acquisition of cannabis companies, a sector in which Ng had an interest;

f. Natasha told Temidire not to follow up on his suggestion to verify the legitimacy of the collateral for the loan;

g. Natasha told Temidire to leave Ng's name out of the documentation;

h. after Temidire sent the first draft of the term sheet, the Sharpes then instructed him to revise it to state that the purpose was the acquisition of commercial real estate (without any mention of Hong Kong);

i. Bridging approved the loan to Ng's company on June 10, 2019; and

j. Ng's acquisition of 50% of Bridging closed on July 8, 2019.

[252] We consider it more likely than not that if Natasha believed the purpose of the loan was investment in Hong Kong real estate, she would have mentioned that to Temidire. She would not have approved the first draft of the term sheet, which stated that the loan's purpose was investment in the cannabis industry, nor would she have approved the second draft, which made no reference to Hong Kong. Considering all the available evidence in the context of the timing of the loan and the closing of Ng's acquisition of 50% of Bridging, we infer Natasha's answer was untrue. We are satisfied she knew all along that the purpose of the loan was to fund Ng's acquisition of 50% of Bridging.

[253] Second, Natasha claimed she did not know how Gautam funded the loan from 331 Nova Scotia. The Commission submits that this statement was misleading because Natasha participated in discussions with David and Gautam about using funds from the Mid-Market Fund to purchase the Ninepoint interest.

[254] We noted above that Gautam testified Natasha was involved in one or two of his discussions with David. We accept Gautam's testimony that Natasha wrote the structure of the plan to finance the Ninepoint purchase "on a piece of paper, … it was written down and discarded after the meeting." We are satisfied that Natasha knew how Gautam funded the purported loan from 331 Nova Scotia. Her statement that she did not know was untrue.

[255] Third, Natasha said she was not aware of:

a. the $2 million loan to Ng's company 1002 Manitoba in October 2019;

b. the $10 million loan to 1002 Manitoba in February 2020; and

c. the $500,000 she received from Ng in November 2019.

[256] While we have evidence that Natasha approved these loans, we cannot find the Commission has met its burden to establish the first two matters. The investigator showed Natasha a schedule of loans and asked her whether she knew of other loans. The Commission did not identify the schedule to us and consequently we cannot conclude her answer was untrue.

[257] We find Natasha misled the Commission about the $500,000. Before asking her if she knew whether Bridging officers, directors or shareholders had received other payments from Ng, the investigator provided context for the question. The investigator first referred to the loans Bridging made to Ng and Ng's acquisition of the interest in Bridging. The investigator asked if that was the extent of the relationship between Bridging and Ng. The investigator then asked whether any Bridging officers, directors, or shareholders had other dealings with Ng, and finally, whether any of them had received additional payments from him. Natasha responded, "Not to my knowledge" to the final question. We are satisfied that Natasha was aware she had received $500,000 from Ng, making her answer misleading.

[258] Finally, Natasha stated that she drafted the 2019 year end review of the status of 1003 Manitoba loan before she learned Ng's collateral was fraudulent. The Commission submits that she became aware of Ng's fraud in February of 2020 and drafted the review in March 2020. The review reports the loan was in good standing.

[259] The memo, which is undated, reports the outstanding balance of the loan as of December 31, 2019. During her examination, Natasha stated that she wrote the memo before identifying Ng's fraud, claiming, "It would never have been written like that otherwise." However, the Commission did not provide any evidence indicating when the memo was actually written.

[260] The Commission has not met its burden to establish this allegation.

3.5.2.d Mushore

[261] The Commission alleges that Mushore misled its staff in two ways during his examination.

[262] First, the Commission alleges that Mushore told Staff that Bridging borrowed $35 million from 331 Nova Scotia to acquire the Ninepoint interest. The Commission supports its allegation with the following responses from Mushore:

> Q. You are aware that [Bridging] borrowed $35 million from 3319891 Nova Scotia company to complete this purchase of Ninepoint's share of the Income Fund. Correct?
>
> A. I am.
>
> Q. Do you recall when you first learned that [Bridging]was borrowing $35 million from 3319891 Nova Scotia?
>
> A. [Sometime around October 2018.]
>
> ...

> Q. Do you know why [Bridging] borrowed this $35 million from 3319891 Nova Scotia as opposed to a more traditional lender?
>
> A. I don't know. I know there was effort made to get a loan from a more traditional lender, as you describe. ... As I understand, this is where it landed.

[263] The Commission submits that Mushore failed to disclose that Bridging had used capital from the Mid-Market Fund to purchase the Management Interest.

[264] As we have found, Mushore was fully aware of the planned structure of the transactions. However, we are not persuaded that the Commission has established Mushore's answers were misleading. The Commission's first two leading questions do not indicate they are intended to elicit the substance rather than the form of the transaction. We are not persuaded that Mushore, by agreeing with what was put to him, intended to mislead the Commission.

[265] It is not clear to us that the intended import of the third question would have been clear to Mushore. We are not persuaded his answer was misleading.

[266] Second, the Commission alleges that Mushore stated that Bridging approved a $67 million loan to Ng's company 1003 Manitoba in June 2019 and "that he remembered reviewing a falsified Credit Committee Submission at that time even though at that point it did not exist." This allegation is based on the following exchange:

> Q. Okay. Let's look at the credit committee submission for this loan to 889 Manitoba. That is at tab 11, and it is page 161. Do you recall reviewing this credit committee submission?
>
> A. Yes, at the time of submission.
>
> Q. In or around June 2019?
>
> A. Yes.

[267] The transcript does not indicate the submission the investigator showed to Mushore was the one that approved $67 million. While the excerpt identifies the document in materials used on the examination, the Commission did not establish which of the submissions filed in evidence it was. Nor does the transcript indicate that Mushore was taken through the document or allowed to examine its it details. It seems Mushore merely agreed with the leading questions put to him.

[268] The Commission did not satisfy its onus to establish this allegation.

3.5.3 False paper trails

3.5.3.a Introduction

[269] The Commission alleges that Bridging, the Sharpes and Mushore created, or directed others to create, false paper trails by altering, deleting or concealing records. The Commission submits that such conduct is contrary to s. 122(1)(a) of the *Act*.

[270] The Commission specifically alleges that:

a. David intentionally deleted emails, and Mushore was involved in that deletion;

b. David, with Mushore's knowledge and involvement, directed that Bridging withhold documents that were required to be produced to Commission investigators in response to a summons; and

c. Natasha and Mushore, with David's knowledge, mischaracterized the $10 million loan to 1002 Manitoba in February 2020.

[271] We address each of these in turn.

3.5.3.b Deletion of emails

[272] Following its appointment, the receiver took immediate steps to secure Bridging's information technology systems. A senior member of the receiver's team involved in that work testified that he met with Bruno Novo (a member of Bridging's portfolio management team, and the receiver's principal IT contact) and the owner of the firm to which Bridging's IT functions were largely outsourced.

[273] During those discussions, the external firm's owner recalled a concerted effort in October 2020 to delete a mass quantity of emails. The firm produced a ticket that had instructed it to two things. First, the firm was to (and did) change a setting

on all of Bridging's electronic mailboxes. The effect of the change was to disable a standard feature that preserves deleted emails for between 14 and 30 days so that an administrator could recover and restore those emails if necessary. Second, the firm was instructed to delete any emails that were identified according to 18 predefined searches.

[274] Between October and December 2020, that instruction resulted in the deletion of about 34,200 emails. The process was necessarily manual to a significant degree, and required searches to be run multiple times. The search terms used correspond significantly with individuals or entities at the core of this proceeding, *e.g.*, "Gary Ng", "Gautam", "River cities [*sic*]", "3319891", "182 Crescent Road Trust".

[275] Novo (the principal IT contact at Bridging) and Mushore both testified that David provided the search terms and gave the instructions to delete the emails. Novo testified that it was made clear to him that this was to be done urgently. He did not have the authority to delete the emails, so he created the ticket with the external firm. Moreau (Bridging's general counsel) testified that David told him certain emails relating to Ng "had been killed".

[276] We agree with the Commission's submission that this deletion of emails in the face of the investigation obstructed that investigation, by creating the false appearance that the emails had never existed. The evidence is unchallenged that Bridging effected this deletion at David's instruction. We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

[277] The basis for the Commission's allegation that Mushore directed the deletion of emails is unclear. On Mushore's own testimony, he was present for some of the discussions in which Novo received instructions. Novo does not clearly implicate Mushore as having done anything other than asking Novo to come into an office to discuss the topic with David and Mushore, and to copy (but not delete) identified emails into new folders. In fact, Novo expressly testified that he did not remember whether it was David or Mushore who instructed him to carry out the searches.

[278] There is no clear evidence, from Novo or otherwise, that Mushore was anything other than a bystander to the instructions and a participant in copying certain emails. In its written submissions, the Commission asserts that David and Mushore asked Novo to run searches, but it cites no evidence in support of the conclusion that Mushore gave any such instructions. We saw none in the record.

[279] We make no finding against Mushore.

3.5.3.c Alteration and exclusion of documents

3.5.3.c.i Introduction

[280] The Commission alleges that David, Natasha and Mushore took various steps to alter documents, and to exclude documents from those being produced to the Commission during its investigation.

[281] Below, we address each specific allegation in turn. Before doing so, we note David's active role in the process of Bridging responding to the Commission's document production requirements. Unchallenged testimony from Moreau (Bridging's general counsel at the relevant time), which we accept, establishes that:

a. David insisted on reviewing and approving the sending of every document to the Commission; and

b. David frequently and repeatedly instructed Mushore and Moreau to alter and exclude documents that were to be produced to the Commission.

3.5.3.c.ii McCoshen loans

[282] The Commission alleges that Bridging provided, on David's instructions to Mushore and others, altered documents relating to the McCoshen loans, to falsely reflect that A2A, rather than McCoshen's numbered company 704 Manitoba, actually received the loan funds.

[283] The Receiver obtained two sets of documents relating to these loans. One set, from Bridging's counsel, showed that the loan proceeds would be paid to McCoshen's company 704 Manitoba. The other set, from Bridging's own records, showed that the proceeds would be paid to A2A.

[284] Moreau testified that when the loan documents were gathered in preparation for production to the Commission, David instructed him (in Mushore's presence) to alter the documents to show the recipient of the proceeds as A2A rather than 704 Manitoba. Moreau objected, but David overruled him and instructed him and Mushore to make the changes. They did so.

[285] We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

3.5.3.c.iii Ninepoint loans

[286] On April 30, 2020, the Commission sent Bridging a direction under s. 19(3) of the *Act* that required Bridging to produce all loan agreements and other documents that recorded a wide range of information about any loans that had been made by the Income Fund or the Mid-Market Fund since January 1, 2017. None of the loan schedules that Bridging produced during the investigation listed the Ninepoint loans.

[287] The Commission alleges that:

a. David directed and ensured that Bridging would provide no records relating to the Ninepoint loans to the Commission; and

b. David and Mushore instructed others to remove the Ninepoint loan from schedules that were provided to the Commission, which schedules purported to list all loans made from the funds.

[288] Moreau testified that David gave him instructions as the Commission alleges, and that Moreau complied with those instructions. Mushore's testimony was similar. He stated that David instructed Novo, in front of Mushore, to exclude the Ninepoint loans from any loan schedules produced to the OSC. We accept Moreau's and Mushore's testimony that David instructed that the Ninepoint loans be excluded. Whether Moreau or Novo carried out that instruction is of no consequence.

[289] We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

[290] The Commission did not pursue a similar allegation against Mushore, other than to note his presence when David instructed Novo. We make no finding against Mushore.

3.5.3.c.iv Loan approval process

[291] The Commission alleges Bridging provided inaccurate documents about the loan approval process, as a result of David's instructions to:

a. Mushore to alter Bridging's policies and procedures manual before Bridging produced it to the Commission, to omit references to the Credit Committee approving loans by email;

b. Mushore not to produce to the Commission emails from Credit Committee members approving loans; and

c. "others" to remove a column from a spreadsheet that listed which members voted to approve specific loans.

[292] Moreau testified that at David's direction, Bridging produced to the Commission a version of its policies and procedures manual that was altered in 2020 to delete references to the Credit Committee approving loans by email. Bridging also withheld a corresponding controls document that referred to email approvals by committee members.

[293] In response to the Commission's direction that Bridging identify the individual Credit Committee members who had approved the various loans, Bridging responded only by saying that the loans were authorized by the Investment Committee and the Credit Committee. Bridging did not identify the members who approved. The Commission asked a second time, but once again Bridging withheld the names of the members and copies of the emails by which the members had approved the loans.

[294] David instructed Novo to exclude from productions to the Commission emails that would have been responsive to the Commission's direction. David also directed Novo to delete the emails from Bridging's servers.

[295] Further, Champ had prepared a schedule of loans that listed the committee members who had approved each loan. When David saw that schedule, he instructed Mushore to direct Champ to remove the names of the committee members, purportedly to protect the integrity of the committees and their members. Champ complied.

[296] We find that Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

3.5.3.c.v Loans to Ng's company 1003 Manitoba

[297] The Commission alleges that when it required that Bridging produce the submission to the Credit Committee for the June 2019 loan to Ng's company 1003 Manitoba, David instructed Mushore first to alter the submission so that it appeared the committee had also approved the $35 million August 2019 advance at the same time.

[298] Mushore testified that David gave him that instruction and that he complied with it. Mushore's testimony is consistent with the documentary record and with Temidire's testimony. Bridging produced the altered record to the Commission, and told the Commission's investigators that the loan that had been approved was for $67 million, payable in two parts, of $32 million and $35 million.

[299] Bridging also produced a term sheet dated June 20, 2019, (more than a month before Ng requested the additional $35 million) purporting to reflect a loan of up to $67 million to 1003 Manitoba. The term sheet appears to bear Temidire's initials, although Temidire testified that he had not seen the term sheet until after the Receiver was appointed.

[300] We find that by engaging in this conduct, Bridging contravened the prohibition in s. 122(1)(a) of the *Act* against misleading the Commission, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

[301] We also find that Mushore should be held accountable for his role in altering the records. Because he was not an officer of Bridging, s. 129.2 does not apply to him. However, we conclude that his conduct as a senior member of Bridging's management, and as Bridging's chief compliance officer, substantially undermines the clear animating principle, set out in s. 122(1)(a), that no one may make a material misstatement in information provided to the Commission or to someone appointed by the Commission to investigate. Mushore's conduct therefore justifies an order under s. 127(1).

3.5.3.c.vi $2 million loan to Ng's company 1002 Manitoba

[302] The Commission alleges that Bridging, on David's and Mushore's instructions to Champ, provided altered accounting records deleting any reference to the $2 million loan made to Ng's company 1002 Manitoba in October 2019.

[303] Bridging originally produced a ledger that showed only a $6 million disbursement, in 2018, to 1002 Manitoba. After the receiver was appointed, the Commission obtained another version of the same ledger, which included a $2 million disbursement in October 2019.

[304] Champ testified that Mushore relayed to him David's instruction to remove the $2 million loan from the ledger. Moreau corroborated this testimony, recalling that Bridging's productions deleted the $2 million loan from the ledger and excluded documents relating to that loan.

[305] We find that by providing the altered record, Bridging contravened the prohibition in s. 122(1)(a) of the *Act*, and that under s. 129.2, David is equally liable, having authorized Bridging's non-compliance.

3.5.3.c.vii $10 million loan to Ng's company 1002 Manitoba

[306] The Commission alleges that Natasha and Mushore, with David's knowledge, tried to cover up the $10 million loan to Ng's company 1002 Manitoba in February 2020. The Commission alleges that Natasha:

a. concocted a story that the loan was an "advance dividend" that Bridging owed to Ng; and

b. instructed Mushore to work with Bridging's accounting team to have Bridging itself (and not the Mid-Market Fund, which had made the loan) "repay" the loan using Bridging's own money, and to falsify accounting records to align with this characterization.

[307] The Commission sent its first direction to Bridging to produce documents in February 2020, just after the $10 million loan to 1002 Manitoba was advanced. On receipt of that direction, the Sharpes met with Mushore. Even though the direction called for records relating to all loans from the Income Fund and Mid-Market Fund, Natasha's only instructions related to the Ng loan.

[308] In that meeting, Natasha suggested that they classify the loan as an advance dividend to Ng as shareholder, and that they cause Bridging itself to reimburse the Mid-Market Fund for the $10 million loan it had just made. Natasha told Mushore to instruct Bridging's finance team to arrange for the payment from Bridging to the fund. The payment was effected on February 27.

[309] Moreau corroborated this version of events.

[310] The Sharpes exerted pressure on Mushore and others to misrepresent the nature of the payments, if the Commission were to ask questions. The Sharpes insisted that Mushore not mention that the $10 million was originally intended to be a loan from the fund.

[311] Mushore acknowledged on cross-examination that he knew the Sharpes were trying to cover up the $10 million loan, and that he participated in the cover-up.

[312] We find that Bridging contravened the prohibition in s. 122(1)(a) by producing the altered records. Under s. 129.2, Natasha and David are equally liable for having authorized Bridging's non-compliance. For the same reasons set out earlier, we find that Mushore's conduct justifies an order under s. 127(1).

3.5.4 Intimidating witnesses

[313] The Commission alleges that in June and July 2021, while the investigation was ongoing, David sent intimidating texts to, and left intimidating voicemail messages for, Bridging employees including Mushore. The Commission alleges that David knew that the Commission would likely interview these individuals. The Commission submits that in doing so, David engaged in conduct that justifies an order under s. 127 of the *Act*.

[314] Unchallenged testimony and documentary evidence supports these allegations:

a. in June 2021, Novo received three profanity-laden, insulting and threatening text messages (which are in evidence) from what was then an anonymous source. Two were later determined to have come from David;

b. in June or July of 2021, Mushore received several communications in various forms from David, including profanity-laden, insulting and threatening voice mail messages (which are in evidence); and

c. in the summer of 2021, Moreau became aware that David was repeatedly viewing Moreau's LinkedIn profile, and Moreau received a text message from David cryptically saying "See you soon".

[315] We find that David knew that Novo, Mushore and Moreau were co-operating with the receiver, that David engaged in this conduct in an effort to intimidate them, and that his conduct justifies an order under s. 127(1).

3.5.5 Natasha permits surreptitious monitoring of her compelled interview

[316] The Commission's investigators conducted an examination of Natasha by telephone in October 2020. The examination was pursuant to a summons issued under s. 13 of the *Act*. Section 16 of the *Act* provides that no person shall disclose to any other person the nature or content of any questions asked under s. 13, or any testimony given under s. 13.

[317] The Commission alleges that Natasha impermissibly allowed David to listen in to her examination. We agree.

[318] In testimony that was neither contradicted nor successfully challenged on cross-examination, Mushore stated that Natasha was in a Bridging office during her examination. In Natasha's presence, David instructed Mushore to turn on the speaker on the phone Natasha was using, and to dial David's cell number from that office so that David could hear the call. David sat in his office and listened to the examination. During breaks in the examination, the Sharpes would confer with each other.

[319] We find that Natasha knowingly permitted David to listen in to her examination, contrary to s. 16 of the *Act*.

4. CONCLUSION

[320] For the above reasons, we find that:

a. with respect to the McCoshen loans:

i. David perpetrated a fraud; and

ii. David and Natasha directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud, and thereby contravened s. 126.1(1)(b) of the *Act*;

b. with respect to the Ninepoint loans:

i. David and Natasha perpetrated a fraud;

ii. David and Natasha directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud, and thereby contravened s. 126.1(1)(b) of the *Act*;

iii. Mushore indirectly participated in that fraud;

iv. Mushore's conduct related to securities, he knew or ought to have known that it perpetrated a fraud, and he thereby contravened s. 126.1(1)(b) of the *Act*;

v. Bridging failed to properly address the conflict of interest and thereby contravened s. 13.4 of NI 31-103; and

vi. David and Natasha authorized Bridging's non-compliance with s. 13.4 of NI 31-103 and are therefore deemed, under s. 129.2 of the *Act*, to also have not complied;

c. with respect to the Ng loans;

i. Natasha perpetrated a fraud; and

ii. Natasha and David directly engaged in conduct related to securities, that they knew or ought to have known perpetrated a fraud, and thereby contravened s. 126.1(1)(b) of the *Act*;

d. David contravened the prohibition in s. 122(1)(a) of the *Act* by making false or misleading statements to the Commission, as we found in paragraphs [242], [244], [245] and [249] above;

e. Natasha contravened the prohibition in s. 122(1)(a) of the *Act* by making false or misleading statements to the Commission, as we found in paragraphs [252], [254] and [257] above;

f. Bridging contravened the prohibition in s. 122(1)(a) of the *Act* by providing misleading information to the Commission, as we found in paragraphs [276], [285], [289], [296], [300], [305] and [312] above;

g. David authorized Bridging's contraventions set out in subparagraph (f) immediately above, and under s. 129.2 is deemed to also have not complied with Ontario securities law;

h. Natasha authorized Bridging's contravention set out in paragraph [312] above, and under s. 129.2 is deemed to also have not complied with Ontario securities law;

i. an order under s. 127(1) is justified against Mushore in respect of his role in Bridging providing the Commission with misleading information regarding the Ng loans, as we found in paragraphs [301] and [312] above;

j. an order under s. 127(1) is justified against David in respect of his efforts to intimidate Novo, Mushore and Moreau; and

k. Natasha contravened s. 16 of the *Act* by permitting David to listen to her examination.

[321] The parties shall contact the Registrar by 4:30pm on November 15, 2024, to arrange for a case management hearing in preparation for a hearing regarding sanctions and costs. The case management hearing is to take place on a date that is mutually convenient, that is fixed by the Registrar, and that is no later than December 6, 2024.

[322] If the parties are unable to present a mutually convenient date for the case management hearing to the Registrar, then each party may submit to the Registrar, for consideration by a panel of the Tribunal, one-page written submissions regarding a date for the case management hearing. Any such submissions shall be submitted by 4:30pm on November 15, 2024.

Dated at Toronto this 28th day of October, 2024

"Russell Juriansz"

"Timothy Moseley"

"Sandra Blake"

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B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Multilateral Staff Notice 58-317 – Review of Disclosure Regarding Women on Boards and in Executive Officer Positions

CSA Multilateral Staff Notice 58-317 – *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Multilateral Staff Notice 58-317
Review of Disclosure Regarding Women on Boards and in Executive Officer Positions

Year 10 Report

October 30, 2024

Highlights of review findings at a glance

Board seats

29%
of board seats were held by women

8%
of the chairs of the board were women

37%
of vacated board seats were filled by women

Executive officer positions

5%
of issuers had a woman chief executive officer (CEO)

16%
of issuers had a woman chief financial officer (CFO)

72%
of issuers had at least one woman in an executive officer position

Policies and targets

64%
of issuers adopted a policy relating to the representation of women on their board

44%
of issuers adopted targets for the representation of women on their board

7%
of issuers adopted targets for the representation of women in executive officer positions

Term limits

25%
of issuers adopted director term limits

40%
of issuers adopted other mechanisms of board renewal (but not director term limits)

32%
of issuers did not adopt director term limits or other mechanisms of board renewal

Disclosure review

Purpose of report

This report outlines key findings from a recent review of public disclosure required by Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) regarding women on boards and in executive officer positions. This is the tenth consecutive annual review of this disclosure that we have conducted.[1] The review was completed primarily for the purposes of identifying key trends. A qualitative assessment of compliance with the disclosure requirements was not conducted.

We expect that this will be the final year that we conduct a review of the above-noted disclosures.

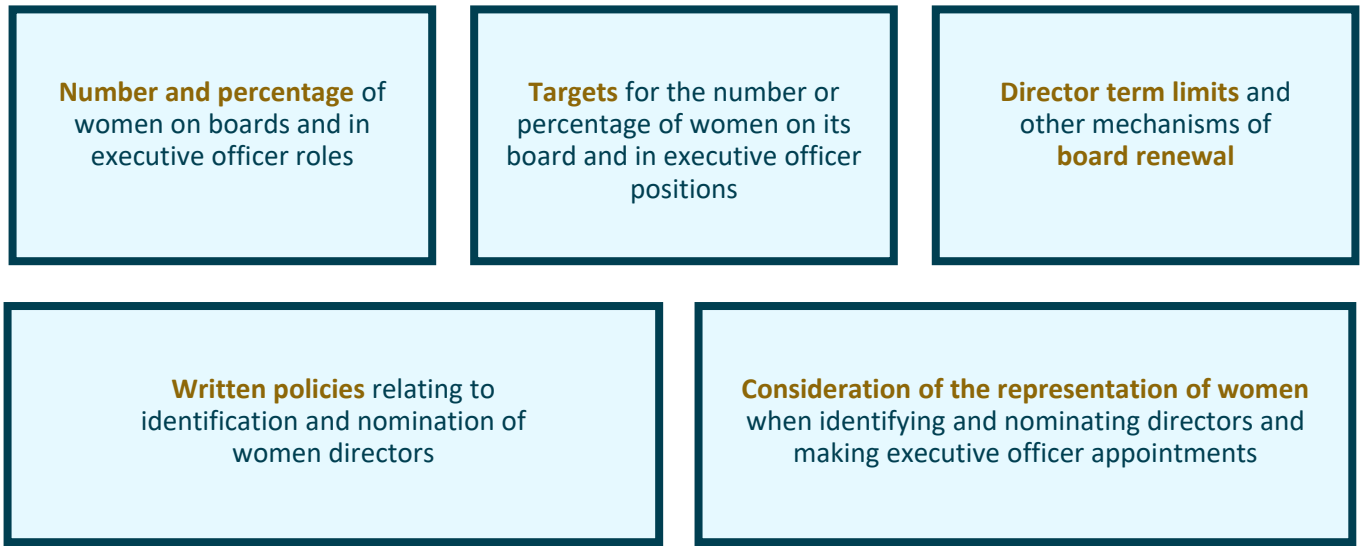
After ten annual reporting periods under the current disclosure standards, we are exploring potential changes to diversity-related disclosure requirements, as outlined in our notice and request for comment dated April 13, 2023 about proposed amendments to Form 58-101F1 *Corporate Governance Disclosure* of NI 58-101 and proposed changes to National Policy 58-201 *Corporate Governance Guidelines*.

We are continuing to work towards a harmonized national disclosure framework considering feedback received following our publication for comment.

[1] The trends from our first nine annual reviews are set out in CSA Multilateral Staff Notices 58-307 (year 1), 58-308 (year 2), 58-309 (year 3), 58-310 (year 4), 58-311 (year 5), 58-312 (year 6), 58-313 (year 7), 58-314 (year 8) and 58-316 (year 9).

Disclosure requirements

Subject to certain exceptions[2], issuers listed on the Toronto Stock Exchange (TSX) and other non-venture issuers are required to provide disclosure on an annual basis in the following five areas:



The objective of the disclosure requirements is to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that issuers take in respect of such representation.

Review sample

As of May 31, 2024, approximately 1,809 issuers were listed on the TSX, of which approximately 709 were subject to the disclosure requirements. The data summarized in this report is based on a review sample of 574 issuers that had year-ends between December 31, 2023 and March 31, 2024 (Year 10) and filed information circulars or annual information forms by July 31, 2024. A breakdown of the issuers in the review sample by market capitalization and industry is set out in Annex A.

[2] Certain TSX listed issuers, such as exchange traded funds, closed-end funds, designated foreign issuers and SEC foreign issuers are not subject to the disclosure requirements.

Year-over-year comparison of key trends

The following is a snapshot of the year-over-year comparison of the key trends identified in our reviews[3]:

Trends[4]	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Board representation										
Total board seats occupied by women	11%	12%	14%	15%	17%	20%	22%	24%	27%	29%
Chairs of the board who are women	--	--	--	--	5%	6%	6%	7%	8%	8%
Board vacancies filled by women	--	--	26%	29%	33%	30%	35%	45%	43%	37%
Issuers with at least one woman on their board	49%	55%	61%	66%	73%	79%	82%	87%	89%	90%
Issuers with three or more women on their board	8%	10%	11%	13%	15%	20%	24%	30%	36%	42%
Board seats occupied by women for issuers with < $1 billion market capitalization	8%	9%	10%	11%	13%	15%	16%	18%	21%	23%
Board seats occupied by women for issuers with $1-2 billion market capitalization	11%	13%	17%	19%	20%	24%	24%	27%	30%	31%
Board seats occupied by women for issuers with $2-10 billion market capitalization	17%	18%	18%	21%	23%	26%	28%	31%	33%	35%
Board seats occupied by women for issuers with over $10 billion market capitalization	21%	23%	24%	25%	27%	31%	30%	33%	35%	36%

[3] Due to the scope of our sample, our findings, and the comparisons between the current year and the prior nine years provide only a partial picture. The issuers in the current year and the prior year samples vary for several reasons including:

- issuers being delisted from the TSX,
- issuers' listings of securities being moved to the TSX-V,
- corporate reorganizations resulting in issuers no longer being listed on the TSX,
- issuers filing information circulars after July 31, 2024 (Year 10),
- issuers completing initial public offerings and becoming listed on the TSX, and
- issuers ceasing to be reporting issuers.

[4] Where a percentage is not identified in this table for a particular trend in a specific year, it is generally because that trend was not included in our reporting during that year's review process.

Trends[5]	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Executive officers										
Issuers with at least one woman in an executive officer position[6]	60%	59%	62%	66%	64%	65%	67%	70%	71%	72%
Issuers with a woman CEO	--	--	--	4%	4%	5%	5%	5%	5%	5%
Issuers with a woman CFO	--	--	--	14%	15%	15%	17%	19%	17%	16%
Policies										
Issuers that adopted a policy relating to the representation of women on their board	15%	21%	35%	42%	50%	54%	60%	61%	64%	64%
Targets										
Issuers that adopted targets for the representation of women on their board	7%	9%	11%	16%	22%	26%	32%	39%	43%	44%
Issuers that adopted targets for the representation of women in executive officer positions[6]	2%	2%	3%	4%	3%	4%	6%	4%	5%	7%
Term limits										
Issuers that adopted director term limits	19%	20%	21%	21%	21%	23%	23%	21%	23%	25%

[5] Where a percentage is not identified in this table for a particular trend in a specific year, it is generally because that trend was not included in our reporting during that year's review process.

[6] The decrease in year 5 is driven in part by a change in methodology used to capture executive officer data. Issuers may have included in their disclosure, positions and/or targets for a group other than executive officers, as that term is defined in NI 58-101. In year 5, we focused more closely on disclosure regarding "executive officers" as defined.

Board seat findings

The percentage of board seats held by women increased from 11% in year 1 to 29% in year 10.

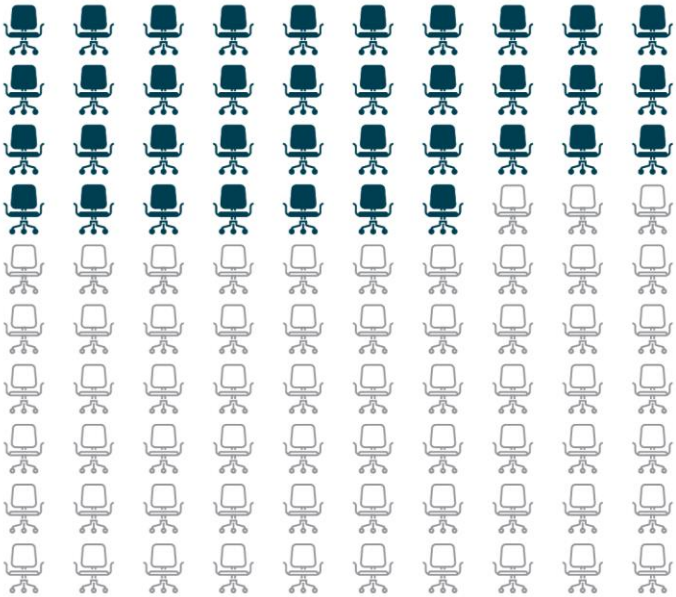
Board seats held by women

29%

This year, 581 board seats were vacated and 438 of those seats were filled. Of those filled seats, approximately 37% (160 seats) were filled by women.

Board vacancies filled by women

37%



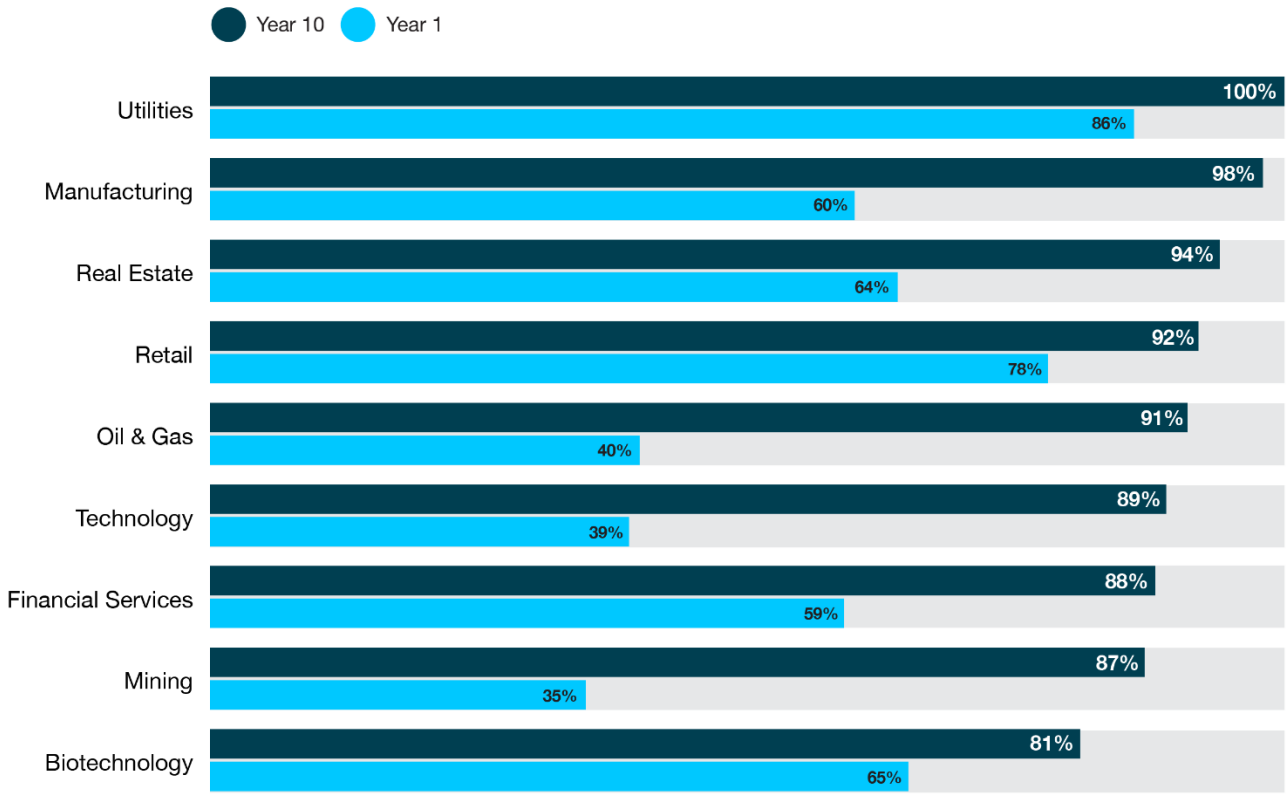
Other notable findings

Variation among industries

The number of women on boards varied by industry. The utilities, manufacturing and real estate industries had the highest percentage of issuers with one or more women on their boards. [7] The biotechnology, mining and financial services industries had the lowest percentage of issuers with one or more women on their boards. Over the past 10 years, the percentage of issuers with at least one woman on the board has increased significantly across all industries.

Refer to Annex B for a year-over-year comparison of the percentage of issuers with one or more women on their boards by industry.

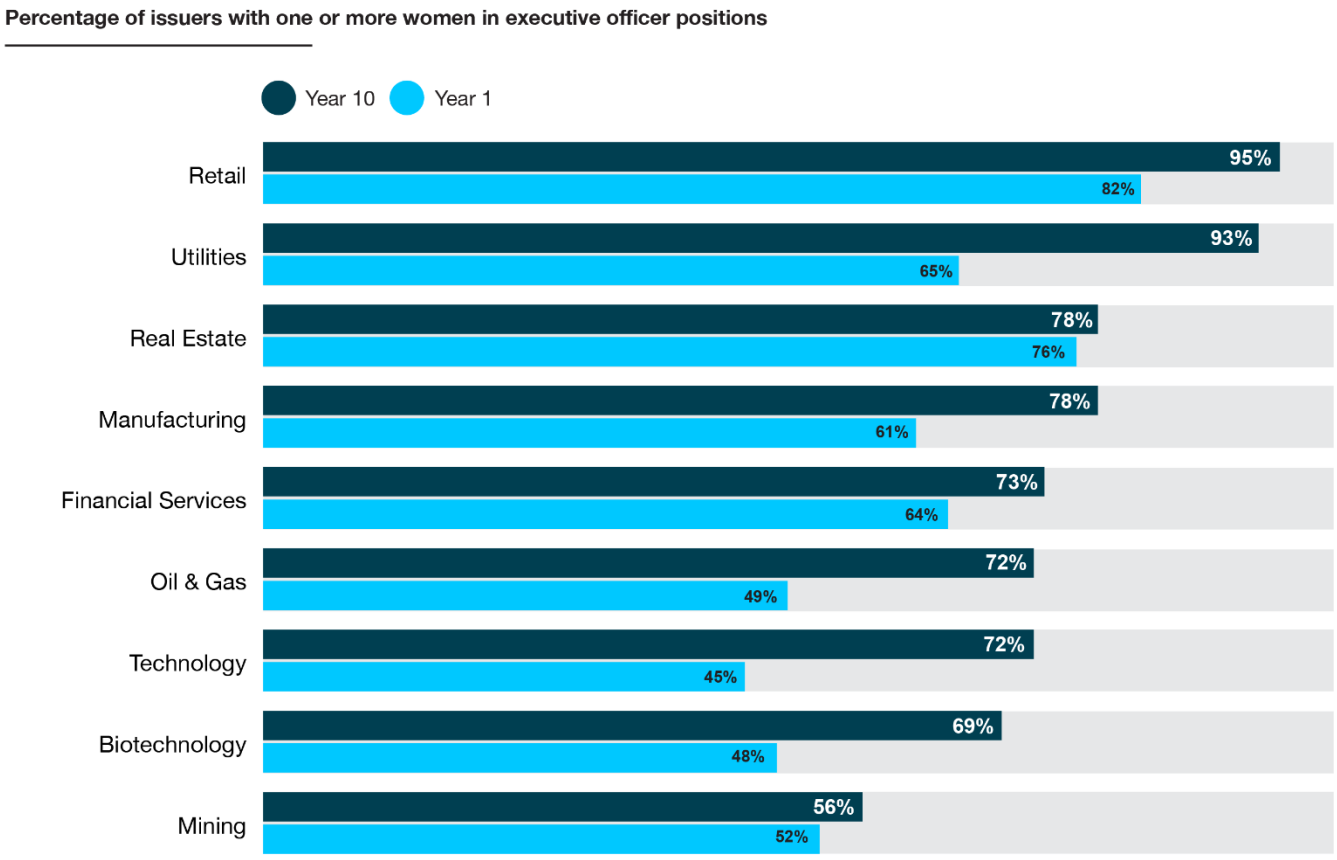
Percentage of issuers with one or more women on boards



[7] The larger Canadian banks, which are part of an industry that has generally been an early adopter of diversity initiatives, are not captured in the data sample for this review.

The number of women in executive officer positions also varied by industry. The retail, utilities, manufacturing and real estate industries had the highest percentage of issuers with one or more women in executive officer positions. The mining, biotechnology, oil & gas and technology industries had the lowest percentage of issuers with one or more women in executive officer positions. Over the past 10 years, the percentage of issuers with at least one woman in an executive officer position has increased by 20% or more in each of the utilities, technology, biotechnology and oil & gas industries.

Refer to Annex C for a year-over-year comparison of the percentage of issuers with one or more women in executive officer positions by industry.



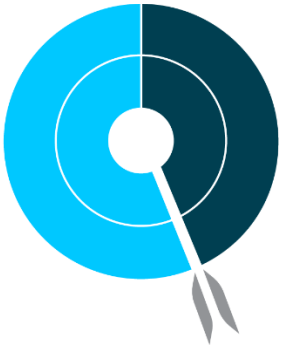
Diversity measures and board seats held by women

There was a correlation between issuers adopting certain diversity measures and the proportion of board seats held by women.

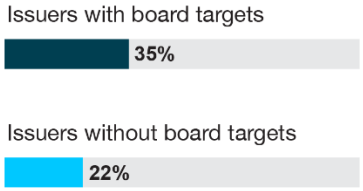
Issuers who set **targets** for the representation of women on their boards had a greater proportion of board seats held by women. Issuers that adopted board targets had an average of 35% of their board seats held by women, compared to 22% for issuers without targets.

Percentage of issuers with targets

44%



Board seats held by women

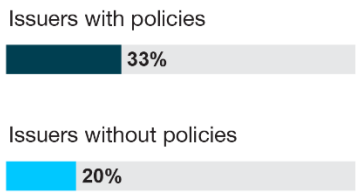


Issuers that adopted a **written policy relating to the representation of women on their board** also tended to have a greater proportion of board seats held by women. Issuers that adopted a policy relating to the representation of women on their boards had an average of 33% of women on their boards, compared to 20% for issuers with no such policy.

Percentage of issuers with policies

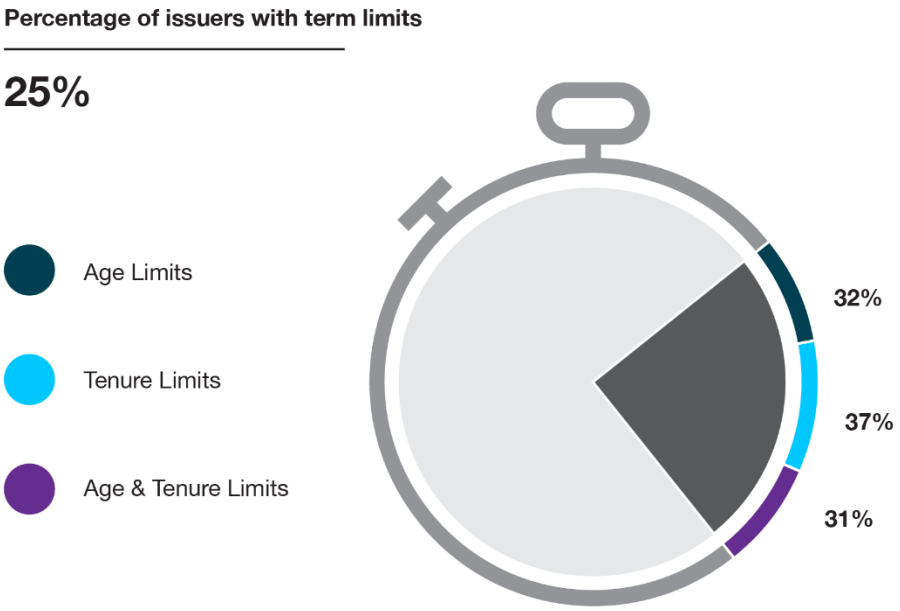
64%

Board seats held by women



Term limits

Of the 25% of issuers we reviewed that had adopted director term limits, 32% adopted age limits alone, 37% adopted tenure limits alone, and 31% adopted both age and tenure limits.



Issuers that adopted term limits had an average of 35% of women on their boards, compared to 26% for issuers with no term limits.

Issuers that adopted other mechanisms of board renewal alone had an average of 29% of women on their boards, compared to 23% for issuers with no term limits or other mechanisms for board renewal.

Questions

If you have any questions regarding this report, please contact:

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Nova Scotia Securities Commission

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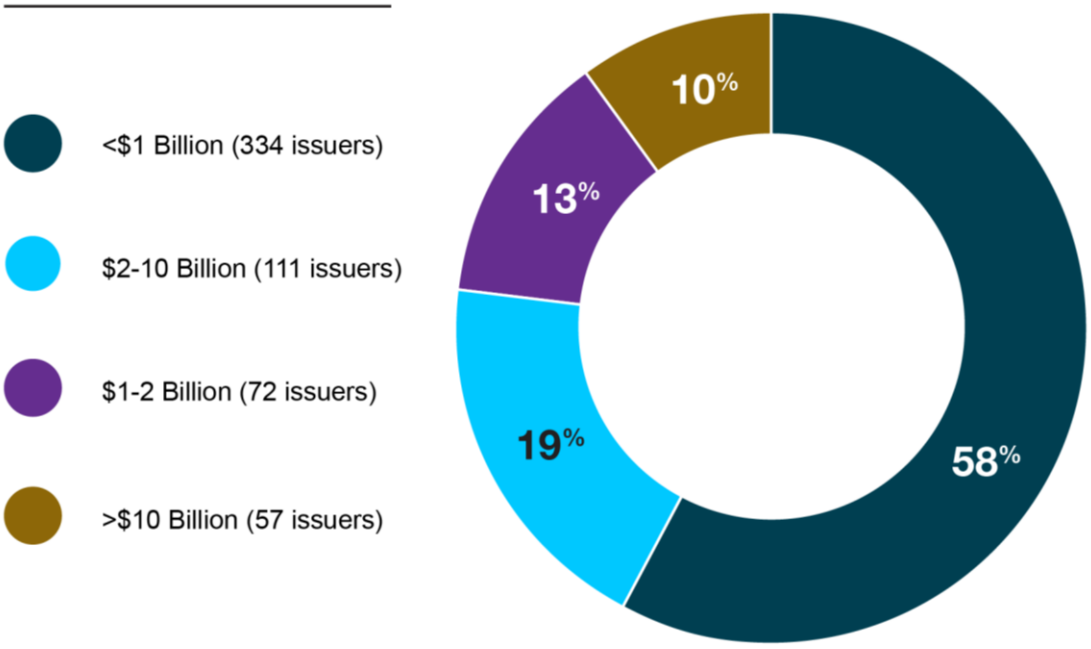
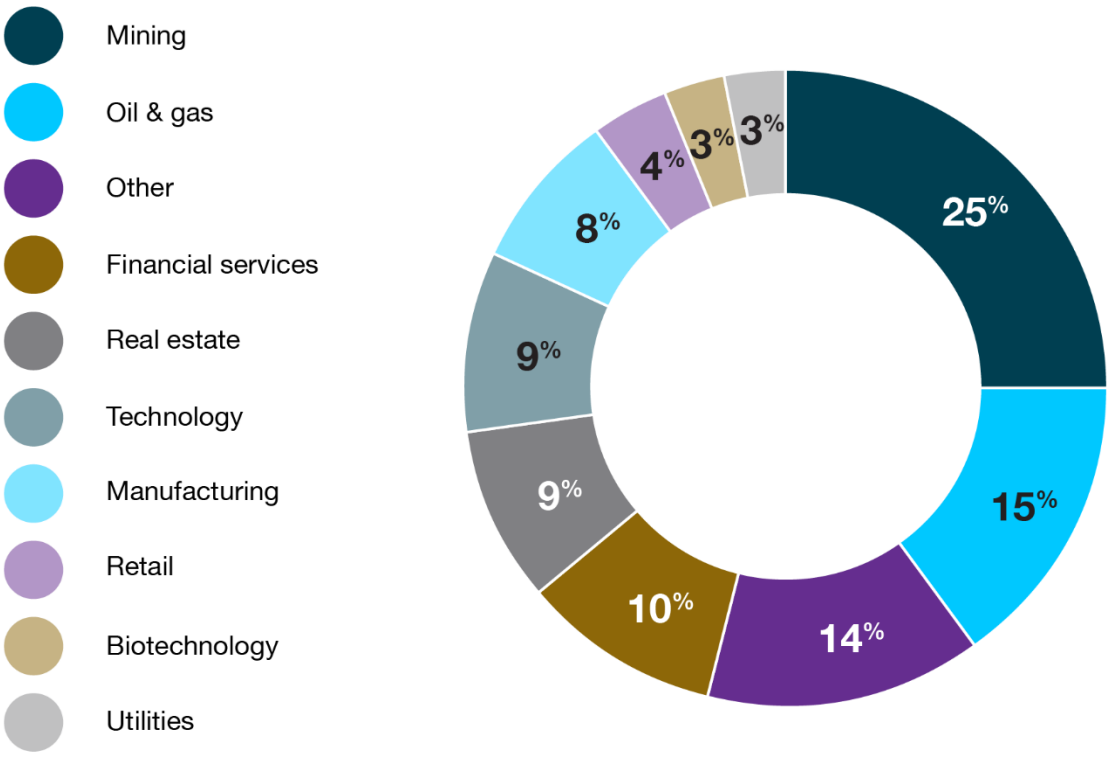
Annex A

Market capitalization in sample (issuer breakdown)



Industries in sample



Annex B

The following is a year-over-year comparison of the percentage of issuers with at least one woman on their board by industry:

Industry	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Biotechnology	65%	57%	56%	56%	67%	59%	64%	85%	82%	81%
Financial Services	59%	67%	60%	61%	73%	77%	85%	86%	88%	88%
Manufacturing	60%	68%	84%	89%	93%	93%	95%	98%	98%	98%
Mining	35%	38%	54%	59%	62%	72%	78%	80%	82%	87%
Oil & Gas	40%	40%	45%	56%	70%	73%	81%	84%	89%	91%
Real Estate	64%	66%	59%	73%	80%	90%	89%	91%	94%	94%
Retail	78%	79%	89%	84%	86%	91%	94%	88%	96%	92%
Technology	39%	52%	52%	68%	73%	84%	74%	86%	92%	89%
Utilities	86%	82%	86%	81%	85%	87%	90%	90%	95%	100%

Annex C

The following is a year-over-year comparison of the percentage of issuers with at least one woman in an executive officer position by industry:

Industry	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Biotechnology	48%	66%	71%	64%	61%	73%	82%	71%	69%	69%
Financial Services	64%	63%	66%	71%	76%	71%	74%	75%	79%	73%
Manufacturing	61%	81%	79%	80%	70%	74%	76%	87%[8]	87%	78%
Mining	52%	49%	52%	56%	52%	52%	57%	55%	50%	56%
Oil & Gas	49%	46%	48%	53%	54%	58%	58%	66%	69%	72%
Real Estate	76%	76%	80%	80%	83%	79%	79%	85%	87%	78%
Retail	82%	71%	68%	76%	80%	78%	88%	88%	90%	95%
Technology	45%	44%	59%	52%	55%	68%	55%	61%	69%	72%
Utilities	65%	73%	67%	75%	70%	75%	79%	85%[8]	87%	93%

[8] This percentage has been updated/corrected, as compared to the amount originally disclosed in the year 8 report.

B.1.2 CSA Notice Regarding Coordinated Blanket Order 96-932 Re Temporary Exemptions from Certain Derivatives Data Reporting Requirements

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA NOTICE REGARDING
COORDINATED BLANKET ORDER 96-932
RE TEMPORARY EXEMPTIONS FROM CERTAIN DERIVATIVES DATA REPORTING REQUIREMENTS

October 31, 2024

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing substantively harmonized exemptions from certain derivatives data reporting requirements under Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (Québec) and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (collectively, the **Trade Reporting Rules**).

Every member of the CSA is implementing the relief through a coordinated local blanket order (collectively, the **Blanket Order**). Although the outcome is the same in all CSA jurisdictions, the language of the Blanket Order issued by each province or territory may not be identical because each jurisdiction's blanket order reflects certain differences among the Trade Reporting Rules and must fit within the authority provided in local securities legislation.

Background

For over-the-counter (**OTC**) derivatives between two end-users, reporting requirements under the Trade Reporting Rules may apply to one or both end-users. Amendments to each of the Trade Reporting Rules published on July 25, 2024 (collectively, the **Amendments**) provide, among other things, end-users of OTC derivatives with certain intended reductions in regulatory burden under the Trade Reporting Rules. The Amendments will come into force on July 25, 2025.

Description of Blanket Order

The purpose of the Blanket Order is to provide end-users with the temporary exemptions listed below from the Trade Reporting Rules to enable them to benefit from certain intended reductions in regulatory burden under the Amendments without having to wait until they come into force:

- *End-user reporting of creation data*

  This exemption provides a reporting counterparty that is not a qualified reporting counterparty, as defined in the Amendments, with an extended period of time to report creation data, which they must report no later than the end of the second business day following the execution date of a transaction. This exemption applies in all CSA jurisdictions.

- *End-user reporting of life-cycle event data*

  This exemption provides a reporting counterparty that is not a qualified reporting counterparty, as defined in the Amendments, with an extended period of time to report life-cycle event data, which they must report no later than the end of the second business day following the day on which the life-cycle event occurred. This exemption applies in all CSA jurisdictions.

- *End-user reporting of valuation data*

  This exemption exempts a reporting counterparty that is neither a derivatives dealer nor a recognized or exempt or reporting clearing agency or reporting clearing house, from reporting valuation data. This exemption applies in all CSA jurisdictions.

- *End-user reporting of commodity derivatives*

  This exemption exempts a reporting counterparty that is a local counterparty and is not a qualified reporting counterparty, each as defined in the Amendments, subject to certain conditions, from reporting commodity derivatives below a specified notional threshold. This exemption only applies in Ontario, Manitoba and Québec

because Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* already provides for a substantively equivalent exclusion.

- *End-user reporting of derivatives between affiliated entities*

  This exemption exempts a reporting counterparty from reporting a transaction where both parties to the transaction are not qualified reporting counterparties and are affiliated entities, each as defined in the Amendments. The term "affiliated entity" includes certain partnerships and trusts, subject to the terms of the Amendments. This exemption only applies in Ontario and Manitoba because Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* and the Autorité des marchés financiers' Blanket Order n° 2015-PDG-0089 already provide for a substantively equivalent exclusion.

Effective Date and Term

The Blanket Order is effective on October 31, 2024. It will cease to be effective on July 25, 2025, which is the date that the Amendments will come into force, unless extended by the CSA jurisdictions.

Questions

If you have questions about this CSA Notice, please contact any of the following:

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B.2
Orders

B.2.1 Ontario Securities Commission – Coordinated Blanket Order 96-932

ONTARIO SECURITIES COMMISSION

COORDINATED BLANKET ORDER 96-932

Citation: Re Temporary Exemptions from Certain Derivatives Data Reporting Requirements

October 31, 2024

Definitions

1. Terms defined in the *Securities Act* (Ontario) (the **Act**), Ontario Securities Commission Rule 14-501 *Definitions*, and Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (the **TR Rule**) have the same meaning in this Order.

2. In this Order, each of the terms "affiliated entity" and "qualified reporting counterparty" has the same meaning as in the TR Amendments.

Background

3. On July 25, 2024, the Ontario Securities Commission (the **Commission**) amended the TR Rule (the **TR Amendments**).[1] The TR Amendments come into force on July 25, 2025.

4. The TR Rule provides that a reporting counterparty is required to report creation data relating to a transaction in no event later than the end of the business day following the execution of the transaction. The TR Amendments provide that a reporting counterparty that is not a qualified reporting counterparty is required to report creation data no later than the end of the second business day following the execution of the transaction.

5. The TR Rule provides that a reporting counterparty is required to report life-cycle event data in no event later than the end of the business day following the day on which the life-cycle event occurs. The TR Amendments provide that a reporting counterparty that is not a qualified reporting counterparty is required to report life-cycle event data no later than the end of the second business day following the day on which the life-cycle event occurs.

6. The TR Rule requires a reporting counterparty that is not a derivatives dealer or recognized or exempt clearing agency to report valuation data quarterly. The TR Amendments provide that a reporting counterparty that is not a derivatives dealer or a recognized or exempt clearing agency is not required to report valuation data.

7. The TR Rule provides that a local counterparty is not required to report derivatives data for a transaction that involves a commodity derivative, other than cash or currency, if the local counterparty is not a derivatives dealer or a recognized or exempt clearing agency, and if the local counterparty has less than $500,000 aggregate notional value, without netting, under all its outstanding transactions at the time of the transaction including the additional notional value related to that transaction. The TR Amendments replace this exclusion with an exclusion that applies, subject to the terms of the TR Amendments, with reference to $250,000,000 aggregate month-end gross notional amount under all outstanding commodity derivatives.

8. The TR Rule provides that a reporting counterparty is not required to report derivatives data in relation to a transaction if, at the time the transaction is executed, the counterparties to the transaction are "affiliated companies" and neither counterparty is a derivatives dealer, recognized or exempt clearing agency, or affiliate thereof. The TR Amendments replace this exclusion with an exclusion that applies, subject to the terms of the TR Amendments, if the counterparties to the transaction are affiliated entities. The TR Amendments provide that the term "affiliated entity" includes certain partnerships, limited partnerships, and trusts, subject to the terms of the TR Amendments.

[1] See OSC Notice of Publication at https://www.osc.ca/en/securities-law/instruments-rules-policies/9/91-507/osc-notice-publication-amendments-osc-rule-91-507-trade-repositories-and-derivatives-data

9. The Commission seeks to provide market participants with the exemptions listed below to enable them to benefit from certain intended reductions in regulatory burden under the TR Amendments without having to wait until they come into force.

Order

End-user reporting of creation data

10. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under subsection 143.11(2) of the Act that a reporting counterparty is exempt from reporting creation data relating to a transaction within the time periods prescribed under section 31 of the TR Rule, provided that:

    (a) the reporting counterparty is not a qualified reporting counterparty,

    (b) the reporting counterparty reports creation data no later than the end of the second business day following the execution date of the transaction.

End-user reporting of life-cycle event data

11. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under subsection 143.11(2) of the Act that a reporting counterparty is exempt from reporting life-cycle event data relating to a transaction within the time periods prescribed under section 32 of the TR Rule, provided that:

    (a) the reporting counterparty is not a qualified reporting counterparty,

    (b) the reporting counterparty reports life-cycle event data no later than the end of the second business day following the day on which the life-cycle event occurs.

End-user reporting of valuation data

12. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under subsection 143.11(2) of the Act that a reporting counterparty that is not a derivatives dealer or a recognized or exempt clearing agency is exempt from reporting valuation data under section 33 of the TR Rule.

End-user reporting exclusion for commodity derivatives

13. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under subsection 143.11(2) of the Act that a local counterparty is exempt from a requirement under the TR Rule to report derivatives data relating to a commodity derivative, provided that:

    (a) the local counterparty is not a qualified reporting counterparty,

    (b) the aggregate month-end gross notional amount under all outstanding transactions in commodity derivatives of the local counterparty, and of each affiliated entity of the local counterparty that is a local counterparty in a jurisdiction of Canada, other than under paragraph (b) of the definition of “local counterparty” as defined under Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*, excluding transactions with an affiliated entity, did not, in any calendar month in the preceding 12 calendar months, exceed $250 000 000,

    (c) the local counterparty begins to report derivatives data 180 days after the date that the local counterparty ceases to satisfy a condition under paragraphs (a) or (b), unless during that 180-day period the local counterparty again satisfies the condition.

End-user reporting exclusion for transactions with affiliated entities

14. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under subsection 143.11(2) of the Act that a reporting counterparty is exempt from reporting derivatives data under the TR Rule in relation to a transaction if, at the time the transaction is executed, the counterparties to the transaction are affiliated entities and neither counterparty is a qualified reporting counterparty.

Effective Date and Term

15. This Order comes into effect on October 31, 2024 and will cease to be effective on July 25, 2025, unless extended by the Commission.

For the Commission:

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

B.2.2 Gowest Gold Ltd. – s. 1(6) of the OBCA

Headnote

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

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
GOWEST GOLD LTD.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

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

AND UPON the Applicant representing to the Commission that:

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

2. The registered and head office of the Applicant is located at 1400-80 Richmond Street West, Toronto, Ontario M5H 2A4;

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

4. On October 18, 2024 the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*; and

5. The representations set out in the Reporting Issuer Order continue to be true.

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

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

DATED at Toronto this 24th day of October, 2024.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0579

B.2.3 Gowest Gold Ltd.

Headnote

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

Applicable Legislative Provisions

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

October 18, 2024

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

AND

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

AND

IN THE MATTER OF
GOWEST GOLD LTD.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2024/0563

B.2.4 Miata Holdings Inc.

Headnote

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

Applicable Legislative Provisions

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

October 29, 2024

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

AND

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

AND

IN THE MATTER OF
MIATA HOLDINGS INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0609

B.3
Reasons and Decisions

B.3.1 Global X Investments Canada Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from concentration restriction in subsection 2.1(1) of NI 81-102 to permit mutual funds to purchase equity securities of the constituent issuers of an underlying equal-weighted index in approximately the same proportion as they are reflected in the index, in accordance with, and as limited by, their investment objectives, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1) and 19.1.

October 22, 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
GLOBAL X INVESTMENTS CANADA INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of Global X Equal Weight Canadian Groceries & Staples Index ETF (**MART**), Global X Equal Weight Canadian Telecommunications Index ETF (**RING**) and Global X Equal Weight Canadian Insurance Index ETF (**SAFE**), as well as any similar future exchange-traded mutual funds managed by the Filer or an affiliate of the Filer (each, a **Future Fund** and, together with MART, RING and SAFE, the **Funds**), for a decision (the **Exemption Sought**) under the securities legislation of the principal regulator (the **Legislation**) relieving the Funds from subsection 2.1(1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**), in order to permit the Funds to purchase securities of an issuer, enter into a specified derivatives transaction or purchase an index participation unit even though, immediately after the transaction, more than 10% of the net asset value (**NAV**) of the Funds would be invested, directly or indirectly, in securities of any issuer (the **Concentration Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for the application; 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 provinces and territories of Canada other than the Jurisdiction (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

The Filer

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

2. The Filer will be the promoter, trustee and manager of the Funds and is registered as a portfolio manager in Alberta, British Columbia, Ontario and Québec, an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan, a commodity trading manager and a commodity trading adviser in Ontario and an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador.

3. The Filer or an affiliate or associate of the Filer is, or will be, the investment fund manager of the Funds.

The Funds

4. The Funds will each be an exchange-traded mutual fund governed by the laws of a Jurisdiction of Canada and a reporting issuer under the laws of the Jurisdictions.

5. The Filer has filed a preliminary long form prospectus on behalf of MART, SAFE and RING with the securities regulatory authority in each of the Jurisdictions.

6. The Funds will be subject to NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities.

7. The Funds will be subject to National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**).

8. The Units of the Funds will (subject to satisfying the Toronto Stock Exchange's (the **TSX**) original listing requirements) be listed on the TSX or such other designated exchange in Canada (the **Designated Exchange**).

9. The investment objective of each of MART, RING and SAFE are set out in the table below:

Fund	Investment Objective
Global X Equal Weight Canadian Groceries & Staples Index ETF	MART seeks to replicate, to the extent possible and net of expenses, the performance of an equal-weighted index designed to provide exposure to the largest Canadian food and staples retail companies (currently, the Mirae Asset Equal Weight Canadian Groceries & Staples Index).
Global X Equal Weight Canadian Telecommunications Index ETF	RING seeks to replicate, to the extent possible and net of expenses, the performance of an equal-weighted index designed to provide exposure to the largest Canadian telecommunication companies (currently, the Mirae Asset Equal Weight Canadian Telecommunications Index).
Global X Equal Weight Canadian Insurance Index ETF	SAFE seeks to replicate, to the extent possible and net of expenses, the performance of an equal-weighted index designed to provide exposure to the largest Canadian insurance companies (currently, the Mirae Asset Equal Weight Canadian Insurance Index).

10. The investment objective and investment strategy of the Funds, as well as the risk factors associated therewith, including concentration risk, are and will be disclosed in the prospectus of the Funds, as may be amended from time to time.

11. In order to achieve its investment objectives, each Fund will invest in equity securities (the **Shares**) of the constituent issuers (the **Constituent Issuers**) of an underlying index (an **Index**) in approximately the same proportion as they are reflected in the Index and/or may hold securities of one or more exchange-traded funds that replicate the performance of the Index.

12. Each Index may not be considered a "permitted index" as such term is defined in NI 81-102 at the inception of a Fund.

13. The current Constituent Issuers are set out in the table below:

Fund	Index	Constituent Issuer and weighting in Index as of September 20, 2024	Market Capitalization as of September 20, 2024
Global X Equal Weight Canadian Groceries & Staples Index ETF	Mirae Asset Equal Weight Canadian Groceries & Staples Index	Empire Co. Ltd., Non-Voting Class A Shares (21.41%)	9,425,611,581
		Loblaw Companies Limited (20.24%)	53,393,096,571
		Metro Inc. (19.95%)	18,476,879,000
		Dollarama Inc. (20.23%)	38,146,933,572
		Alimentation Couche-Tard Inc. (18.17%)	72,797,692,226
Global X Equal Weight Canadian Telecommunications Index ETF	Mirae Asset Equal Weight Canadian Telecommunications Index	Telus Corporation (33.30%)	33,715,500,000
		BCE Inc. (33.20%)	43,387,777,360
		Rogers Communications Inc., Class B Non-voting Shares (33.50%)	29,219,642,327
Global X Equal Weight Canadian Insurance Index ETF	Mirae Asset Equal Weight Canadian Insurance Index	Sun Life Financial Inc. (25.68%)	44,403,768,000
		Great-West Lifeco Inc. (25.49%)	42,701,322,772
		Manulife Financial Corporation (24.80%)	69,597,150,000
		Intact Financial Corporation (24.03%)	45,530,970,111

14. Each Index will rebalance its portfolio quarterly (an **Index Rebalance Date**). In accordance with the current index methodology of each applicable Index, each Constituent Issuer will be assigned an equal weight of the applicable Index in connection with each Index Rebalance Date.

15. Any Future Funds will similarly seek to replicate the performance of an equal-weighted index that employs a rules-based methodology pursuant to which Constituent Issuers would be assigned an equal weight in connection with each applicable Index Rebalance Date. Each Index will consist of a minimum of three Constituent Issuers. The Filer expects that the Constituent Issuers of each applicable Index of the Future Funds will be large public issuers with liquid markets for their Shares, and will generally have free float market capitalizations of at least $3 billion and minimum one and six month average daily trading volumes of $8 million.

16. Following an Index Rebalance Date, the Funds will generally acquire and/or dispose of the appropriate number of Shares in order to track the portfolio weighting of the applicable Index. As a result: (i) units of the Funds may be issued, or cash may be paid, in consideration for the Shares making up the applicable Index and to be acquired by the Funds, as determined by its portfolio adviser; and (ii) units may be exchanged in consideration for those securities that the portfolio adviser determines should be sold by the Funds, or cash may be paid as determined by the portfolio adviser. Generally, such transactions may be implemented by a transfer of Shares to the Funds that the portfolio adviser determines should be acquired by the Funds or a transfer of those securities that the portfolio adviser determines should be sold by the Funds.

17. Outside of an Index Rebalance Date, any investments by the Funds (owing, for example, to subscriptions received in respect of units of the Funds), if any, will be such that securities are acquired up to the same weights as such securities exist in the Funds' portfolio, based on their relative market values, at the time of such investment.

18. The Funds wish to be able to invest in Shares of the Constituent Issuers, such that immediately after a purchase, more than 10 percent of its net assets may be invested in the Shares of one Constituent Issuer for the purposes of determining compliance with the Concentration Restriction.

19. The Shares are or will be listed on the TSX or another Designated Exchange.

Rationale for Investment

20. The Filer notes that, in respect of the Funds, their strategies to acquire securities of an applicable Constituent Issuer will be transparent, passive and fully disclosed to investors. The Funds will not invest in securities other than the Shares. In addition, in respect of the Funds, the names of the Constituent Issuers to be invested in will be listed on the Funds' website. Consequently, unitholders of the Funds will be fully aware of the risks involved with an investment in the securities of the Funds.

21. Given the composition of each Index and the proposed composition of each of the Funds' portfolios, it would be impossible for a Fund to achieve its investment objectives and pursue its investment strategies without obtaining relief from the Concentration Restriction.

22. The units of the Funds will be highly liquid securities, as designated brokers act as intermediaries between investors and the Funds, standing in the market with bid and ask prices for the units of the Funds to maintain a liquid market for the units of the Funds. The majority of trading in units of the Funds will occur in the secondary market.

23. If required to facilitate distributions or pay expenses of a Fund, the Shares will be sold pro-rata across the Fund's portfolio according to their relative market values at the time of such sale.

24. Future subscriptions proceeds from the sale of units of a Fund, if any, will be used to acquire Shares of each Constituent Issuer up to the same portfolio weights as exist in the Fund's portfolio, based on their relative market values at the time of such subscription.

25. In the view of the Filer, the Funds are also similar to "fixed portfolio investment funds", as such term is defined in NI 81-102, in that they will: (a) have fundamental investment objectives that include holding and maintaining a fixed (i.e., equal) weighting of publicly traded equity securities of one or more issuers, the names of which are disclosed in its prospectus; and (b) trade the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus. The Funds will not be "fixed portfolio investment funds" as they will be in continuous distribution.

26. The Filer further notes that a "fixed portfolio investment fund" is exempt from the Concentration Restrictions, provided purchases of securities are made in accordance with its investment objectives.

27. The Constituent Issuers are among the largest public issuers in Canada. The Shares comprising each Index are some of the most liquid equity securities listed on the Designated Exchange and are less likely to be subject to liquidity concerns than the securities of other issuers.

28. The Exemption Sought is sought to permit the Funds to purchase Shares or enter into specified derivatives transactions in connection therewith such that, immediately after the transaction, more than 10 percent of its net assets would be invested in the Shares of one Constituent Issuer for the purposes of determining compliance with the Concentration Restriction (the **Proposed Transactions**).

29. Neither the Filer nor the Funds is in default of any of its obligations under securities legislation in any of the Jurisdictions. The Filer is applying for the Exemption Sought for the purposes of greater certainty with respect to the pursuit of the investment strategies of the Funds.

Decision

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

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

(a) the Proposed Transactions are in accordance with the investment objectives and investment strategies of each Fund to replicate the performance of the applicable Index, or any successor thereto;

(b) each Index contains a minimum of three Constituent Issuers;

(c) the Funds' investment strategies disclose that, following a Fund's Index Rebalance Date, the Fund will invest in the Constituent Issuers in equal weights. Outside of an Index Rebalance Date, any investments by the Funds, if any, will be such that securities of each Constituent Issuer are acquired up to the same weights as the Shares exist in the Funds' portfolio, based on their relative market values at the time of such investment;

(d) the Funds' investment strategies disclose the frequency of the rebalancing of the Funds' portfolio; and

(e) the final prospectus of the Funds includes: (i) disclosure regarding the Exemption Sought under the heading "Exemptions and Approvals"; and (ii) a risk factor regarding the concentration of the Fund's investments in the Constituent Issuers and the risks associated therewith.

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

Application File #: 2024/0559
SEDAR+ File #: 6186521

B.3.2 PenderFund Capital Management Ltd.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1.

October 8, 2024

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

AND

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

AND

IN THE MATTER OF
PENDERFUND CAPITAL MANAGEMENT LTD.
(the "Filer")

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**"), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the "**Exemption Sought**").

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

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

(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 Filer and its Registered Individuals (as defined below) in each of Alberta, Manitoba, Québec, Newfoundland and Labrador in respect of the Exemption Sought; and

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

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of British Columbia and has its head office in Vancouver, British Columbia.

2. The Filer is registered as an (i) investment fund manager in British Columbia, Ontario, Québec, and Newfoundland and Labrador; (ii) portfolio manager in British Columbia and Ontario; and (iii) exempt market dealer in British Columbia, Ontario, Alberta, Manitoba and Québec.

3. The Filer is not in default of securities legislation in any province or territory of Canada, other than with respect to the subject matter of this decision. The Filer and certain of its registered individuals were in default of the requirements in paragraph 13.18(2)(b) of NI 31-103 from December 31, 2021, to the date of the decision. The Exemption Sought is only in effect from the date of the decision.

4. The Filer is the manager, portfolio manager and trustee of certain mutual funds and other investment funds.

5. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the "**Registered Individuals**"). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has two Registered Individuals.

6. The current titles used by the Registered Individuals include the words "Vice President" and "Director", and the Registered Individuals may use additional corporate officer titles in the future (collectively, the "**Titles**").

7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience. A Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

8. The Registered Individuals interact primarily with institutional clients that are, each, a non-individual "permitted client" as defined in section 1.1 of NI 31-103 (the "**Institutional Clients**").

9. To the extent a Registered Individual interacts with clients that are not Institutional Clients (each, a "**Non-Institutional Client**"), the Filer has policies, procedures and controls in place to ensure that such Registered Individual will only use a Title when interacting with Institutional Clients, and will not use a Title in any interaction with Non-Institutional Clients, including in any communications, such as written and verbal communications, that are directed at, or may be received by, Non-Institutional Clients.

10. The Filer will not grant any registered individual that interacts primarily with Non-Institutional Clients, nor will such registered individual be permitted by the Filer to use, a corporate officer title other than in compliance with paragraph 13.18(2)(b) of NI 31-103.

11. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

12. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

13. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Institutional Clients.

14. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Janice Leung"
Acting Director, Capital Markets Regulation
British Columbia Securities Commission

OSC File #: 2024/0165

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
Delta 9 Cannabis Inc.	October 23, 2024	
DGTL Holdings Inc.	October 7, 2024	October 24, 2024
The BC Bud Corporation	September 9, 2024	October 24, 2024
Vencanna Ventures Inc	October 25, 2024	

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

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

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	
Organto Foods Inc.	May 8, 2024	
AION THERAPEUTIC INC.	August 30, 2024	

Company Name	Date of Order	Date of Lapse
Hybrid Power Solutions Inc.	October 2, 2024	

B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Alphabet (GOOGL) Yield Shares Purpose ETF
Amazon (AMZN) Yield Shares Purpose ETF
AMD (AMD) Yield Shares Purpose ETF
Apple (AAPL) Yield Shares Purpose ETF
Berkshire Hathaway (BRK) Yield Shares Purpose ETF
META (META) Yield Shares Purpose ETF
Microsoft (MSFT) Yield Shares Purpose ETF
MLD Core Fund
NVIDIA (NVDA) Yield Shares Purpose ETF
PK Core Fund
Purpose Active Balanced Fund
Purpose Active Conservative Fund
Purpose Active Growth Fund
Purpose Canadian Financial Income Fund
Purpose Conservative Income Fund
Purpose Emerging Markets Dividend Fund
Purpose Enhanced Dividend Fund
Purpose Global Bond Fund
Purpose Global Flexible Credit Fund (formerly Purpose Floating Rate Income Fund)
Purpose Gold Bullion Fund
Purpose High Interest Savings Fund (formerly, Purpose High Interest Savings ETF)
Purpose International Dividend Fund
Purpose International Tactical Hedged Equity Fund
Purpose Premium Money Market Fund
Purpose Premium Yield Fund
Purpose Tactical Thematic Fund
Purpose U.S. Preferred Share Fund
Purpose US Cash Fund
Tesla (TSLA) Yield Shares Purpose ETF
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 23, 2024
NP 11-202 Final Receipt dated Oct 24, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06184020

Issuer Name:
Titanium Canadian Equity Private Pool
Titanium Canadian Fixed Income Private Pool
Titanium Global Fixed Income Private Pool
Titanium Global Strategics Opportunities Private Pool
Titanium International Equity Private Pool
Titanium U.S. Equity Private Pool
Principal Regulator – Quebec
Type and Date:
Preliminary Simplified Prospectus dated Oct 18, 2024
NP 11-202 Preliminary Receipt dated Oct 22, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06194153

Issuer Name:
TD FundSmart Managed Aggressive Growth Portfolio
TD FundSmart Managed Balanced Growth Portfolio
TD FundSmart Managed Income & Moderate Growth Portfolio
TD Managed Aggressive Growth ETF Portfolio
TD Managed Aggressive Growth Portfolio
TD Managed Balanced Growth ETF Portfolio
TD Managed Balanced Growth Portfolio
TD Managed Income & Moderate Growth ETF Portfolio
TD Managed Income & Moderate Growth Portfolio
TD Managed Income ETF Portfolio
TD Managed Income Portfolio
TD Managed Maximum Equity Growth ETF Portfolio
TD Managed Maximum Equity Growth Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 24, 2024
NP 11-202 Final Receipt dated Oct 25, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06183216

Issuer Name:
Probity Mining 2024-II Short Duration Flow-Through Limited Partnership – British Columbia Class
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Oct 25, 2024
NP 11-202 Final Receipt dated Oct 25, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #6171968

Issuer Name:
Probity Mining 2024-II Short Duration Flow-Through Limited Partnership – Quebec Class
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Oct 25, 2024
NP 11-202 Final Receipt dated Oct 25, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06171969

Issuer Name:
Probity Mining 2024-II Short Duration Flow-Through Limited Partnership – National Class
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Oct 25, 2024
NP 11-202 Final Receipt dated Oct 25, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06171988

Issuer Name:
Tralucent Global Alt (Long/Short) Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 21, 2024
NP 11-202 Final Receipt dated Oct 22, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06182945

Issuer Name:
Manulife Smart Core Bond ETF
Manulife Smart Corporate Bond ETF
Manulife Smart Defensive Equity ETF
Manulife Smart Dividend ETF
Manulife Smart International Defensive Equity ETF
Manulife Smart International Dividend ETF
Manulife Smart Short-Term Bond ETF
Manulife Smart U.S. Defensive Equity ETF
Manulife Smart U.S. Dividend ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Oct 25, 2024
NP 11-202 Final Receipt dated Oct 25, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06185707

Issuer Name:
EHP Alpha Strategies Alternative Fund
EHP Select Alternative Fund
EHP Strategic Income Alternative Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated Oct 10, 2024
NP 11-202 Final Receipt dated Oct 22, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06150297

Issuer Name:
Dynamic Active Bond ETF
Dynamic Active Corporate Bond ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Oct 21, 2024
NP 11-202 Final Receipt dated Oct 22, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06186250

Issuer Name:
Dynamic Alpha Performance II Fund
Dynamic Credit Absolute Return Fund
Dynamic Credit Opportunities Fund
Dynamic Global Growth Opportunities Fund
Dynamic Liquid Alternatives Private Pool
Dynamic Premium Yield PLUS Fund
Dynamic Real Estate & Infrastructure Income II Fund
Dynamic Short Term Credit PLUS Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 18, 2024
NP 11-202 Final Receipt dated Oct 22, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06178047

Issuer Name:
DAMI Corporate Bond Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 28, 2024
NP 11-202 Final Receipt dated Oct 28, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06184910

Issuer Name:
iShares Gold Bullion ETF
iShares Silver Bullion ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Oct 25, 2024
NP 11-202 Final Receipt dated Oct 28, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06187498

NON-INVESTMENT FUNDS

Issuer Name:
Alcon Silver Corp.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated October 24, 2024
NP 11-202 Final Receipt dated October 25, 2024
Offering Price and Description:
Minimum Offering: $2,800,000 or 9,333,333 Units
Maximum Offering: $4,000,000 or 13,333,333 Units
Price: $0.30 per Unit
Filing # 06130582

Issuer Name:
Brazil Potash Corp
Principal Regulator – Ontario
Type and Date:
Amendment to Preliminary Long Form Prospectus dated October 23, 2024
NP 11-202 Amendment Receipt dated October 25, 2024
Offering Price and Description:
US$*
4,250,000 Common Shares
US$* per Common Share
Filing # 06188534

Issuer Name:
TAG Oil Ltd
Principal Regulator – British Columbia
Type and Date:
Amendment to Preliminary Short Form Prospectus dated October 23, 2024
NP 11-202 Amendment Receipt dated October 23, 2024
Offering Price and Description:
Up to $10,000,000
Up to 58,823,529 Units
Price: $0.17 Per Unit
Filing # 06194121

Issuer Name:
TAG Oil Ltd
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 21, 2024
NP 11-202 Preliminary Receipt dated October 21, 2024
Offering Price and Description:
Up to $10,000,000
* Units
Price: * Per Unit
Filing # 06194121

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	AON SECURITIES INVESTMENT MANAGEMENT INC.	Portfolio Manager and Commodity Trading Manager	October 22, 2024
Change of Registration Category	MERCHANT OPPORTUNITIES FUND SERVICES LTD.	From: Exempt Market Dealer To: Investment Fund Manager, Exempt Market Dealer	October 23, 2024
New Registration	Incana Capital Management Inc.	Investment Fund Manager and Exempt Market Dealer	October 25, 2024

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 TSX Inc. – Notice of Approval

TSX INC.

NOTICE OF APPROVAL

(OCTOBER 31, 2024)

Introduction

In accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto" for recognized exchanges, TSX Inc. (the "**Exchange**") has adopted, and the Ontario Securities Commission has approved, certain amendments to the TSX Rule Book to make certain amendments to the Long Life order type, as set out in the Request for Comment (as defined below) (the "**Amendments**").

On August 8, 2024, the Exchange published a Notice of Proposed Amendments and Request for Comments (the "**Request for Comment**").

Capitalized terms used and not otherwise defined in the Notice of Approval shall have the meaning ascribed to them in the Request for Comment.

Summary of the Amendments

A copy of the Amendments can be found here.

Comments Received

The Amendments were published for comment on August 8, 2024 for a 30-day period, and three comment letters were received. A summary of the comments submitted, together with the Exchange's responses, is attached at **Appendix A**. The Exchange thanks all commenters for their feedback and suggestions.

Effective Date

The Amendments will be implemented in Q4, 2024.

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSES

List of Commenters:

Canadian Security Traders' Association, Inc.

Scotiabank

TD Securities Inc.

	Summarized Comments Received	***The Exchange's Response***
1.	Two commenters were of the view that Long Life type orders are a critical equalizer and market structure tool for market participants who commit stable and accessible passive liquidity versus short-horizon latency-sensitive strategies.	The Exchange thanks the commenters for their feedback.
2.	One commenter was of the view that the usage of long life orders by their intended beneficiaries (typically institutional and retail investors) has led to improved quote stability on primary markets, larger and more predictable fills and resultingly a better execution experience.	The Exchange thanks the commenter for their feedback.
3.	Two commenters were generally unsupportive of the Amendments, being of the view that the Amendments may pose adverse risks to the intended users of the Long Life order type, hurt natural liquidity and promote the use of long life orders by low-latency participants for whom the Long Life priority advantage was never intended. Both commenters were also of the view that the Cancellation Delay is a gatekeeper of unintended user activity. One commenter was of the view that the cancellation delay is an integral aspect of the long life order type and is the most important element in achieving the goal of benefit natural investors, their dealers and other non-latency participants. The commenter questioned what additional flexibility the proposed amendments would provide to natural investors and their dealers. One commenter was of the view that existing users of long life orders will experience diminished value to the order type and worse-off execution quality as more market participants who do not represent the original profile of natural and committed providers of liquidity migrate to using the long life order type.	The Exchange continues to believe that the proposal to remove the Cancellation Delay, applicable only after the required one second resting period, seeks to balance the promotion of market stability with the provision of the operational flexibility essential for effective trading strategies. The core value proposition of the Long Life order type remains unchanged: participants committing to a minimum of one second of exposure will continue to receive enhanced queue priority. This queue priority gives natural liquidity providers (retail and institutional investors) the advantage needed to trade without having to compete solely on speed. Generally, natural liquidity providers cannot react as quickly to adverse market conditions when compared to low latency participants. The Cancellation Delay further impeded the natural liquidity provider's ability to react quickly. Removing the Cancellation Delay does not diminish the fundamental benefit of Long Life orders. Instead, the Exchange is of the view that the Amendments enhance flexibility by, allowing the natural liquidity providers, who are not low latency participants, an opportunity to better manage their exposure in fast-moving potential adverse market conditions. The Exchange disagrees with the view that low-latency participants will begin to dominate the Long Life order type. As one commenter noted, the one second delay "itself is a substantial burden in modern fast-moving markets", and the Exchange believes that the continued existence of such one second delay will continue to act as a disincentive for latency-sensitive traders to use the Long Life order type. The Exchange is of the view that the one second delay is the "gatekeeper of unintended user activity." The Exchange believes that, if the Amendments are approved and implemented, natural liquidity providers will continue to be the beneficiaries of the Long Life order type.

	Summarized Comments Received	***The Exchange's Response***
4.	One commenter was of the view that the Amendments would allow Long Life orders to join the order book at any time and immediately take priority over pre-existing non-Long-Life orders, with the ability to cancel at any time after the first second, thereby providing participants with the "best of both worlds". The commenter was of the view that in an environment of stable quotes, these orders will be filled sooner, but can also rapidly cancel to avoid adverse selection. One commenter was of the view that a key consideration for the Amendments is whether a one second commitment is sufficient to earn the rights and privileges of enhanced queue priority through the entire duration of the order. Two commenters were of the view that a singular one second rest period criteria was not an appropriate differentiator of order flow deserving of a queue priority benefit, and that the removal of the Cancellation Delay will provide orders with a benefit for an unlimited duration (queue priority) in exchange for risk only in the first second, with the benefit conferred thus being disproportionate to the risk taken. One commenter was also of the view that the one second rest criteria is arguably easier to overcome for so-called fast traders than the Cancellation Delay. One commenter was of the view that TSX should explore a shorter static delay on the cancellation period, as a compromise between users looking for certainty on cancel delay and maintaining a material enough cancel risk that the long life order type does not become utilized by 100% of the market.	The Exchange disagrees with the commenters' views. The Exchange believes that the privilege of queue priority is earned by a participant when they subject their order to the one second delay. The one second delay is a meaningful and appropriate differentiator, and is a significant amount of time where orders are exposed to market risks. In today's fast moving markets, where trades occur in microseconds, a participant voluntarily subjecting their order to a one second delay should be viewed as a considerable concession entitling such order to queue priority.
5.	Two commenters questioned whether the "45% of all Long Life" order users whose feedback was sought was sufficiently diverse as to represent a broad cross-section of users.	From time to time, when considering certain proposals, the Exchange may conduct preliminary external consultation from certain participants, including, but not limited to, users of a specific order type or participants who may be impacted the most, are well experienced using an order type, functionality, etc. Any feedback received from this subset of participants is not meant to bypass the formal consultation process, nor is it intended to serve as a proxy for participants as a whole. Instead, any preliminary consultations undertaken are intended to help inform our decision on how to proceed with a proposal, including potentially modifying the proposal based on the initial feedback received, soliciting additional preliminary feedback, and determining whether or not to formally propose amendments by filing an application with the applicable securities regulators, in which a formal Request for Comment is published for public consultation. Based on the comments received through the formal public consultation process, the Exchange may make changes to proposed amendments. Any changes made to a proposal as a result of this process may warrant the publication of a second Request for Comment (i.e. where the changes made are material) to seek feedback on those changes.

	Summarized Comments Received	***The Exchange's Response***
		With respect to the Proposed Amendments, the Exchange consulted with the top 10 users of the Long Life order type for 2023, representing over 45% of Long Life order type users.
6.	One commenter raised the possibility of lengthening the minimum time commitment (i.e. to greater than one second) as a better tradeoff to make disposing the Cancellation Delay more suitable.	The Exchange does not believe that lengthening the minimum time commitment is necessary or a better trade-off. The Exchange does not believe that a longer resting period would enhance the value of the long life order type. Instead, the Exchange believes that a longer resting period could make the Long Life order type less attractive to natural liquidity providers as the exposure to risk increases, which would have the unintended effect of dampening the liquidity and price discovery benefits that Long Life order types provide.
7.	One commenter noted that retail limit orders that are commonly marked as long life have the most to lose given that they are typically displayed in full-size and have no need for order management flexibility. The commenter was of the view that these orders are rarely canceled and easily fulfill both criteria naturally and questioned why orders that require millisecond option flexibility should be in the same class as this client order flow.	While retail orders may not be frequently canceled, the Exchange is of the view that providing retail investors the option and ability to manage their orders if market conditions change should not be considered a negative attribute of the Amendments. Retail investors should be afforded the flexibility to adapt to unexpected market movements.

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